

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE**

[2025] NZERA 316
3370543

BETWEEN	ANGHARAD O'BRIEN Applicant
AND	THE PLATFORM MEDIA NZ LIMITED Respondent

Member of Authority:	Rowan Anderson
Representatives:	Barbara Buckett, counsel for the Applicant Michael O'Brien, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions and further information received:	Up to and including 26 May 2025
Determination:	5 June 2025

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Angharad O'Brien has lodged a statement of problem in the Authority seeking compliance orders and the payment of interest in relation to sums awarded to her by the Authority for humiliation, loss of dignity, and injury to feelings in relation to successful personal grievance claims taken by her.¹

[2] The two relevant determinations in relation to which compliance orders are sought are subject to challenge in the Employment Court (the Court) taken by Ms O'Brien.

¹ \$17,550 in O'Brien v The Platform Media NZ Limited [2025] NZERA 56 and \$22,500 in O'Brien v The Platform Media NZ Limited [2025] NZERA 57.

[3] The Platform Media NZ Limited (The Platform) has sought that the compliance proceedings, and an order made by the Authority requiring the payment of compensation, be stayed pending the resolution of the challenges in the Court.

Preliminary issue

[4] The preliminary issue for investigation and determination is whether the compliance proceedings, and order made requiring the payment of compensation, should be stayed.

The Authority's investigation

[5] A case management conference (CMC) was held on 7 May 2025 for the purposes of discussing timetable directions relating to the compliance application. On the same day, prior to the CMC, The Platform lodged an application seeking a stay of the compliance proceedings.

[6] The CMC proceeded and both matters were discussed without objection. It was noted at the CMC that one of the disputed sums, that for \$22,550, had since been paid. Directions were ultimately issued on the basis that the stay application would be resolved first and could be dealt with on the papers based on written submissions. Written submissions were subsequently received by the Authority.

Background

[7] The Authority issued the relevant determination on 3 February 2025. The determination included an order that The Platform make payment to Ms O'Brien of \$17,550 within 28 days of the determination.

[8] Ms O'Brien has elected to have the matter heard by the Employment Court in terms of s 179 of the Employment Relations Act 2000 (the Act).² Ms O'Brien is not seeking a hearing *de novo* and the election relates to parts of the determination. Aspects of the compensatory orders made by the Authority are subject to challenge, including as to the globalisation of compensation and a reduction of compensation on account of contribution. Ms O'Brien's challenge in the Court seeks an uplift in compensation.

[9] Counsel for Ms O'Brien wrote to The Platform seeking payment of the sums due and providing details for payment on 24 March and 27 March 2025. The

² Statement of claim in EmpC 87/2025 dated 28 February 2025.

correspondence of 24 March 2025 asserted that the sums had been due to be paid by 3 and 4 March 2025 respectively.

[10] Ms O'Brien lodged a statement of problem in the Authority seeking compliance orders on 8 April 2025.

[11] Ms O'Brien issued a statutory demand for payment dated 8 April 2025, said by The Platform to have been served on 10 April 2025.

[12] The Platform lodged a statement in reply on 24 April 2025. The Platform's reply asserted that there was no basis for the compliance orders sought as Ms O'Brien had put the sum due into dispute by filing her challenge in the Court.

[13] The Platform lodged an application in the Authority seeking a stay of the compliance proceedings on 7 May 2025.

[14] There is no evidence of any stay, nor application for security of costs, having been sought in the Court.

Relevant law and principles

[15] Section 180 of the Act provides that that an election under s 179 of the Act does not operate as a stay unless the Authority or Court so order.

[16] The power of the Court or Authority to order a stay of proceedings in terms of s 179 is dealt with at reg 64 of the Employment Court Regulations 2000, which provides:

64 Power to order stay of proceedings

(1) If an election is made under section 179 of the Act, the Authority and the Court each have power to order a stay of proceedings under the determination to which the election relates.

...

(3) An order under subclause (1) or subclause (2) –

(a) may relate to the whole or part of a determination or decision or order, or to a particular form of execution; and

(b) may be subject to such conditions, including conditions as to the giving of security, as the Authority or the Court thinks fit to impose.

[17] In *Carrington Resort Jade LP v Knight*³ the Employment Court restated that the overarching consideration, in considering the Court's power to order a stay of the

³ *Carrington Resort Jade LP v Knight* [2023] NZEmpC 83 at [9].

