

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA689/2021
[2021] NZCA 686

BETWEEN BOARD OF TRUSTEES OF MELVILLE
HIGH SCHOOL
Applicant

AND KATHLEEN CRONIN-LAMPE
First Respondent

RONALD CRONIN-LAMPE
Second Respondent

Counsel: A C Challis for Applicant
T M Braun for First and Second Respondents
F L Becroft and L D Hawes-Gandar for Accident Compensation
Corporation as Intervenor

Judgment: 15 December 2021 at 10.30 am
(On the papers)

JUDGMENT OF BROWN J

Leave to appeal is granted on the question of law:

Whether the Employment Court has jurisdiction to hear a proceeding in which a claimant has made claims under the Accident Compensation Act 2001 but review and appeal rights under that Act have not been exhausted?

REASONS

[1] The applicant applies for leave to appeal under s 214(1) of the Employment Relations Act 2000 against a decision of the Employment Court on a preliminary issue of jurisdiction.¹ The grounds of appeal are:

¹ *Cronin-Lampe v Board of Trustees of Melville High School* [2021] NZEmpC 201.

The Employment Court has erred in failing to apply the Supreme Court's interpretation of s 133(5) Accident Compensation Act 2001 in *Austin v Roche Products (New Zealand) Limited* [2021] NZSC 30. In particular that the Employment Court does not have jurisdiction to hear a proceeding, or order remedies for the same injuries, where claims were made and coverage sought under that Act but review and appeal rights have not been exhausted.

[2] This Court may only grant leave if the question of law raised by the proposed appeal is one which by reason of its general or public importance or for any other reason ought to be submitted to this Court for decision.²

[3] The first and second respondents do not oppose the application for leave but will oppose the appeal should leave be granted. The Accident Compensation Corporation (ACC) takes a neutral position, neither supporting nor opposing the application for leave to appeal.

[4] I consider that the appeal raises a question of law which crosses the threshold in s 214(3). That question of law is:

Whether the Employment Court has jurisdiction to hear a proceeding in which a claimant has made claims under the Accident Compensation Act 2001 but review and appeal rights under that Act have not been exhausted?

[5] Leave to appeal is granted on that question of law.

[6] ACC was listed as third respondent. It is not a party to the proceeding but appeared as intervenor in the Employment Court as it had a right to be heard under s 320 of the Accident Compensation Act. In light of this I believe it is appropriate to continue to characterise ACC as an intervenor and have done so accordingly.

Solicitors:
McElroys, Auckland for Applicant
Braun Bond and Lomas, Auckland for First and Second Respondents
Medico Law Ltd, Auckland for Third Respondent

² Employment Relations Act 2000, s 214(3).