

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

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

**[2023] NZEmpC 141
EMPC 356/2022**

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

AND IN THE MATTER OF an application for a stay of proceedings

BETWEEN CAISTEAL AN IME LIMITED
Plaintiff

AND A LABOUR INSPECTOR OF THE
MINISTRY OF BUSINESS,
INNOVATION AND EMPLOYMENT
Defendant

Hearing: On the papers

Appearances: D Angus, agent for plaintiff
A Miller, counsel for defendant

Judgment: 28 August 2023

**INTERLOCUTORY JUDGMENT (NO 2) OF JUDGE K G SMITH
(Application for a stay of proceedings)**

[1] On 14 August 2023, judgment was issued in this proceeding dismissing Caistéal An Ime Ltd's challenge and finding that the Labour Inspector was entitled to costs.¹

[2] The substance of the proceeding was Caistéal not complying with notices issued by the Inspector pursuant to s 229 of the Employment Relations Act 2000 (the

¹ *Caistéal An Ime Ltd v A Labour Inspector of the Ministry of Business, Innovation and Employment* [2023] NZEmpC 126.

Act) in which she required from the company certain information relating to wage and time records, holiday and leave records, and employment agreements.² While Caisteal's challenge failed the judgment altered the time within which the company was to comply with the Inspector's notice. That decision was made because the Authority's compliance order had given the company 28 days from the date of the determination to comply and that time had passed.³ The revised time for compliance was set at 5 pm on 28 August 2023.

[3] Caisteal has applied for leave to appeal to the Court of Appeal. It has also sought a stay.

[4] The application for a stay repeats several of the grounds advanced by Caisteal in the challenge, but it has also drawn attention to the following:

- (a) The defendant is the Labour Inspector so no employee will suffer any disadvantage if a stay is granted.
- (b) The penalty is payable to the Crown.
- (c) Paying the penalty will have a damaging impact on the company's business.
- (d) If a stay is not granted compliance with the orders made would render any appeal "Null and Void".
- (e) The Inspector did not challenge the application for a stay made to this Court relating to the Authority's determination which was advanced on essentially the same grounds as this application is put forward.

[5] Counsel for the Labour Inspector responded very promptly, by memorandum, to advise that the defendant did not consent to or oppose the application while drawing attention to s 214(6) of the Act and r 12 of the Court of Appeal (Civil) Rules 2005.

² At [6].

³ *A Labour Inspector v Caisteal An Ime Ltd* [2022] NZERA 485 (Member Cheyne).

[6] Of all of the grounds relied on the one that is compelling is the company's concern that without a stay it must comply with the judgment, which would undermine any subsequent appeal if leave is granted.

[7] I accept that a stay should be granted. The judgment of 14 August 2023 is stayed pending the outcome of the application by Caisteal for leave to appeal to the Court of Appeal and, if leave is granted, until such time as the appeal is resolved.

[8] Costs are reserved.

K G Smith
Judge

Judgment signed at 11.15 am on 28 August 2023