

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2015] NZEmpC 87  
EMPC 287/2014**

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

BETWEEN KEERITHI MERENNAGE  
Plaintiff

AND RITCHIES TRANSPORT HOLDINGS  
LIMITED  
Defendant

**EMPC 288/2014**

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

AND IN THE MATTER of an application for adjournment

AND BETWEEN RITCHIES TRANSPORT HOLDINGS  
LIMITED  
Plaintiff

AND KEERITHI MERENNAGE  
Defendant

Hearing: By memoranda filed on 10 and 11 June 2015 and by telephone  
11 June 2015

Appearances: H White, counsel for Mr Merennage  
K Amodeo, counsel for Ritchies Transport Holdings Limited

Judgment: 11 June 2015

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**INTERLOCUTORY JUDGMENT (NO 2) OF JUDGE CHRISTINA INGLIS**

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[1] The company has challenged a determination of the Employment Relations Authority finding that Mr Merennage was unjustifiably dismissed.<sup>1</sup> It has also

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<sup>1</sup> *Merennage v Ritchies Transport Holdings Ltd* [2014] NZERA Auckland 406.

challenged the Authority's subsequent costs determination.<sup>2</sup> The challenges are set down for a five day hearing commencing one working day away, on Monday 15 June 2015.

[2] An application for an adjournment was filed yesterday on behalf of the company. This was on the basis that lead counsel for the company, Ms Mayes, has been unexpectedly incapacitated and will not be available next week. The circumstances surrounding her incapacitation are set out in a memorandum of counsel filed in support of the application.

[3] The application for an adjournment is opposed by Mr Merennage, although no issue is taken with the factual basis on which the adjournment is sought.

[4] After hearing from counsel this afternoon on an urgent basis, and having had regard to the memoranda filed in support of the parties' respective positions, I granted the application. My reasons for doing so follow.

[5] In deciding an application for an adjournment the Court must be guided by the need to do justice between the parties. Also relevant is the public interest in achieving the most efficient use of court resources, and the affect of an adjournment on others in the litigation queue.

[6] Ms Mayes has been instructed to act as lead counsel in this Court. She appeared in the Authority, although Mr Amodeo (who is an experienced practitioner) also had extensive involvement with the proceedings at that stage. He says, and I accept, that Ms Mayes has had primary responsibility for the preparation of the plaintiff's case for hearing. While the possibility of Mr Amodeo appearing as sole counsel next week has been raised, that is not an option that the company is drawn to given Ms Mayes' abilities, her in-depth involvement in the preparation for hearing, and the complexity of the issues that the company submits will arise. The position is exacerbated by Ms Mayes' inability to liaise with Mr Amodeo about the case, having regard to her circumstances. The company submits that it will be significantly prejudiced if an adjournment is not granted.

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<sup>2</sup> *Merennage v Ritchies Transport Holdings Ltd* [2015] NZERA Auckland 50.

[7] Ms White makes the point that Mr Amodeo is familiar with the proceedings and, she says, is more than capable of representing the company at the hearing. She submits that Mr Merennage has arranged time off from his job to attend the hearing and that it is unlikely that his leave arrangements can be reversed at this late stage. Further, he has booked and paid for airline tickets from Australia (where he now resides) and is unsure whether he will be able to secure a refund if an adjournment is granted. Finally, it is said that any delay in hearing the case will have a broader prejudicial effect. That is because Mr Merennage is a bankrupt and is not able to travel freely to Sri Lanka where his elderly relatives live. If the company's challenge fails, his financial position will improve and this will ease the limitations currently imposed on him. Counsel also makes the point that a stay was ordered, by agreement, on the basis that the company's challenge would be heard as soon as possible.

[8] The application for adjournment was advanced in a timely manner and on a sound basis. It is well accepted that illness or unavailability of counsel is a proper ground for an adjournment. It is true, as Ms White observes, that Mr Amodeo could take over sole carriage of the case. However, given the very close proximity to a relatively lengthy hearing, and having regard to the nature of the issues that are likely to arise, I accept that the company will suffer prejudice if Ms Mayes, its chosen senior counsel, is not able to appear on its behalf. I do not consider that the prejudice to the company would be adequately addressed by a one-day delay to the start of the hearing or taking Mr Merennage's evidence (which is crucial) in Ms Mayes' absence.

[9] It is clear that an adjournment would raise issues of prejudice for Mr Merennage. However I consider that such prejudice can adequately be addressed. In this regard the company has indicated a willingness to reimburse Mr Merennage in the event that he is unable to obtain a refund for his airline tickets. And any additional prejudice can be minimised by ensuring that alternative hearing dates are accommodated as soon as possible.

[10] In the circumstances I consider that it is in the overall interests of justice that the company's application for an adjournment be granted. New dates are to be allocated by the Registrar in consultation with counsel.

[11] Mr Merennage is entitled to costs on the company's application, together with reimbursement of any travel costs to the extent that he is unable to secure a refund. I anticipate that the parties will be in a position to agree costs. If that does not prove possible I will receive memoranda.

Christina Inglis  
Judge

Judgment signed at 5 pm on 11 June 2015