

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

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

**[2023] NZEmpC 81
EMPC 40/2023**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

AND IN THE MATTER OF an application for stay of proceedings

EMPC 82/2023

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

AND IN THE MATTER OF an application for a stay of proceedings

BETWEEN CARRINGTON RESORT JADE LP
Plaintiff

AND STACEY ROY
Defendant

Hearing: On the papers

Appearances: W Tan, agent for plaintiff
L Anderson, advocate for defendant

Judgment: 2 June 2023

**INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN
(Applications for stay of proceedings)**

[1] In the Employment Relations Authority (the Authority), the defendant, Ms Roy, succeeded in her claim that she had been unjustifiably suspended and unjustifiably dismissed by the plaintiff, Carrington Resort Jade LP (Carrington). The Authority also accepted that Ms Roy was entitled to be reimbursed for an unlawful deduction Carrington made from her final pay, and that she was owed wage arrears.

It awarded interest on her wage arrears.¹ In a subsequent determination, Ms Roy was awarded costs.²

[2] Carrington was ordered:

- (a) to pay Ms Roy wage arrears of \$1,432.64 gross for her unpaid suspension;
- (b) to pay Ms Roy \$10,783.05 gross loss of earnings;
- (c) to pay Ms Roy \$24,000 as distress compensation;
- (d) to repay Ms Roy \$4,757.08, being an unlawful deduction made from Ms Roy's final pay;
- (e) to pay Ms Roy \$949.56 gross wage arrears due on the termination of Ms Roy's employment;
- (f) to make all required deductions from those sums and remit them to IRD;
- (g) to pay interest on \$7,139.28 of wage arrears, to run from 1 May 2022 until the amount had been repaid in full; and
- (h) to pay costs and disbursements of \$8,209.04.

[3] Carrington has challenged the Authority's substantive and costs determinations on a de novo basis. It now applies for a stay of the Authority determinations, effectively staying execution of the Authority's orders. Ms Roy opposes a stay.

¹ *Roy v Carrington Resort Jade LP* [2023] NZERA 4 at [185] (Member Larmer) [*Substantive*].

² *Roy v Carrington Resort Jade LP* [2023] NZERA 51 at [41] [*Costs*].

A challenge does not operate as a stay, but the Court can order one

[4] The starting point is that a challenge does not operate as a stay of the execution of a determination.³ The Court does, however, have the power to order a stay.⁴ The overarching consideration on an application for a stay is whether granting a stay will be in the interests of justice, taking into account various factors, including:⁵

- (a) whether the challenge will be rendered ineffectual if the stay is not granted;
- (b) whether the challenge is brought and pursued in good faith;
- (c) whether the successful party at first instance will be injuriously affected by a stay;
- (d) the extent to which a stay will impact on third parties;
- (e) the novelty and/or importance of the questions involved;
- (f) the public interest in the proceeding; and
- (g) the overall balance of convenience.

The parties address the issues

[5] Carrington says that, if the stay is not granted, the challenges filed may be rendered ineffectual. It says that it has genuine concerns regarding Ms Roy's financial situation such that it was likely it would not be able to recover the remedies ordered by the Authority from Ms Roy in the event that the challenge was successful. It makes various assertions regarding Ms Roy's current situation, including that she is employed in a restaurant in Kaitaia, does not own any real property and has no savings.

³ Employment Relations Act 2000, s 180.

⁴ Employment Court Regulations 2000, reg 64.

⁵ *Assured Financial Peace Ltd v Pais* [2010] NZEmpC 50 at [5]; *Dymocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd* (1999) 13 PRNZ 48 (CA).

[6] Carrington says that the challenges, along with the applications for a stay, are made in good faith and that the challenges have merit.

[7] It says that Ms Roy would suffer no prejudice or any new inconvenience pending the Court's decision on the challenges.

[8] It says further that there is no third party involved in the challenges or likely to be impacted by the challenges.

[9] It says that there is public interest in the matter as Carrington's reputation has been affected by media reports about the Authority's substantive determination. Finally, it says that it is in a financial position to comfortably honour any remedies ordered by the Court in the event that the challenges fail.

[10] Carrington does not oppose paying the amounts ordered by the Authority into Court.

[11] Carrington's application is supported by an affidavit of Mr William Tan, who is the General Manager of Carrington. He also is the Chief Executive Officer of Gorges Jade Holdings Ltd, which is the parent company of Carrington. He is representing Carrington before the Court.

[12] Ms Roy opposes the application. She says she is not in financial hardship but now works full-time, earning over \$70,000 per annum as a commercial road transport tutor. She says she does not have significant debt and that she is aware of the consequences if Carrington were to be successful in its challenge and she had to repay the amounts ordered by the Authority.

[13] She says Carrington has not acted in good faith and the challenges have no merit. She is concerned that Mr Tan has publicly said Carrington would not be paying her the remedies ordered.

[14] She says Carrington has not established a reasonable basis for the making of orders staying the Authority's determinations.

[15] Mr Tan's affidavit is largely directed to substantive issues, and other matters not relevant to this application. He otherwise addresses the affidavit that Ms Roy filed in opposition to the application, casting doubt on her evidence of her debts and liabilities.

No basis for a stay

[16] The default position is that Ms Roy, as the successful party before the Authority, is entitled to the use of the monies that Carrington was ordered to pay to her. The question is whether the default position should be displaced.

[17] Ms Roy is presently due a significant amount of money; she is incurring costs for representation. She is, and would continue to be, injuriously affected by the delay in payment.

[18] I do not accept that Carrington has established that the challenges would be rendered ineffectual if the stay is not granted. Ms Roy is in current employment and she understands the effect that a reversal in the Court would have on her.

[19] For the purposes of this application, I accept that Carrington genuinely believes the challenges are justified. I note, however, that there is an issue as to whether Carrington participated in the Authority's investigation in a manner that was designed to resolve the issues involved. It did not attend the Authority's investigation meeting.⁶ A good faith report has been received from the Authority, which raises a number of concerns about Carrington's conduct in the Authority. It is not possible to assess the merits of Carrington's challenges, particularly given the unresolved good faith issues and Carrington's non-appearance at the investigation meeting.

[20] Although the outcome in the Authority has been reported in the media, and there may well be interest in the proceedings, given Carrington is a large employer in the area in which it operates, there is no public interest in the proceeding in the sense of it having any implications more broadly. There are no novel or important questions involved. There are no third party interests.

⁶ Roy, above n 1, at [71]-[74].

[21] On balance, I am not satisfied that Carrington has established a basis for a stay, or that granting a stay would be in the interests of justice. Ms Roy is entitled to the use of the money due to her, knowing she may need to repay it if the challenges succeed. The application fails.

Ms Roy entitled to costs

[22] Ms Roy is entitled to costs on the applications. If they cannot be agreed between the parties, Ms Roy may apply to the Court by memorandum filed and served within 20 working days of the date of this judgment. Carrington may respond by memorandum filed and served within a further 15 working days, with Ms Roy entitled to file and serve a memorandum in reply within a further seven days. Costs then will be determined on the papers.

J C Holden
Judge

Judgment signed at 11 am on 2 June 2023