

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA632/2017
[2018] NZCA 521**

BETWEEN TYRONE WAYNE UNDERHILL
 First Applicant

 KANE JOSEPH UNDERHILL
 Second Applicant

AND COCA-COLA AMATIL (NZ) LIMITED
 Respondent

Hearing: 19 November 2018

Court: Cooper, Winkelmann and Gilbert JJ

Counsel: Applicants in person
 B A Smith and T P Oldfield for Respondent

Judgment: 22 November 2018 at 12.30 pm

JUDGMENT OF THE COURT

- A The application under r 29A(1) of the Court of Appeal (Civil) Rules 2005 for an extension of time to file an application for leave to appeal under s 214(2) of the Employment Relations Act 2000 is granted.**
- B The application for leave to appeal the decision of the Employment Court in *Underhill v Coca-Cola Amatil (NZ) Ltd* [2017] NZEmpC 117 is granted.**
- C The approved questions for consideration by this Court are:**
- (a) whether there was any evidence from which the Employment Court could properly conclude that reinstatement was an inappropriate remedy, or was not practicable or reasonable;**

- (b) given the Employment Court's conclusion that the applicants were unjustifiably dismissed because the respondent failed to afford the applicants any of their procedural rights prior to dismissal, did the Employment Court err:
- (i) by holding it was for the applicants to show that reinstatement was reasonable and practicable; and
 - (ii) in reducing the award of compensation on the basis of an unrelated contributory fault.
- (c) if the Court was correct to award monetary compensation rather than reinstatement, did the Court err by:
- (i) calculating the applicants' entitlement by reference to an hourly rate derived from a contract that had been superseded; and
 - (ii) failing to address any arrears outstanding or accrued at the time of dismissal.

D Costs are reserved.

REASONS OF THE COURT

(Given by Cooper J)

[1] The applicants, laypersons acting without legal advice, were 10 days late in filing the necessary application for leave to appeal from a decision of the Employment Court under s 214(2) of the Employment Relations Act 2000. Although Coca-Cola Amatil (NZ) Ltd opposed the extension of time for appealing, it did not assert prejudice. In the circumstances, we extend the time for appealing pursuant to r 29A(1) of the Court of Appeal (Civil) Rules 2005.¹

¹ Since the time for appealing is established by the Employment Relations Act, we consider it is r 29A that applies and not r 5(2) under which the applicants' application was advanced.

[2] We are satisfied that the questions set out above are in each case a question of law involved in the appeal which by reason of its general importance ought to be submitted to the Court of Appeal for decision.

[3] Costs are reserved.

Solicitors:
SBM Legal, Auckland for Respondent