

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

**I TE KŌTI TAKE MAHI O AOTEAROA
TE WHANGANUI-A-TARA**

**[2023] NZEmpC 197
EMPC 381/2023**

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

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

BETWEEN THE CHIEF OF NEW ZEALAND
 DEFENCE FORCE
 Plaintiff

AND NEW ZEALAND PUBLIC SERVICE
 ASSOCIATION TE PŪKENGĀ HERE
 TIKANGA MAHI INCORPORATED
 Defendant

Hearing: On the papers

Appearances: J Boyle, counsel for plaintiff
 P Cranney, counsel for defendant

Judgment: 13 November 2023

**CONSENT JUDGMENT OF JUDGE J C HOLDEN
(Application for stay of proceedings)**

[1] The Chief of Defence Force (CDF) has challenged a determination of the Employment Relations Authority.¹ The Authority found that the CDF had breached the prohibition on preference in s 9 of the Employment Relations Act 2000 in relation to bargaining for a collective agreement for 2020 and 2021, through his actions in backdating pay increases for non-union staff and increasing pay rates for non-union

¹ *New Zealand Public Service Assoc Te Pūkenga Here Tikanga Mahi Inc v Chief of Defence Force* [2023] NZERA 558 (Member Kinley).

staff to match New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi Incorporated (PSA) negotiated rates. As well as making a declaration of breach, the Authority made a compliance order requiring the CDF to pay equivalent sums to all eligible PSA employees under s 137 of the Act, and interest on those sums.²

[2] The CDF has applied for a stay of proceedings, seeking orders to stay the execution of the Authority's determination.

[3] The PSA has advised it will not take any enforcement action in relation to the determination pending the outcome of the challenge. The parties now seek an order by consent staying the execution of the determination. That is appropriate.

[4] Accordingly, there is an order by consent staying the Authority proceedings, effectively staying execution of the determination.³

[5] The parties agree that there is no issue as to costs in relation to this application.

J C Holden
Judge

Judgment signed at 9.15 am on 13 November 2023

² At [82]-[83].

³ Employment Court Regulations 2000, reg 64.