

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
CHRISTCHURCH**

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI**

**[2020] NZEmpC 187
EMPC 326/2020**

IN THE MATTER OF an application to extend time to challenge a
 determination of the Employment Relations
 Authority

BETWEEN VERNON COETZEE
 Applicant

AND OAMARU MEATS LIMITED
 Respondent

Hearing: On the papers

Appearances: D Balfour, advocate for applicant
 L Laming, counsel for respondent

Judgment: 10 November 2020

**INTERLOCUTORY JUDGMENT OF JUDGE K G SMITH
(Application to extend time to challenge a costs determination)**

[1] On 9 July 2020 the Employment Relations Authority delivered a determination on a preliminary issue. It concluded that Vernon Coetzee could not pursue personal grievances against Oamaru Meats Ltd because he had signed a settlement agreement resolving the employment relationship problems between them.¹

[2] Mr Coetzee had worked as a maintenance electrician/engineer for Oamaru Meats from April 2018 until September 2019. He claimed to have been unjustifiably dismissed and/or disadvantaged during a redundancy process that he believed was predetermined and did not satisfy the company's good faith obligations required by

¹ *Coetzee v Oamaru Meats Ltd* [2020] NZERA 276 (Member Beck).

the Employment Relations Act 2000.² The Authority's determination recorded that Mr Coetzee claimed to have been coerced and/or misled into signing a settlement agreement with the company on 6 September 2020.

[3] The Authority's determination was confined to one question: did the fact that a settlement agreement had been entered into prevent Mr Coetzee from pursuing a further personal grievance?³ The Authority concluded that the agreement was an accord and satisfaction which also acted as an estoppel preventing further litigation.⁴ The result was that he could not pursue personal grievance claims compromised by the agreement.

[4] Mr Coetzee was dissatisfied with that result and challenged the determination on 5 August 2020. The relief he claimed sought to set aside the determination but went further and purported to extend to setting aside any adverse costs determination that might be made. There was a problem with that pleading, because the Authority had not dealt with the costs of the investigation at the time Mr Coetzee's challenge was filed. The costs decision was delivered a week later, on 12 August 2020, and Mr Coetzee was ordered to pay Oamaru Meats \$2,000 towards its legal costs.⁵ A challenge to this determination was not filed.⁶

[5] When this difficulty was drawn to the attention of Mr Balfour, who is Mr Coetzee's agent, leave was applied for to extend the time to challenge the costs determination. The grounds of the application rely on an error by Mr Balfour who had wrongly assumed that, because of the pleadings in the challenge to the substantive determination, no further steps were required to challenge the costs determination.

[6] The Court has jurisdiction to extend the time within which a challenge may be filed if doing so is in the interests of justice. The factors usually considered include the reason for the omission to challenge the determination within time, the length of

² At [2].

³ At [7].

⁴ At [114] relying on *Cabletalk Astute Network Services Ltd v Cunningham* [2004] 1 ERNZ 506 (EmpC).

⁵ *Coetzee v Oamaru Meats Ltd* [2020] NZERA 317 (Member Beck) at [8].

⁶ "Employment Court of New Zealand Practice Directions" <www.employmentcourt.govt.nz> at No 11.

the delay, any prejudice or hardship to any person, the effect on the rights and liabilities of the parties, subsequent events and (within limits) the merits.⁷

[7] Oamaru Meats has no objection to the application to extend time. Ms Laming, counsel for the company, took the realistic attitude that the omission to file a challenge had been adequately explained and it is not prejudiced by what happened.

[8] I am satisfied that it is in the interests of justice to grant the application and order accordingly. A statement of claim in the form of the draft filed with the application is to be filed and served no later than **4 pm on 18 November 2020**.

[9] Costs are reserved.

K G Smith
Judge

Judgment signed at 11.30 am on 10 November 2020

⁷ See for example *An Employee v An Employer* [2007] ERNZ 295 (EmpC) at [9]; and see also *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [38].