

**IN THE EMPLOYMENT COURT
AUCKLAND**

**AC 38/07
ARC 7/07
ARC 15/07**

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

AND IN THE MATTER OF an application for stay of proceedings

BETWEEN CENTURION GSM LTD (T/A DIGITAL
 MOBILE)
 Plaintiff in ARC 7/07
 Defendant in ARC 15/07

AND JEFFERY MCCARTHY
 Defendant in ARC 7/07
 Plaintiff in ARC 15/07

Hearing: 22 June 2007
 (Heard at Auckland)

Appearances: Chris Patterson, counsel for Centurion GSM Ltd
 James Turner, counsel for J McCarthy

Judgment: 25 June 2007

INTERLOCUTORY JUDGMENT OF JUDGE M E PERKINS

[1] This is a matter in which His Honour Chief Judge Colgan made a direction on 13 June 2007 that interconnected challenges against determinations of the Employment Relations Authority at Auckland be heard together. The determinations were delivered by the Authority on 1 March 2007 and 11 April 2007. The second determination dealt with the issue of costs.

[2] The plaintiff has filed an application for stay of the proceedings pending the hearing and outcome of the challenges against the determination. The defendant has

filed a notice of opposition to the application for stay. Both the application for stay and the notice of opposition are supported by affidavits.

[3] The application for stay has come before me today, 22 June 2007. In view of the fact that the Court can now allocate an early fixture to this matter the hearing has incorporated a callover of the proceedings so that they can be set down for trial and timetabling directions made accordingly.

[4] In advance of the hearing on the stay application I was able to read written submissions filed by Mr Turner. These covered, in a comprehensive way, the issues to be resolved in respect of that application. At the hearing I heard oral submissions from Mr Patterson in support of the application. This was followed by an informal discussion with counsel, following which I retired to enable counsel to discuss the matter further between themselves. Following that discussion I was informed of an agreement under which consent orders could be made to resolve the application for stay. Pursuant to that agreement the following orders are now made by consent:

- a) The holiday pay of \$4,410, which Centurion GSM Ltd was ordered to pay to Mr Jeffery McCarthy in the determination of 1 March 2007, is to be paid to Mr McCarthy within 7 days from 22 June 2007. In addition, Centurion GSM Ltd, is to pay interest on that sum calculated from 1 March 2007 to the date of payment. Such interest is to be calculated at the rate prescribed in clause 14, schedule 3 of the Employment Relations Act 2000. For the sake of clarity such interest is to be calculated at the full rate specified in that clause, being the 90 day bill rate as at the date of payment, plus 2 percent.
- b) The remaining sums awarded in the determinations of the Authority, including the sum for costs, are to be paid into the Employment Court in Auckland within 7 days from today, 22 June 2007. Such sums are then to be held in an interest bearing account. Such interest is to be paid by the Registrar to Mr McCarthy at monthly intervals from the day that the money is first paid into Court.

- c) On condition that such sums are paid as specified in a) and b) above enforcement of the determinations is stayed until further order of the Court.
- d) Costs on the plaintiff's application for stay are reserved.

[5] I emphasise that these orders have simply been made by agreement to resolve the application for stay pending the hearing of the challenge. None of the orders prejudice the outcome of the substantive hearing of the challenges. I have warned Mr McCarthy that if the outcomes of the challenges are successful for Centurion GSM Ltd then he may have to repay the money received by him as a result of these interlocutory orders.

[6] I turn now to the matter of the callover. The Registrar has been able to allocate 3 days for the hearing of this matter. The hearing will commence at 9.30am on 14 August 2007. If necessary the hearing will continue on 15 and 16 August 2007.

[7] The parties have requested a Judicial Settlement Conference. One half day commencing at 9.30am on 26 July 2007 has been allocated for the Judicial Settlement Conference. In preparation for that conference the parties are agreed that they should each prepare, file and exchange the briefs of evidence, which will be used if the matter does not settle and proceeds to trial. Such briefs are to be prepared, filed and exchanged by 24 July 2007.

[8] I am informed that there are a number of documents upon which the parties wish to rely. It has been agreed that Mr Patterson will, as soon as possible, prepare an index of such documents and reach agreement with Mr Turner as to which documents are then to be included in the bundle of documents. The bundle of documents is then to be prepared and filed by 24 July 2007.

[9] In case there is need for any further intervention from the Court in this matter, prior to the commencement of the Judicial Settlement Conference, leave is

reserved to either party to apply to the Court for a further callover conference if necessary.

M E Perkins
Judge

Interlocutory Judgment signed at 12.30pm on Monday, 25 June 2007