

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**CA577/2016  
[2017] NZCA 202**

BETWEEN                      BROADSPECTRUM (NEW ZEALAND)  
   LIMITED  
   Applicant

AND                                JASON ARAMIHA NATHAN  
   Respondent

Hearing:                      15 May 2017

Court:                            Kós P, Asher and Brown JJ

Counsel:                      J O Upton QC for Applicant  
   T P Cleary for Respondent

Judgment:                      23 May 2017 at 4.00 pm

---

**JUDGMENT OF THE COURT**

---

- A The application for leave to appeal dismissed.**
- B The applicant must pay the respondent costs for a standard application on a Band A basis together with usual disbursements.**
- 

**REASONS OF THE COURT**

(Given by Kós P)

[1] The applicant, Broadspectrum (New Zealand) Ltd (Broadspectrum), seeks leave to appeal against a decision of the Employment Court ordering that the respondent, Jason Nathan, be reinstated to his former position in Broadspectrum's employment, together with orders for payment of lost wages and costs in the Employment Relations Authority.<sup>1</sup>

---

<sup>1</sup> *Nathan v Broadspectrum (New Zealand) Ltd* [2016] NZEmpC 135.

[2] Mr Nathan had been employed as a lines mechanic by Broadspectrum and was an acting team leader in June 2013 when he responded to an incident in Wellington. In the course of that response one of his team members received an electric shock. Broadspectrum commenced a disciplinary investigation leading to Mr Nathan's dismissal in August 2013. Broadspectrum pursued a personal grievance claim for unjustified dismissal and sought "reinstatement".

[3] Before the Authority, Broadspectrum agreed to meet the remedies sought in Mr Nathan's Statement of Problem, but only reinstating him to a position no less advantageous than his former position. That is, not to his previous job. Mr Nathan was unwilling to accept that at the hearing.

[4] In its decision some 10 days after the hearing the Authority expressly did not determine whether the dismissal was lawful or not. Given Broadspectrum's concession, the Authority said it would simply determine remedies. It directed reinstatement of Mr Nathan to a position no less advantageous than his previous role. Reinstatement to his former role was not granted.

[5] Mr Nathan challenged the remedies ordered in an appeal to the Employment Court. Two alleged errors of law were pleaded: erroneous reliance on evidence from two witnesses, and a wrongful order not to award costs. But in substance it seems to us the appeal also canvassed two other broader questions: whether the Authority was right not to determine justifiability of the dismissal, and whether it acted in breach of natural justice in not hearing further from Mr Nathan in evidence before any determining remedy.

[6] The Employment Court in a decision dated 28 October 2016 allowed the appeal on both grounds advanced. It then considered what remedies should be granted. The Court concluded that the appropriate remedy was to order Mr Nathan be reinstated to his previous position (at the same location) "but in a staged manner to ensure his reintegration into the workforce is achieved as smoothly as possible".<sup>2</sup> Lost wages and costs were also directed.

---

<sup>2</sup> At [85].

[7] Broadspectrum now seeks leave to appeal to this Court. Such appeal must be on a question of law only, and this Court may grant leave only if the question of law “is one that, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision”.<sup>3</sup>

[8] Broadspectrum advances certain questions which it asserts are ones of law. These concern alleged misdirection as to the basis for the Authority granting reinstatement, or Broadspectrum accepting Mr Nathan’s claim. These are questions of peculiarly individual consideration, of no matter beyond this particular case. They lack general or public importance and are not deserving of further hearing before this Court.

[9] Another question advanced by Broadspectrum concerns whether, if a party concedes liability and remedy, there is need for the Authority to go any further with its investigation into liability and remedy (and whether it has jurisdiction for that purpose). Any such question is necessarily fact and context specific, and lacks general or public importance.

[10] Nor do we consider that question seriously arguable in this context. The fundamental difficulty, confronted entirely appropriately by the Employment Court, was the failure of the Authority to make a liability determination at all before imposing a remedy when remedies were very much in issue. In doing so the Authority failed to meet the requirements of s 157(1) of the Employment Relations Act 2000. The partial remedial concession of the applicant did not justify any such short cut. That was particularly so given the consequence that Mr Nathan’s evidence was not then heard. Mr Upton QC submitted Broadspectrum in substance had conceded liability. If so, the failure of the Authority to record that, and to determine liability accordingly, is all the more perplexing.

[11] The Authority’s obligation under s 157 of the Act was to determine a matter according to its substantial merits. We agree with Mr Cleary’s characterisation that

---

<sup>3</sup> Employment Relations Act 2000, s 214(3).

the “determination” in this case was more akin to some sort of consent order, but one made without the consent of one of the parties.

## **Result**

[12] The application for leave to appeal is dismissed.

[13] The applicant must pay the respondent costs for a standard application on a Band A basis together with usual disbursements.

Solicitors:  
AJO Legal, Auckland for Applicant  
Charles McGuinness, Wellington for Respondent