Authority's determination, is whether granting a stay is in the interests of justice, and it also set out a non-exhaustive list of factors that may be relevant to that decision, those being:⁴

- (a) Whether the challenge will be rendered ineffectual if the stay is not granted.
- (b) Whether the challenge is brought and pursued in good faith.
- (c) Whether the successful party at first instance will be injuriously affected by the stay.
- (d) The extent of any impact of granting it on third parties.
- (e) The novelty and/or importance of the question involved.
- (f) The public interest in the proceeding.
- (g) The overall balance of convenience.

[18] It was also noted in *Carrington Resort Jade LP v Knight*⁵ that where the primary issue is monetary compensation the balancing of competing considerations may be reached by the imposition of conditions such as the payment to being held on trust or payment to the Registrar of the Court.⁶

Analysis and discussion

[19] While somewhat unusual in that a challenge has now been made to the Court and the application for stay is made in the Authority, reg 64 of the Employment Court Regulations in my view clearly sets out that the Authority has power to order a stay of the proceedings, including any order, as to the determination under which the s 179 election is made.

[20] Setting aside the compensatory order which has now been paid, the grounds for a stay raised by The Platform relate to the remaining compensatory order being the subject of challenge in the Court and to the interests of justice.

[21] The mere fact that the aspects of the compensatory order are challenged by Ms O'Brien, even accounting for what is said to be the possibility of the sum being reduced, is not in any way a sufficient basis on which to grant any stay.

⁴ Referring to *Dymocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises* (1993) 13 PRNZ (HC) at para [8] and [9], *Assured Financial Peace Ltd v Pais* [2010] NZEmpC 50, and *New Zealand Cards Ltd v Ramsey* [2013] NZCA 582.

⁵ *Carrington Resort Jade LP v Knight* [2023] NZEmpC 83 at [9].

⁶ *Carrington Resort Jade LP v Knight* [2023] NZEmpC 83 at [11].

[22] The Platform’s submissions only identified the novelty or significance of the proceedings in the Court as being a factor counting towards the granting of the stay sought. It was submitted that Ms O’Brien’s seeking of “extreme financial compensation” was a factor counting towards the granting of the application. Even assuming that submission has some merit, it does not in my view establish any proper basis for the granting of a stay. Simply put, the assertion that there is some novelty in the case before the Court does establish that it is in the interests of justice to order a stay of execution or stay of the proceedings that are in the Authority.

[23] Having regard to the factors identified in *Carrington Resort Jade LP v Knight*, I do not consider any of them assist The Platform in relation to the present matter. Significantly, there is an absence of evidence or even assertion as to any practical consequences or negative impact that might arise from the Authority declining to grant a stay.

[24] The Platform also referred to *New India Assurance Co Ltd v Zivi Ltd*⁷ in submitting that a recognised principle that a statutory demand cannot be issued when a debt is in dispute should by analogy be extended to an application for compliance orders. I do not consider there is any reasonable analogy that can be drawn given the circumstances here concern an order made by the Authority and that the suggested analogy, if drawn, would likely be equally applicable in the event of a challenge by an unsuccessful party from a determination in the Authority.

[25] Further to the above, the overriding consideration here is the interests of justice. The issue raised by the submission may or may not be relevant to the exercise of the Authority’s discretion as to the granting or otherwise of compliance orders, but I do not consider it goes squarely to any relevant considerations going to The Platform’s application for a stay.

[26] The starting point is that the relevant sum that is subject to the compliance proceedings is due to be paid. No concerns have been raised indicating any likely significant impact or adverse consequences to The Platform from the Authority declining to order any stay. At best for The Platform, the application proceeds on the basis that the failure to order a stay might result in some mild inconvenience should a corrective repayment be required. Ultimately no compelling reason has been put

⁷ *New India Assurance Co Ltd v Zivi Ltd* [2024] NZHC 2770.

forward as to why the granting of a stay would be in the interests of justice and I find that any assessment of balance would in any event favour Ms O'Brien.

[27] I decline to order any stay.

[28] I note that I would also have considered the significant delay in seeking the stay, that being at best two months following the filing of the statement of claim in the Court, as a factor against granting a stay.

Outcome

[29] I decline to order a stay of proceedings or stay of any orders made by the Authority.

Next steps

[30] Timetable directions will be issued to the parties, relevant to the compliance application, in line with those indicated at the case management conference held on 7 May 2025.

Costs

[31] Costs are reserved pending the Authority's determination of the substantive compliance application.

Rowan Anderson
Member of the Employment Relations Authority