

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

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

**[2020] NZEmpC 128
EMPC 411/2018**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application to hear evidence at a distance
BETWEEN	CONCRETE STRUCTURES (NZ) LIMITED Plaintiff
AND	SAM WARD Defendant

EMPC 426/2019

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application to her evidence at a distance
BETWEEN	SAM WARD Plaintiff
AND	CONCRETE STRUCTURES (NZ) LIMITED Defendant

Hearing: On the papers

Appearances: KA Badcock, counsel for Concrete Structures (NZ) Limited
R Bryant, counsel for S Ward

Judgment: 21 August 2020

**INTERLOCUTORY JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS
(Application to hear evidence at a distance)**

[1] Both parties are challenging a determination of the Employment Relations finding that Mr Ward was unjustifiably dismissed.¹ A hearing is set down in Auckland commencing on 2 September 2020.

[2] Concrete Structures (NZ) Ltd has applied for orders allowing one of its witnesses, Ms Stevens, to attend the hearing via audio-visual link (AVL). Ms Stevens' personal circumstances, taken with the restrictions and concerns relating to the current COVID-19 situation, are said to present difficulties for her in attending the hearing in person.

[3] The application is not opposed by Mr Ward.

[4] The ordinary way for a witness to give evidence in a civil proceeding is orally in a courtroom in the presence of a Judge, the parties and the public.² There is no presumption in favour of giving evidence in the ordinary way.³

[5] The Courts (Remote Participation) Act 2010 provides for the use of AVL in civil and criminal proceedings. The criteria for allowing the use of AVL is set out in s 5, which provides:

5 General criteria for allowing use of audio-visual links

A judicial officer or Registrar must consider the following criteria when he or she is making a determination under this Act whether or not to allow the use of AVL for the appearance of any participant in a proceeding:

- (a) the nature of the proceeding;
- (b) the availability and quality of the technology that is to be used;
- (c) the potential impact of the use of the technology on the effective maintenance of the rights of other parties to the proceeding, including—
 - (i) the ability to assess the credibility of witnesses and the reliability of evidence presented to the court; and
 - (ii) the level of contact with other participants;
- (d) any other relevant matters.

¹ *Ward v Concrete Structures (NZ) Ltd* [2018] NZERA Auckland 350 (Member Trotman).

² See, for example, High Court Rules 2016, r 9.51; Evidence Act 2006, s 83.

³ See the discussion in *V (CA492/10) v R* [2011] NZCA 525, citing *R v Shone* [2008] NZCA 313 at [28]. The Court of Appeal confirmed this is still the principle in *Wealleans v R* [2015] NZCA 353 at [34].

[6] The proceedings have been set down for two days, do not appear to raise complex factual issues, and do not require extensive documentation. Ms Stevens's evidence relates to processing pay and the maintenance of employee records. AVL is available and there is nothing to indicate that there would likely be any problems or difficulties with the quality of the technology.

[7] I am satisfied that it is appropriate in the circumstances that Ms Stevens be permitted to give her evidence via AVL.

[8] Counsel for the company is to liaise with the Court and counsel for Mr Ward to make the necessary arrangements and ensure that the agreed bundle of documents is available when Ms Stevens gives evidence.

[9] I do not understand any issue of costs to arise on this application.

Christina Inglis
Chief Judge

Judgment signed at 11 am on 21 August 2020