

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

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

**[2020] NZEmpC 83  
EMPC 123/2020**

IN THE MATTER OF	an application for leave to extend time to file challenge to a determination of the Employment Relations Authority
BETWEEN	WARREN JOHN HURST Applicant
AND	JACOB HODGSON Respondent

Hearing: On the papers

Appearances: C W Stewart and L Knight, counsel for applicant  
F Joychild QC, counsel for respondent

Judgment: 11 June 2020

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**JUDGMENT OF JUDGE J C HOLDEN**

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[1] Mr Hurst wishes to file a challenge to a determination of the Employment Relations Authority (the Authority) which found that Mr Hodgson was an employee of Greenfields Internet Limited (Greenfields); that his employment by Greenfields ended by constructive and unjustifiable dismissal entitling Mr Hodgson to lost wages, compensation and other monies from Greenfields; and that Mr Hurst, together with Mr Reimann,<sup>1</sup> were people exercising significant influence over the management of Greenfields and were each “a person involved in the breach” or breaches of Greenfields as defined in s 142W of the Employment Relations Act 2000 (the Act).<sup>2</sup>

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<sup>1</sup> Mr Reimann was the sole director of Greenfields at the relevant times; Mr Hurst says he was Greenfields’ Network Development Manager.

<sup>2</sup> *Hodgson v Rural Networks Ltd* [2020] NZERA 80 (Member Arthur) at [A]-[G].

[2] Mr Hurst's challenge ought to have been filed by 20 March 2020.<sup>3</sup> He filed an application for leave to extend time to file a challenge on 24 April 2020. This judgement resolves that application.

[3] Under s 219 of the Act, the Court may extend the time for doing anything that has not been done within the time allowed. This is a broad discretion and the fundamental principle that must guide the Court in the exercise of its discretion is the justice of the case. Does the justice of the case require that the extension of time sought be granted?

### **In the circumstances leave is granted**

[4] The usual factors that will be considered on an application for leave to extend time are:<sup>4</sup>

- (a) the reasons for the omission to bring the case within time;
- (b) the length of the delay;
- (c) any prejudice or hardship to any other person;
- (d) the effect on the rights and liabilities of the parties;
- (e) subsequent events; and
- (f) the merits of the proposed challenge.

[5] On its face, a delay of over a month is significant, but that must be balanced against other circumstances here that support leave being granted.

[6] Mr Reimann has separately challenged the determination of the Authority. Mr Hurst says that he only became aware of Mr Reimann's challenge to the determination after the statutory 28-day deadline had passed. The effect of Mr Reimann's challenge

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<sup>3</sup> Employment Relations Act 2000, s 179(2).

<sup>4</sup> *An Employee v An Employer* [2007] ERNZ 295 (EmpC) at [9].

could be to leave Mr Hurst as the sole person responsible for the awards against Greenfields to the extent Greenfields is unable to pay those awards. Mr Hurst says that it was only upon reading Mr Reimann's statement of claim, which he received on 21 April 2020, that he became aware of the significant potential negative implications of Mr Reimann's challenge for himself. He then acted quickly to apply for leave to extend time.

[7] Also relevant when considering the reasons for the omission to bring the case within time, and the length of the delay, is the impact of the COVID-19 situation. Mr Hurst says he struggled to find a solicitor to represent him within the prescribed 28-day period with people not responding to his calls. Mr Hurst assumes this was because they were dealing with the impact of the COVID-19 situation. Mr Hurst is an IT specialist and he says his work was ramping up as more people were moving to work remotely due to COVID-19, so was under pressure himself. The COVID-19 restrictions in place from Saturday 21 March 2020 also affected Mr Hurst's ability to give instructions to his representative as he was focussed on meeting his clients' demands.<sup>5</sup>

[8] The attitudes of the other parties involved in this matter are relevant. Mr Hodgson did not file submissions and abides the decision of the Court; his counsel noted that Mr Hurst would be a key witness in the determination of Mr Reimann's challenge and, if not a party, he will need to be summonsed. Mr Reimann also abides the decision of the Court.<sup>6</sup>

[9] In the circumstances, and having considered the affidavits filed by Mr Hurst, and the submissions filed on his behalf, I consider it is in the interests of justice that an extension of time is granted to him to bring a challenge to the determination. Accordingly, leave is granted to extend the time for filing a statement of claim challenging the determination of the Authority.

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<sup>5</sup> Alert Level 2 commenced on 21 March 2020; New Zealand moved to Alert Level 4 on Thursday 26 March 2020.

<sup>6</sup> All parties envision the two challenges being held together if leave is granted.

[10] Mr Hurst is to file and serve his statement of claim, and pay the Court filing fee within 14 days of the date of this judgment. Further, Mr Hurst is to now provide Mr Reimann with a copy of this judgment and then serve him with his statement of claim within 14 days of the date of this judgment. Mr Hodgson is to file a statement of defence in the usual way. Otherwise, the timetable proposed by the parties and ordered by minute dated 11 May 2020, applies to Mr Hodgson's application for security for costs.

[11] Costs are reserved.

J C Holden  
Judge

Judgment signed at 4 pm on 11 June 2020