

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

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

**[2020] NZEmpC 102
EMPC 273/2019**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for leave to serve a defendant overseas
BETWEEN	KATYA PFENNIGER Plaintiff
AND	GORDON BLUME First Defendant
AND	RONALD BRAUN Second Defendant

Hearing: On the papers

Appearances: Plaintiff in person
No appearance for second defendant

Judgment: 13 July 2020

**INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN
(Application for leave to serve a defendant overseas)**

[1] The plaintiff has challenged a determination of the Employment Relations Authority (the Authority) that declined her application for wage arrears and her application for name suppression.¹ Before the employment relationship problem was able to be investigated, Craftbros Hospitality Ltd (Craftbros Hospitality), the first

¹ *Pfenniger v Craftbros Hospitality Ltd* [2019] NZERA 429 (Member Tetitaha).

respondent before the Authority, was removed from the Companies Register, ending the claim against it.²

[2] In the Authority, the plaintiff's application for leave to serve the first defendant overseas was declined on the basis that the Authority found that there was insufficient evidence that he was the plaintiff's employer. The Authority also found little, if any, evidence that the second defendant was the plaintiff's employer. It found that the best evidence of who was intended to be the plaintiff's employer at the time of her employment pointed to Craftbros Hospitality.

[3] In the Court, the plaintiff asserts that her true employer at all material times was the first defendant. She continues to seek wage arrears in excess of \$3,025 as well as corresponding holiday pay and KiwiSaver contributions. She also challenges the Authority's decision not to grant her name suppression.

[4] It is against that background that the plaintiff now applies for leave to serve the first defendant in Germany, where he now resides. Her application is based on the grounds that the first defendant was operating under Craftbros Hospitality during her employment and has now moved to Germany. She says he has had numerous businesses registered with the Companies Office.³

[5] The plaintiff asserts that the Authority had previously advised her that she did not need to serve the proceedings overseas. She also says that the Authority permitted service overseas without leave.

Court may give leave for overseas service

[6] Documents relating to a matter before the Court may be served out of New Zealand by leave of the Court; and in accordance with regulations made under the Act.⁴

² At [39]–[41].

³ In that context she identifies three companies, including Craftbros Hospitality, all of which seem to have been removed from the Companies Register.

⁴ Employment Relations Act 2000, sch 3 cl 5A.

[7] Where a party seeks leave to serve a statement of claim overseas (and beyond Australia) reg 31A of the Employment Court Regulations 2000 (the Regulations) applies. Under that regulation the Court may grant leave where the employment agreement that is the subject of the proceedings was made in New Zealand, or was to be wholly or partly performed in New Zealand, or was expressly or impliedly to be governed by New Zealand law, or is said in the statement of claim to have been breached in New Zealand. It also may grant leave where the overseas party is a necessary and proper party to the proceeding brought by the plaintiff against a person who is to be, or has been, served in New Zealand.⁵

[8] An application for leave must be made on notice to every party to the proceeding, other than the overseas party.⁶ The second defendant, has been served with the application. He has not filed any documents in response.

[9] In the present proceedings, the plaintiff's employment was in New Zealand, is governed by New Zealand law and is said in the statement of claim to have been breached in New Zealand. As she claims the first defendant was her employer at all relevant times, he ought to be served with the proceedings.

[10] An order is accordingly made, granting leave for the first defendant to be served overseas.

[11] The plaintiff sought an order under reg 28(2) of the Regulations allowing her to serve the first defendant by way of electronic communication (email). While such an order may seem sensible, it is precluded by reg 31B(8) and the convention arrangements between New Zealand and Germany.⁷ The plaintiff must now follow the procedure in reg 31B, and file a request for service overseas together with accompanying documents with the Court.⁸ This ought be done within 14 days of the

⁵ Regulation 31A(5)(c).

⁶ Regulation 31A(2).

⁷ Convention between His Majesty and the President of the German Reich regarding Legal Proceedings in Civil and Commercial Matters [1928] NZTS 10 (signed 20 March 1928, entered into force 1 January 1930); Exchange of Correspondence Constituting an Agreement between the Government of New Zealand and the Government of the Federal Republic of Germany concerning the Convention of 20 March 1928 regarding Legal Proceedings in Civil and Commercial Matters 271 UNTS 207 (signed 10 December 1952, entered into force 1 January 1953).

⁸ Employment Court Regulations 2000, reg 31B(2)–(4) and sch 1 forms 2B and 2C.

date of this judgment. The Court then will transmit the necessary documents through the appropriate channels, and inform the plaintiff when service on the first defendant has been effected.

[12] Costs are reserved.

J C Holden
Judge

Judgment signed at 11 am on 13 July 2020