

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

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

**[2024] NZEmpC 15  
EMPC 181/2023**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	applications for leave to appear as interveners
BETWEEN	MICHAEL LANIGAN AND THE OTHER PLAINTIFFS LISTED IN APPENDIX A Plaintiffs
AND	FONTERRA BRANDS (NEW ZEALAND) LIMITED Defendant

Hearing:	On the papers
Appearances:	BA Smith and T Oldfield, counsel for plaintiffs R Rendle, counsel for defendant G Iddamalgoda, counsel for New Zealand Council of Trade Unions as applicant intervener I Clarke and S Cates, counsel for Privacy Foundation New Zealand Incorporated as applicant intervener
Judgment:	13 February 2024

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**INTERLOCUTORY JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS  
(Applications for leave to appear as interveners)**

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[1] The New Zealand Council of Trade Unions and Privacy Foundation New Zealand Incorporated have sought leave to intervene in these proceedings.

[2] The applications arise in the context of a challenge to a determination of the Employment Relations Authority finding that the defendant may lawfully and reasonably instruct Mr Lanigan to use fingerprint technology for time recording purposes.<sup>1</sup> The 16 other plaintiffs have been joined in the Court proceedings by way of a Court minute dated 21 November 2023. Because of the nature of the issues involved I directed that a full Court would hear the challenge. The Registrar was also directed to draw the proceedings to the attention of a number of organisations. The Council of Trade Unions and Privacy Foundation subsequently applied for leave to intervene.

[3] Applications for leave to intervene fall to be considered under cl 2(2) of sch 3 of the Employment Relations Act 2000. The test is whether, in the opinion of the Court, the applicant is “justly entitled to be heard”. The test is broad and is determined having regard to the particular circumstances of the case.<sup>2</sup>

[4] This proceeding raises important issues in respect of the use of biometric timekeeping technology. While these issues are not novel, in the sense that the Court has previously considered them, it is a rapidly developing area and a number of interests are engaged. Counsel for the plaintiffs has advised that the Court will be invited to depart from its earlier judgment.<sup>3</sup> The Council of Trade Unions has a legitimate interest in timekeeping technology as it applies to employees and the Privacy Foundation has a particular interest and expertise in the interface between technology and privacy rights more generally, as disclosed in the affidavit filed in support of the application. Both organisations are likely to bring a useful perspective and insight to the issues to be addressed by the Court.<sup>4</sup>

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<sup>1</sup> *Fonterra Brands (New Zealand) Ltd v Lanigan* [2023] NZERA 197 (Member Dumbleton) at [92].

<sup>2</sup> *Zhou v Chief Executive of the Department of Labour* [2010] NZEmpC 162 at [3], [5], [7] and [14]; and *Matsuoka v LSG Sky Chefs New Zealand Ltd* [2011] NZEmpC 24 at [6]. See too *Leota v Parcel Express Ltd* [2019] NZEmpC 152 at [6]–[10] summarising some of the principles that apply.

<sup>3</sup> *OCS Ltd v Service and Food Workers Union Nga Ringa Tota Inc* [2006] ERNZ 762 (EmpC).

<sup>4</sup> See *Wellington City Council v Woolworths New Zealand Ltd* [1996] 2 NZLR 436 (CA); *Drew v Attorney-General* [2001] 2 NZLR 428 (CA) at [17]; and *Leota*, above n 2, at [10].

[5] For completeness I have considered whether there are any countervailing considerations which might tell against the grant of leave. I have been unable to identify any.

[6] Neither party is opposed to either application and is content to abide the decision of the Court.

[7] Having considered the applications and material filed in support, I am satisfied that the applicants are each justly entitled to be heard and leave is granted accordingly.

[8] Leave is granted on the following basis:

- The Registrar is to provide the interveners with a copy of all documents that have been filed to date, and the interveners are to be included in all future communications with the Court.
- All documents from now on are to be served not only on the parties but also on each of the interveners.
- The interveners may file and serve written submissions no later than two days before the date set for hearing.
- The interveners may appear by counsel and make oral submissions at the hearing. If an intervener wishes to call evidence, the Court's special leave to do so will be required.
- The interveners may not apply for costs against either party.

[9] No issue of costs arises.

Christina Inglis  
Chief Judge

Judgment signed at 3.15 pm on 13 February 2024

## **APPENDIX A**

PETER ARMSTRONG

JAN BOSMA

MARTIN BROCK

ANTHONY CROPP

SHANNON FARLEY

DION HUBERS

BRIAN HUGHES

ANDREW JAMES

BRADLEY JESSON

CLIFF MCNEIL

WILLIAM MARR

BRUCE MUNRO

JASON POWRIE

DARREL ROBERTS

PAUL TAU

JEREMY WRIGHT