

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 117/10
5087854

BETWEEN

RAYMOND PATRICK
WYNNE
Applicant

AND

THE ORDER OF ST JOHN
MIDLAND REGIONAL
TRUST BOARD
Respondent

Member of Authority: Dzintra King

Representatives: Damian Chesterman, Counsel for Applicant
Mark Hammond, Counsel for Respondent

On the Papers
Submissions received: 5 February 2010 from Applicant
19 February 2010 from Respondent

Determination: 12 March 2010

DETERMINATION OF THE AUTHORITY

EMPLOYMENT RELATIONSHIP PROBLEM

[1] The applicant seeks a stay of proceedings for the costs determination.

[2] The applicant has applied to the Employment Court for an extension of time to make an election under s 179 Employment Relations Act 2000 to challenge the Authority's determination dated 7 December 2009 (AA437/09). This was filed on 22 January 2010.

[3] In that determination I reserved costs and set a timetable for the filing of memoranda if the parties were unable to resolve the issue of costs. At the time the

applicant made the application for a stay the respondent had not filed a costs memorandum.

[4] The costs relate not just to the determination issued on 7 December 2009 but also to a number of earlier proceedings.

[5] The applicant says that if costs are awarded against him, he will be prejudiced in his ability to fund and proceed with his out of time application and with any subsequent challenge under s 179.

[6] The applicant says the respondent is a large organisation and a stay of proceedings would not have any impact upon it.

[7] The respondent seeks costs of \$2,322 plus GST for the determination AA200/07, \$5,000 plus GST for determination AA200A/07, \$20,000 plus GST for determination AA437/09: total of \$27,322 plus GST.

[8] The respondent opposes the stay application. It says the applicant's right of challenge will not be rendered nugatory if no stay is granted. It says that if an award is made in favour of the respondent it would then be open to the applicant to apply for a stay of that application.

[9] The respondent says the applicant's application does not provide any basis for the Authority to stay proceedings to determine costs. At present, until the Authority determines costs, the applicant's ability to fund a challenge or any other proceedings cannot as a matter of fact be limited. There is no certainty that the challenge will proceed as it was filed out of time. The respondent (as defendant) has opposed the application for leave to file a challenge out of time. The application is to be heard by the Employment Court on 22 March 2010.

[10] The respondent says it will be injuriously affected by a stay and it is in the interests of justice that proceedings be finalised by a determination of costs.

[11] The respondent is a charitable organisation and does not have unlimited funds to meet the costs of repeatedly defending itself. The respondent's actual costs exceed \$135,000.

[12] No determination regarding costs has yet been made. In those circumstances it is difficult to see how the applicant can say that an award will render his ability to challenge nugatory or that he will be prejudiced in his ability to do so.

[13] The respondent is entitled to finality and I accept that it is not an organisation with unlimited funds.

[14] I decline the application for a stay.

[15] The applicant should file a memorandum regarding costs within 14 days of the date of this determination.

Dzintra King

Member of the Employment Relations Authority