

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

**I TE KŌTI TAKE MAHI O AOTEAROA
TE WHANGANUI-A-TARA**

**[2022] NZEmpC 40
EMPC 73/2022**

IN THE MATTER OF an application for a judicial review
AND IN THE MATTER of an application for stay of costs issues
BETWEEN ADRIAANUS WILFRED STRAAYER
 Plaintiff
AND EMPLOYMENT RELATIONS
 AUTHORITY
 First Defendant
AND WORKSAFE NEW ZEALAND
 Second Defendant

Hearing: On the papers

Appearances: A Straayer in person
 No appearance for the first defendant, by leave
 G Cain and K Alexander, counsel for second defendant

Judgment: 15 March 2023

**JUDGMENT OF JUDGE B A CORKILL
(Application for stay of costs issues)**

Introduction

[1] On 17 October 2022, I issued my judgment in judicial review proceedings brought by Mr Adriaanus Straayer against his former employer, WorkSafe New Zealand (WorkSafe).¹ The proceeding was struck out, with costs reserved.

¹ *Straayer v Employment Relations Authority* [2022] NZEmpC 184.

[2] On 7 November 2022, WorkSafe filed an application for costs, which was opposed by a submission from Mr Straayer filed on 28 November 2022.

[3] However, prior to that date, on 14 November 2022, Mr Straayer filed an application for stay of proceedings, that is, of the application for costs.

[4] The basis for the stay is, in summary, that there was a mistake in law in the judicial review proceeding because the Employment Relations Authority did not file a statement of defence to Mr Straayer's claim and did not participate in the judicial review proceeding. Mr Straayer's point is that this means there was a breach of certain provisions of the Judicial Review Procedure Act 2016.

[5] An allied submission was made under s 27 of the New Zealand Bill of Rights Act 1990, to the effect that there is a fundamental right of judicial review of an entity like the Authority, requiring it to come to this Court when there is a challenge to the legality of the exercise of its powers.

[6] WorkSafe filed a notice of opposition, resisting the various points raised by Mr Straayer in support of the application for stay. Amongst those points was a contention that there is no power available to stay the proceedings in the circumstances.

[7] Turning to the position of the Authority, after the proceeding was served on it, its counsel filed an appearance abiding the decision of the Court but appearing so that it might be heard on the question of costs should any person seek costs against it in the course of the proceeding, and to be served with copies of all documents filed in the proceeding.

[8] The Authority also reserved its rights in the event that if another person became party to the proceeding that party took a step that was against the Authority's interests.

[9] I granted leave accordingly, and this was notified to the parties via the Registry on 29 March 2022.

[10] The first defendant was also asked to confirm whether it wished to be heard in relation to the present application for stay. The Court was advised that the Authority continued to abide the decision of the Court in the proceeding. As such, it took no position on the application for stay.

Analysis

[11] The purpose of a stay, if ordered, is to preserve the position of the parties, so far as is possible, pending a successful appeal or review of the judgment in question. Thus, in considering such a possibility, the Court must consider a range of factors which centre on the procedural step being taken by way of appeal or otherwise.²

[12] Mr Straayer has taken no procedural step to challenge the judgment of the Court which he asserts proceeded on the basis of a legal mistake. There has been no application for leave to appeal the Court's decision as required for a stay of proceedings and execution to be granted under r 12 of the Court of Appeal (Civil) Rules 2005.

[13] In Mr Straayer's supporting affidavit of 14 November 2022, he refers to steps which he says will be taken by a third party to file an application in the Court of Appeal. He says the application will be seeking remedies for an alleged miscarriage of justice suffered by the practice of the Authority choosing to abide the decision of the Court. Mr Straayer also says he will be providing evidence in that particular case. However, no copy of the proceeding to which he refers has been placed before the Court. Moreover, it is unclear whether r 12 of the Court of Appeal (Civil) Rules 2005 would apply where the applicant for stay is not the party seeking relief in the Court of Appeal.

² *Dwyer v Air New Zealand Ltd* [1997] ERNZ 156 (EmpC) at [158]; *New Zealand Cards Ltd v Ramsay* [2013] NZCA 582 at [7].

[14] Because no relevant step has been taken such as might justify a consideration of an application for stay, it is inappropriate to do so now. Therefore the Court will now move to consider the costs application on the papers.

B A Corkill

Judge

Judgment signed at 9.05 am on 15 March 2023