

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2015] NZEmpC 78
EMPC 43/2015**

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

AND IN THE MATTER of an application by the defendant to
extend time for filing a challenge to a
determinaton of the Employment
Relations Authority

BETWEEN NEW ZEALAND NURSES
ORGANISATION
First Plaintiff

AND MARISSA PANETTIERE
Second Plaintiff

AND WAIKATO DISTRICT HEALTH BOARD
Defendant

Hearing: On the papers filed on 6, 19 and 26 May 2015

Appearances: J Lawrie, counsel for plaintiffs
G Peploe, advocate for defendant

Judgment: 29 May 2015

INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS

[1] Waikato District Health Board (WDHB) applies to extend the time for filing a challenge to a determination of the Employment Relations Authority.¹ It had earlier filed a statement of defence to the plaintiffs' statement of claim and had purported to include a cross-challenge in its pleadings. During a telephone directions conference on 1 May 2015 Mr Peploe, for the WDHB, accepted that an application to extend the time for filing a challenge would be required in the circumstances.

¹ *New Zealand Nurses Organisation v Waikato District Health Board* [2015] NZERA Auckland 18.

[2] The WDHB promptly filed an application, the grounds of which are set out in the notice, supported by an affidavit sworn by Ms Griffin, Employee Relations Consultant. It is clear that in incorporating a cross-challenge with its statement of defence the WDHB was proceeding on the basis of a revoked Practice Direction issued by the Court. The current Practice Direction makes it clear that if a defendant wishes to challenge a determination of the Authority it must do so within the 28 day timeframe specified in s 179(2) of the Employment Relations Act 2000 (the Act).

[3] The application is opposed by the plaintiffs. It is said that clear notice was given over a year ago as to the revocation of the earlier Practice Direction and that lawyers and lay advocates were advised of the change through their professional associations. The plaintiffs say that no adequate explanation has been provided as to why the WDHB did not follow the requirements as notified. It is also said that the plaintiffs will be prejudiced if an extension of time is granted.

[4] I pause to note that on 20 May 2015 a direction was issued that if the plaintiffs wished to have an allegation of prejudice considered, affidavit evidence would be required.² Rather than filing an affidavit counsel has advised, by way of memorandum, that the only prejudice relied upon by the plaintiffs is the inconvenience of having to defend a claim before the Court.

[5] The delay in filing a challenge is adequately explained in the affidavit filed in support of the application. It is apparent that it arose out of a reliance on a revoked Practice Direction of the Court. As soon as the position was drawn to the WDHB's attention an application was promptly advanced. The challenge had originally been incorporated within a statement of defence which was filed within the requisite timeframe.

[6] While I accept that the grant of the application will mean that the plaintiffs will have to defend a claim that is not currently properly before the Court, I do not regard that as a significant factor. Had the WDHB not been mistaken as to the applicable requirements relating to cross-challenges, the issue would not have arisen.

² Refer direction of Court dated 20 May 2015.

[7] I do not consider it to be in the overall interests of justice that the WDHB be denied an opportunity to pursue a challenge to the Authority's determination in all of the circumstances, including where a genuine mistake led to the situation in which it finds itself and in light of the extent of prejudice claimed on behalf of the plaintiffs.

[8] Subject to the following condition, time for filing a statement of claim in this matter is extended, to validate the filing of the draft statement of claim on 6 May 2015. The filing fee for the statement of claim must be paid no later than 10 June 2015. If this condition is not satisfied, the extension of time will not be effective. If this condition is satisfied, the plaintiffs must file and serve a statement of defence within 30 days of today's date.

[9] Once the pleadings have been finalised, the Registrar should convene a telephone conference. One of the issues that will need to be traversed is the nature and scope of the hearing. The parties' representatives should be in a position to address the Court on these issues at that time.

[10] Costs on this application are reserved.

Christina Inglis
Judge

Judgment signed at 2.45pm on 29 May 2015