

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

**I TE KŌTI TAKE MAHI O AOTEAROA  
ŌTAUTAHI**

**[2019] NZEmpC 32  
EMPC 428/2018**

IN THE MATTER OF      a challenge to a determination of the  
   Employment Relations Authority

AND IN THE MATTER    of an application for stay of execution

BETWEEN                              CANTERBURY CONCRETE CUTTING  
   NEW ZEALAND LIMITED  
   Plaintiff

AND    MICHAEL NICOL  
   Defendant

Hearing:                      On the papers

Appearances:              T Cleary, counsel for plaintiff  
   R Thompson, advocate for defendant

Judgment:                      25 March 2019

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**CONSENT INTERLOCUTORY JUDGMENT OF JUDGE K G SMITH  
(Application for stay of execution of determination)**

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[1]      The Employment Relations Authority determined that Michael Nicol was unjustifiably dismissed from his employment with Canterbury Concrete Cutting New Zealand Ltd on 4 December 2017.<sup>1</sup>

[2]      Canterbury Concrete was ordered to pay Mr Nicol:

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<sup>1</sup>      *Nicol v Canterbury Concrete Cutting NZ Ltd* [2018] NZERA Christchurch 180.

- (a) \$9,126.64 gross, as reimbursement of lost wages under s 123(1)(b)(i) of the Employment Relations Act 2000 (the Act); and
- (b) \$18,750.00 being compensation under s 123(1)(c)(i) of the Act.

[3] The amounts which Canterbury Concrete were ordered to pay Mr Nicol, therefore, amounted to \$27,876.64. The Authority ordered Mr Nicol to pay a penalty of \$2,000 to the Crown for breach of the duty of good faith. On 15 February 2018 the Authority ordered Canterbury Concrete to pay a contribution to Mr Nicol's costs of \$4,500 and disbursements of \$71.56.<sup>2</sup>

[4] Both determinations have been challenged. Canterbury Concrete seeks to establish that it was justified in dismissing Mr Nicol and to have the determinations set aside.

[5] On 24 December 2018 Canterbury Concrete paid to the Registrar of this Court \$27,876.64. That step was taken before an application was made for a stay of execution of the Authority's determination of 6 December 2018.

[6] Following a directions conference on 11 March 2019 the parties have reached agreement and seek orders by consent providing for a stay of execution of both determinations subject to the amount ordered to be paid in the 6 December 2018 determination being held by the Registrar of this Court. The agreement does not require the amount of the costs determination to be paid to the Registrar.

[7] I am satisfied that a stay is appropriate. By consent both determinations are stayed and the Registrar is to continue to hold the sum of \$27,876.64 on interest-bearing deposit pending further order of the Court or agreement in writing by the parties.

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<sup>2</sup> *Nicol v Canterbury Concrete Cutting NZ Ltd* [2019] NZERA 84.

[8] Costs are reserved.

K G Smith  
Judge

Judgment signed at 10.10 am on 25 March 2019