

**IN THE EMPLOYMENT COURT
WELLINGTON**

**[2012] NZEmpC 32
WRC 41/11**

IN THE MATTER OF proceedings removed from the
Employment Relations Authority
AND IN THE MATTER OF an application for leave to extend time to
file statement of claim

BETWEEN MALCOLM FRENCH
Plaintiff

AND ACCIDENT COMPENSATION
CORPORATION
Defendant

Hearing: (on the papers)

Appearances: Ms Barbara Buckett, counsel for the plaintiff
Mr Peter Churchman, counsel for the defendant

Judgment: 27 February 2012

INTERLOCUTORY JUDGMENT OF JUDGE A D FORD

[1] In the opening paragraph of its initial determination¹ in this case dated 10 January 2011, the Employment Relations Authority (the Authority) made the observation: “This has proven to be an evolving employment relationship problem.” That statement has turned out to be surprisingly accurate. There is no need for me to canvass the developments over the last 13 months or so. Suffice it to say that the application before me relates to a subsequent determination² of the Authority dated 15 December 2011.

[2] In its determination of 15 December 2011, the Authority granted the plaintiff’s application to remove Mr French’s personal grievance claim to the Court

¹ [2011] NZERA Wellington 2.

² [2011] NZERA Wellington 202.

in its entirety, for hearing and determination without the Authority investigating it. The application was granted pursuant to subs (2)(c) and (2)(d) of s 178 of the Employment Relations Act 2000 (the Act).

[3] As is generally the case when matters are removed to the Court in their entirety, notices are issued to counsel requiring the filing of a statement of claim and statement of defence in the form contemplated by regs 11 and 20 of the Employment Court Regulations 2000. The notice, issued by the Court Registry Office, required the statement of claim to be filed within 30 days. The defendant was given a like period of time from service in which to file a statement of defence.

[4] It was common ground that the due date for filing the statement of claim was 15 January 2012. On 19 January 2012, an application was filed on behalf of the plaintiff seeking an extension of time for filing the statement of claim. The stated grounds of the application were that counsel for the plaintiff had been out of the country between 15 December 2011 and 18 January 2012. Affidavit evidence was filed in support. The application was made pursuant to s 221(c) of the Act.

[5] On 23 February 2012, formal advice was received from counsel for the defendant that the defendant would abide the decision of the Court in relation to the application for an extension of time.

[6] The application was made promptly and the grounds for the application are compelling. There is no evidence of any prejudice to the defendant. Leave is, therefore, granted for the statement of claim to be filed and served within 14 days of the date of this judgment. The defendant will have 30 days from receipt of the statement of claim in which to file its statement of defence.

[7] Costs on the application are reserved.

A D Ford
Judge

Judgment signed at 2.00 pm on 27 February 2012