

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 78/2020
[2020] NZSC 130**

BETWEEN GEORGINA RACHELLE
 Applicant

AND AIR NEW ZEALAND LIMITED
 Respondent

Court: Glazebrook, O'Regan and Williams JJ

Counsel: Applicant in person
 P A Caisley and S R Worthy for Respondent

Judgment: 20 November 2020

JUDGMENT OF THE COURT

- A The application for an extension of time to apply for leave to appeal is granted.**
- B The application for leave to appeal is dismissed.**
- C The applicant must pay the respondent costs of \$2,500.**
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REASONS

[1] The applicant, Ms Rachele, commenced proceedings against Air New Zealand Ltd in the Employment Relations Authority claiming unjustifiable dismissal and other grievances. The claim was dismissed.¹

¹ *Rachele v Air New Zealand Ltd* [2017] NZERA Christchurch 140.

[2] The applicant then pursued the claim in the Employment Court. There were eight causes of action but five of these were struck out² and the remainder were dismissed.³

[3] Ms Rachele then sought leave to appeal to the Court of Appeal against the decision of the Employment Court. Leave to appeal was declined.⁴

[4] After the Court of Appeal decision was delivered, the Employment Court delivered a decision dealing with costs for the proceeding in that Court.⁵ Costs of \$44,000 were awarded to Air New Zealand.⁶

[5] The applicant filed an application for leave to appeal to this Court against the decision of the Court of Appeal refusing leave and the Employment Court's costs judgment.

[6] There was no right of appeal to this Court against a decision of the Court of Appeal declining leave to appeal to that Court.⁷ We understand that this was made clear to the applicant by the case officer and that he advised her that the application for leave was accepted for filing on the basis that it was limited to the application for leave to appeal against the Employment Court's costs judgment.

[7] The application was made out of time. We treat it as including an application for an extension of time. The respondent opposes an extension but does not point to any prejudice arising from the failure to apply for leave within time. In the circumstances, we are prepared to grant an extension of time.

[8] Normally, an application for leave to appeal against a decision of the Employment Court would be made to the Court of Appeal, not the Supreme Court. While s 214A of the Employment Relations Act 2000 provides for a direct appeal from

² *Rachele v Air New Zealand Ltd* [2018] NZEmpC 75 (Judge Smith); and *Rachele v Air New Zealand Ltd* [2019] NZEmpC 23 (Judge Smith).

³ *Rachele v Air New Zealand Ltd* [2019] NZEmpC 191 (Judge Smith).

⁴ *Rachele v Air New Zealand Ltd* [2020] NZCA 266 (French and Clifford JJ).

⁵ *Rachele v Air New Zealand Ltd* [2020] NZEmpC 95 (Judge Smith).

⁶ At [10].

⁷ Senior Courts Act 2016, s 68(b).

the Employment Court to the Supreme Court, such an appeal is available only “in exceptional circumstances”. This is because s 214A is subject to s 75 of the Senior Courts Act 2016,⁸ which provides that this Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court.

[9] The costs decision was an orthodox application of the Employment Court’s Guideline Scale to the facts of the case.⁹ There is nothing in the material provided to this Court by the applicant that indicates that the decision of the Employment Court is wrong in law¹⁰ and there is certainly nothing to indicate that there are exceptional circumstances justifying a direct appeal from the Employment Court to this Court.

[10] Accordingly, the criteria for the grant of leave to appeal are not met.

[11] The application for leave to appeal is dismissed. The applicant must pay the respondent costs of \$2,500.

Solicitors:
Kiely Thompson Caisley, Auckland for Respondent

⁸ Employment Relations Act 2000, s 214A(4).

⁹ Employment Court “Employment Court of New Zealand Practice Directions” <www.employmentcourt.govt.nz> at 18–22.

¹⁰ Employment Relations Act, s 214A(1).