

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2025] NZERA 101
3239459

BETWEEN BLAIR KING
 Applicant

AND FAR NORTH DISTRICT
 COUNCIL
 Respondent

Member of Authority: Alex Leulu

Representatives: Penny Swarbrick, counsel for the Applicant
 Charles McGuinness, counsel for the Respondent

Submissions and further 4 November 2024 from the Applicant
information received: 30 October 2024, 25 November 2024, and 18 January
 2025 from the Respondent

Determination: 21 February 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The Far North District Council (the Council) has made an application to stay the Authority’s investigation into claims by Blair King against the Council. Mr King opposed the application.

[2] On 27 September 2024 the Authority determined Mr King was successful in his claims against the Council for unjustified disadvantage and unjustified dismissal (the Authority’s determination).¹ Subject to further ongoing discussions between the parties, the Authority reserved its decision on various matters including determining an outcome in respect of an award of remedies to Mr King. This determination is in respect of the Council’s application to stay the Authority’s determination of the outstanding matters between parties (the stay application).

¹ *King v Far North District Council* [2024] NZ ERA 571.

Stay Application

Assessing an application for a stay

[3] On 25 October 2024 the Council filed a de novo challenge of the Authority's determination at the Employment Court. On 4 November 2024 Mr King initiated his own de novo challenge of the Authority's determination at the Court. Key aspects of the stay application relied on the Council's challenge to the Court.

[4] The Council's decision to challenge the Authority's determination does not in itself operate as a stay of proceedings unless the Authority (or the Court) orders otherwise.² In considering the stay application, the Authority must consider Mr King's right as the successful litigant in this matter to enjoy the benefits of his success. This right is weighed against preserving the Council's position in a situation where it obtains a favourable decision because of its challenge to the Court.³ The factors to consider when assessing a stay application are well established and are as follows:⁴

- (a) If no stay is granted, whether the applicant's right of appeal will be rendered ineffectual;
- (b) Whether the appeal is brought and prosecuted for good reasons, in good faith;
- (c) Whether the successful party at first instance will be affected injuriously by a stay;
- (d) The effect on third parties;
- (e) The novelty and importance of the question involved in the case;
- (f) The public interest in the proceedings; and
- (g) The overall balance of convenience.

The Council's position

[5] The Council said the stay application should be granted because the outcome of the Court challenges would present relevant considerations for the Authority to consider before determining the remaining outstanding matters. In support of its application, the Council also submitted:

² Employment Relations Act 2000, s 180.

³ *Labour Inspector of Ministry of Business, Innovation and Employment v New Zealand Fusion International Ltd* (in admin) [2020] NZEmpC 21 at [2].

⁴ *Assured Financial Peace Ltd v Pais* [2010] NZEmpC 50 at [5].

- (a) the balance of convenience in granting a stay weighed in granting the stay because there was a possibility of the Court also addressing the outstanding matters currently before the Authority;
- (b) any arguments about whether its right of appeal will be rendered ineffectual were moot because Mr King also filed his own challenge to the Court; and
- (c) for the same reason neither party would be affected injuriously by a stay because both parties were challenging aspects of the Authority's determination which were not in their respective favour.

Mr King's position

[6] Mr King opposed the stay application submitting the balance of convenience supported the Authority not granting a stay. He also said the Council's challenge to the Authority's decision will not be adversely affected by any Authority decision not to grant the stay. In support of his arguments, Mr King submitted:

- (a) he would be adversely affected by a successful stay application because he would be denied the benefit in his favour from the "fruits of the determination" while defending the Council's challenge;
- (b) the parties may also wish to challenge the Authority's determination of remedies which will allow the Court to also consider remedies together with the current matters which are before the Court; and
- (c) the Authority currently has submissions from both parties in respect of remedies (and that no further submissions would be required).

Outcome

[7] The inference drawn from the Council's submission was that continuing with a determination for the remaining matters before the Authority would lead to unnecessary expense and time taken for the parties to address these matters. This included the expense and time it would take for each party to participate further with the Authority's investigation and the possibility of challenges to further Authority determinations.

[8] Mr King's challenge to the Court occurred after he had lodged his notice in opposition to the stay application. He did not provide any further views in response to the Council's submissions in respect of his Court challenge.

[9] After assessing both parties' respective positions, there were insufficient grounds in this case to warrant the grant of a stay. I acknowledge the Council's views about the effect the outcome of the Court challenges could have on the future of Mr King's claims (including the matters currently before the Authority). However this scenario is not uncommon with many Court challenges which are subject to further findings by the Authority. As it currently stands, the remaining matters before the Authority are still within the Authority's jurisdiction. Furthermore, it is unclear whether any of the matters before the Authority will be addressed by the outcome of challenges before the Court.

[10] Mr King's opposition to the stay application carried significant weight given he is entitled to enjoy the benefits of his success. For these stated reasons, the Council's stay application is declined, and the Authority will continue to address the outstanding matters before it. The Authority will be in contact with the parties on the next steps in addressing the remaining matters before the Authority.

Costs

[11] Costs are reserved subject to the outcome of the remaining matters before the Authority.

Alex Leulu
Member of the Employment Relations Authority