

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2014] NZEmpC 105
ARC 32/14**

IN THE MATTER OF an application for leave to file challenge
out of time

BETWEEN BENJAMIN JOHN AUSTIN
Applicant

AND YOOBEE LIMITED
Respondent

Hearing: By written submissions filed on 12 May and 12 and 19 June
2014

Appearances: Applicant in person
T Clarke and E Coats, counsel for respondent

Judgment: 20 June 2014

JUDGMENT OF CHIEF JUDGE G L COLGAN

[1] Benjamin Austin has applied for leave to challenge out of time a preliminary interlocutory determination of the Employment Relations Authority (the Authority) finding that proposed evidence in Mr Austin’s personal grievance will be inadmissible.¹

[2] The Court has not needed to hear submissions from the respondent, Yoobee Limited, and is able to determine Mr Austin’s application for leave in the following circumstances.

[3] On 13 June 2014 the parties were advised by Minute that a judgment of the full Court, which was to issue that day, would likely be determinative of Mr Austin’s challenge, even if the Court were to grant leave for that to be made out of time. The

¹ *Austin v Yoobee Limited* [2013] NZERA Auckland 504.

full Court judgment referred to is *H v A Limited*.² The Registry supplied copies of this judgment to the parties. Having considered his position as he was invited to by the Court's minute of 13 June 2014, Mr Austin has nevertheless advised the Registry that he wishes to proceed with his application.

[4] Mr Austin's application for leave to challenge out of time is dismissed. That is because s 179(5) of the Employment Relations Act 2000 (the Act), as interpreted by the full Court in *H v A Limited*, precludes statutorily a litigant from challenging a determination of the Authority about its procedure. Determining that proposed evidence is inadmissible is a matter of the Authority's procedure. The scheme of the Act is for the Authority to get on and determine the proceeding on its merits. If Mr Austin is dissatisfied with the Authority's substantive determination of his grievance, he will have a right of challenge by hearing de novo. In the course of this, he will be entitled to re-argue the question of the admissibility of the evidence which the Authority has refused to consider. Thus, the Authority's determination on the inadmissibility of the evidence does not create an irrevocable injustice for Mr Austin.

[5] For the foregoing reasons, the application for leave to challenge out of time is refused. Yoobee Limited may be entitled to an order for costs on this application. It may, however, be significant, in determining such an application, that the law was, until a week ago, uncertain on the question of whether parties are entitled to challenge preliminary Authority determinations on admissibility of evidence.

[6] Mr Austin's personal grievance remains with the Authority for investigation and determination on its merits.

GL Colgan
Chief Judge

Judgment signed at 4.30 pm on Friday 20 June 2014

² [2014] NZEmpC 92.