

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

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

**[2020] NZEmpC 183
EMPC 295/2019**

IN THE MATTER OF	proceedings removed in full from the Employment Relations Authority
AND IN THE MATTER	of an application to adjourn the hearing
BETWEEN	E TŪ INCORPORATED Plaintiff
AND	MOUNT COOK AIRLINE LIMITED Defendant

Hearing:	On the papers
Appearances:	P Cranney, counsel for plaintiff K Thompson, counsel for defendant
Judgment:	6 November 2020

**INTERLOCUTORY JUDGMENT OF JUDGE K G SMITH
(Application to adjourn the hearing)**

[1] This proceeding is set down to be heard over three days beginning on Tuesday 24 November 2020.

[2] The parties have jointly applied for an adjournment. Before considering the application a brief description of the proceeding is required.

[3] Mount Cook Airline Ltd operates airline services throughout New Zealand and is a wholly owned subsidiary of Air New Zealand Ltd.

[4] It employs cabin crew as full-time, part-time or casual employees. At the time when the parties filed a statement of agreed facts, it employed 250 full-time, 15 part-time and 8 casual cabin crew employees. The plaintiff, E Tū, and Mount Cook are parties to a collective agreement covering the work of those cabin crew employees who are members of the union.

[5] In 2011 the part-time cabin crew role was introduced into the collective agreement, providing for a salary to be paid to part-time employees. The issue raised in this proceeding is, generally speaking, whether that salary complies with the relevant Minimum Wage Order because of the way in which it is calculated.

[6] The application to adjourn was contained in joint memoranda from counsel dated 15 and 29 October 2020. In them counsel advised that, since 27 March 2020, Air New Zealand and the union have been dealing with what was described as a profound and deepening crisis caused by the collapse of substantial parts of the airline industry. According to counsel, an anticipated post-lockdown recovery has not occurred. One consequence of this crisis has been 1,900 union members, and others, losing their jobs with the airline (and its subsidiaries). A further approximately 350 job losses in cabin crew roles have been announced and wage cuts are expected.

[7] The present situation was described as creating significant stress and dislocation on “both sides of the industrial fence”. Counsel advised that there are disagreements between the union and airline over the process by which some of these changes have occurred, and been implemented, leading to litigation in the Employment Relations Authority.

[8] The clear message conveyed by the memoranda was that the industrial difficulties confronting the union and airline arising from the pandemic have overwhelmed, and potentially overtaken, the matters raised by this proceeding. Against that background, and while recognising that the Court’s hearing time is a limited resource, they have sought an adjournment to provide an opportunity to attempt to resolve the complex problems that have emerged and, in doing so, to also settle this dispute. Without diminishing the seriousness of the issue in this proceeding, the parties seem to accept that it is now overshadowed by other problems.

[9] Ordinarily, an adjournment would not be granted merely because the parties desire an opportunity to attempt to resolve the issues between them. Court time, and judicial resources, are scarce. Almost inevitably a late application to adjourn means it is unlikely another case can be allocated to the hearing time that becomes available and which is then lost.

[10] Taking all of that into account, I accept the parties are faced with unusual (and hopefully rare) circumstances which have arisen for reasons beyond their control. Given the breadth of the issues outstanding between them, and how they have materialised relatively recently, I accept that an adjournment is appropriate.

[11] The application is granted. The fixture dates are vacated and the Registrar is requested to arrange a telephone directions conference with counsel on the first available date in the new year.

[12] There will be no order for costs.

K G Smith
Judge

Judgment signed at 3.40 pm on 6 November 2020