

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2022] NZEmpC 230
EMPC 49/2019**

IN THE MATTER OF proceedings removed in full from the
Employment Relations Authority

AND IN THE MATTER of an application for audio recordings

BETWEEN TE WHATU ORA – HEALTH NEW
ZEALAND (in respect of the former Bay of
Plenty District Health Board)
Plaintiff

AND CULTURES SAFE NEW ZEALAND
LIMITED (in liquidation)
First Defendant

AND ALLAN HALSE
Second Defendant

AND ANA SHAW
Third Defendant

Hearing: On the papers

Appearances: M Beech, counsel for plaintiff
No appearance for CultureSafe NZ Ltd (in liquidation)
A Halse, in person
A Shaw, in person

Judgment: 13 December 2022

**INTERLOCUTORY JUDGMENT OF JUDGE B A CORKILL
(Application for audio recordings)**

Introduction

[1] Ms Shaw has requested that audio recordings of two hearings in April and June 2020 be provided to her.

[2] The ground relied on by Ms Shaw is that she “wishes to prepare an application for the further examination of the process used by the plaintiff and by the Employment Relations Authority and by the Employment Court” and that the audio recordings will provide evidence of that process.

[3] Counsel for the plaintiff, Mr Beech, does not consent to, nor oppose, the application. No submissions were advanced on behalf of the plaintiff.

[4] Mr Halse filed an email stating that he supports the request, and also seeks a copy of the audio recordings of the two hearings in question. He also says that he proposes to file, in due course, an application to strike out the current proceeding.

[5] The first request relates to a telephone directions conference which took place on 6 April 2020 and resulted in procedural directions being made and notified to the parties via the Registrar. No audio recording was made.

[6] The second event concerns a submissions-only hearing which was held on 29 June 2020. On that occasion, counsel addressed their previously filed submissions. These led to my judgment of 22 September 2020.¹ The audio recording of this event was transcribed at the time. Before considering issues relating to that recording, I summarise the applicable legal principles.

Legal framework

[7] The Employment Relations Act 2000 does not deal with access to material held on the Court file, nor do the Employment Court Regulations 2000 (the Regulations). The Senior Courts (Access to Court Documents) Rules 2017 (the Rules), however, are applied via reg 6 of the Regulations and/or by way of helpful analogy.²

[8] The electronic record of a hearing is not part of the “formal court record” as defined in r 4 of the Rules. Accordingly, the record is not subject to the right of access to formal court records provided by r 8.

¹ *Bay of Plenty District Health Board v CultureSafe New Zealand Ltd* [2020] NZEmpC 149, [2020] ERNZ 376.

² *Prasad v LSG Sky Chefs New Zealand Ltd* [2017] NZEmpC 160 at [4]; *E Tū Incorporated v Rasier Operations BV (No 3)* [2022] NZEmpC 196 at [4].

[9] However, r 9 provides the general rights of parties to proceedings.

[10] Rule 9(1) provides a general right for a party to a civil proceeding to search and inspect a court file and document relating to the proceeding, under supervision of a Registrar or a person appointed by the Registrar; and to copy any part of the court file or any document relating to the proceeding on paying a prescribed fee.

[11] This right, however, is subject to the qualification contained in r 9(5) of the Rules, which relevantly states:

- (5) ...
- (a) a record of a court proceeding in electronic form that is in the custody and control of the court may be copied only with the permission of a Judge:
- ...

[12] In *Nuku v R*, the Supreme Court considered whether an applicant was entitled to a transcript of a hearing in the Court of Appeal against conviction and sentence.³ Winkelmann J, as she then was, recorded that the applicant wished to have the transcript “for his own records and to assist him in his research and studies”. The request was declined.

[13] A second request was made, with the reason then being given that the applicant wished to use the transcript for the purposes of prosecuting complaints or proceedings associated with alleged wrongdoing by prison and police officers and Paremoremo Prison. Winkelmann J again rejected the application, stating she was of the view that the applicant’s reason for seeking a transcript was not sufficient as the ability of the applicant to advance his complaints was not materially affected by him having (or not having) a transcript.⁴

[14] In considering whether there was an appealable point, the Supreme Court concluded that there was no question of public or general importance; but materially

³ *Nuku v R* [2018] NZSC 96.

⁴ At [2].

for present purposes that there was no appearance of error in the reasons given by Winkelmann J.⁵

[15] From this, I conclude that in determining whether permission should be given to the copying of a record of a court proceeding, the court should be satisfied that there is a good reason for doing so.⁶

Analysis

[16] Since there is no audio recording of the telephone directions conference heard on 6 April 2020, the application in that respect is dismissed.

[17] I am not satisfied that an electronic copy of the hearing of 29 June 2020 should be released. Rather, the issue is whether the transcript which was created at the time should be provided.

[18] In Ms Shaw's application, she says she needs the material because she wishes to prepare an application for the further examination of the process adopted by the Court.

[19] In her supporting affirmation she says the material is sought "to assist with the consideration of the appropriate steps in relation to these proceedings".

[20] She goes on to outline her view of various aspects of the history of this litigation. It is apparent from her description of those events that she does not have a complete understanding of the way in which the submissions-only hearing proceeded on 29 June 2020.

[21] Then she describes the subsequent steps that occurred, after the September judgment was issued.

[22] As she correctly notes, these included judicial review proceedings in the Court of Appeal, which related to various determinations and judgments of this Court

⁵ At [9].

⁶ See also *Zhang v Westpac New Zealand Ltd* [2019] NZHC 2797 at [33] where the High Court proceeded on this basis.

including the judgment in this proceeding. She also referred to the decision of the Court of Appeal dismissing the judicial review application. Reference was made also to an application for leave to appeal this to the Supreme Court, which was dismissed, and a subsequent application for leave to appeal the judgment of this Court to the Court of Appeal, which was also dismissed.⁷

[23] Given this history, it is not apparent what further steps Ms Shaw may be considering.

[24] For that reason, the question of whether the Court should give permission for its transcript to be released is a finely balanced one. I have concluded, however, that in the unusual circumstances permission should be given to release a transcript of the hearing held on 29 June 2020, so that at the very least there will be clarity as to what occurred. I am also mindful of the fact that the transcript already exists, so there is no issue of the Court's resources being unduly pressured by producing a transcript in respect of a day-long hearing.

[25] I direct that a copy of the transcript is to be provided to Ms Shaw, Mr Halse and Mr Beech.

[26] There is no issue as to costs.

B A Corkill
Judge

Judgment signed at 9.10 am on 13 December 2022

⁷ As summarised recently in *Te Whatu Ora – Health New Zealand v CultureSafe New Zealand Ltd (in liq)* [2022] NZEmpC 190 at [12]– [13].