

**IN THE EMPLOYMENT COURT
WELLINGTON**

**[2015] NZEmpC 1
WRC17/13**

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

AND IN THE MATTER of an application for stay of proceedings

BETWEEN LYNDA JEAN HILL
Plaintiff

AND WORKFORCE DEVELOPMENT
LIMITED
Defendant

WRC 19/13

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

BETWEEN LYNDA JEAN HILL
Plaintiff

AND WORKFORCE DEVELOPMENT
LIMITED
Defendant

Hearing: On the papers filed on 10 and 17 December 2014

Appearances: P O'Sullivan, advocate for Lynda Hill
S Webster, counsel for Workforce Development Limited

Judgment: 8 January 2015

INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS

[1] Workforce Development Ltd (WDL) challenged an earlier determination of the Employment Relations Authority.¹ The challenge succeeded, for reasons set out

¹ *Hill v Workforce Development Ltd* [2013] NZERA Wellington 65.

in my substantive judgment.² The parties were invited to agree on costs but were unable to do so. Costs submissions have been filed, together with an application to join Mr O’Sullivan, advocate for Mrs Hill, as a party for the purposes of determining costs. Neither the application for joinder, nor the application for costs, has been determined. In the interim Mrs Hill has applied for leave to appeal against the substantive judgment. The application for leave has not yet been determined by the Court of Appeal. Mrs Hill seeks orders staying the applications for joinder and for costs pending the outcome of the appeal process. That application is opposed by the defendant.

[2] The parties agreed that the application for a stay could be dealt with on the papers.

[3] The Court may order a stay pending an appeal.³ A range of factors will be relevant to an exercise of the Court’s discretion to order a stay, including whether in practical terms the benefit of a successful appeal will be lost to the appellant if the stay were not granted; whether the respondent would be injuriously affected by a stay; whether the appeal is bona fide or the application for stay is brought for other reasons; considerations relating to the preservation of the status quo and the effect of any delay.⁴

[4] I accept the submission advanced by Mr Webster (counsel for WDL) that Mrs Hill’s right of appeal will not be rendered nugatory if a stay is not granted. That is particularly so in light of the concession made on WDL’s behalf that enforcement of any order for costs be deferred until after the outcome of the appeal process is known. While such a course would address any concerns about meeting a costs award in the interim, I agree with Mr O’Sullivan that it tends to undermine the extent of any potential prejudice WDL might otherwise be said to be exposed to if a stay was granted.

² *Workforce Development Ltd v Hill* [2014] NZEmpC 174.

³ Employment Relations Act 2000, s 214(6).

⁴ *Foodtown Supermarkets Ltd v New Zealand Shop Employees’ IAOW* [1983] ACJ 775 (AC) at 776-777.

[5] It is submitted that WDL would be injuriously affected by a stay because of delays. Reference is made to delays said to have been occasioned by Mrs Hill in arranging representation in the Court of Appeal. Mr O'Sullivan submits that those issues have been resolved, with counsel now instructed. While I accept that there is the potential for delay in prosecuting the appeal, such concerns could adequately be addressed by the imposition of conditions. There is, as Mr Webster submits, the potential for some delay following the outcome of the appeal process pending consideration and determination of the applications advanced by WDL, if that proves necessary. However, it is unlikely that any such delay would be substantial.

[6] I accept, based on the material before the Court, that the application for leave to appeal is bona fide, and is being pursued in good faith and not for an ulterior motive.

[7] I have regard to the fact that proceeding with the application for joinder and for costs will put the parties to further cost. The application for joinder, in particular, raises a number of issues that are not straightforward. Such costs may be rendered unnecessary depending on the outcome of the appeal process.

[8] On balance I consider that a stay of the applications for costs and for joinder is in the overall interests of justice. While Mr O'Sullivan, on Mrs Hill's behalf, proposes that a stay could be subject to conditions as to security over Mrs Hill's property, I do not consider this to be a desirable, or necessary, course. Nor do I understand WDL to be seeking any such orders. The stay is, however, ordered on the condition that Mrs Hill diligently pursue her application for leave to appeal, and any appeal if leave is granted. Mrs Hill, through her representative, is to keep the Court advised of the progress with her appeal and to advise the Court as soon as any judgment has been delivered.

[9] Costs are reserved.

Christina Inglis
Judge

Judgment signed at 10.30am on 8 January 2015