

**IN THE DISTRICT COURT
AT WELLINGTON**

**I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA**

[2024] NZACC 10

ACR 215/22

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPLICATION FOR LEAVE TO APPEAL UNDER SECTION 162(1) OF THE ACT
BETWEEN	DANIEL PIO Applicant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Hearing: On the papers

Submissions: The Applicant is self-represented
B Marten and T Lynskey for the Corporation

Judgment: 23 January 2024

**JUDGMENT OF JUDGE P R SPILLER
[Leave to Appeal to the High Court – Section 162
Accident Compensation Act 2001]**

Introduction

[1] This is an application for leave to appeal against a judgment of His Honour, Judge Carter, delivered on 6 September 2023.¹ At issue in the appeal was the Corporation’s decision declining Mr Pio weekly compensation on the basis that he was not an earner immediately before incapacity commenced, and there was insufficient evidence of incapacity resulting from a relevant covered personal injury. The Court dismissed the appeal, for the reasons outlined below.

¹ *Pio v Accident Compensation Corporation* [2023] NZACC 142.

Background

[2] Mr Pio is a 61-year-old man who has worked in labour-intensive industries, including forestry, farming and in a mussel packing factory.

[3] On 21 March 2014, Mr Pio was referred by his General Practitioner (GP) for orthopaedic review due to bilateral carpal tunnel symptoms.

[4] On 31 March 2014, Mr Rick Wilson, Orthopaedic Surgeon, reviewed Mr Pio, noting:

He does indeed have bilateral carpal tunnel syndrome with night-time disturbance every night and his enjoyment of life is clearly compromised by this. He is a very fit man of 50 years of age, his appearance certainly belies his years. He works in the mussel opening industry nowadays but has had other jobs historically.

[5] On 1 April 2014, Mr Wilson submitted an Assessment Report and Treatment Plan (ARTP). In that plan, Mr Wilson noted that packing mussels repetitively had caused bilateral carpal tunnel syndrome, requiring carpal tunnel release surgery. He expected that Mr Pio would be out of work for about three to four weeks following his surgery.

[6] On 4 May 2015, Mr Pio presented to a hospital Emergency Department complaining of left arm tingling and numbness. The triage nurse noted that it had been present for two years but had become worse that night and Mr Pio could no longer put up with it. The Emergency Department doctor diagnosed left-hand probable carpal tunnel syndrome.

[7] On 14 May 2015, Mr Pio presented to his GP, who noted Mr Pio's history of longstanding carpal tunnel syndrome which had gradually been getting worse and recently flared up even more. The GP noted that Mr Pio was concerned it would start interfering with his job, which was now in forestry.

[8] On 7 August 2015, Mr Pio completed a client cover questionnaire. He recorded that he had been working in the mussel factory for six to seven months before noticing symptoms, and that he eventually left the job because he could not

handle the pain. After a six to eight week break, he obtained a job in forestry, as he found the pain was less.

[9] On 7 September 2015, the Corporation accepted cover for bilateral carpal tunnel syndrome, with an accident date of 21 March 2014 (when he first sought treatment).

[10] On 9 September 2015, Mr Pio had an initial client interview with the Corporation. He informed the Corporation that he developed carpal tunnel gradually while working in a mussel factory. He left the factory and started a job with Pelorus Logging in Blenheim, where he was going well for approximately twelve months when symptoms returned worse than ever.

[11] On 16 September 2015, a weekly compensation transcript noted that Mr Pio's date of first incapacity was considered to be 31 March 2014, with a date of subsequent incapacity being 3 August 2015, according to his medical certificate.

[12] On 30 September 2015, Mr Pio was seen by Mr Jeremy Earl, Orthopaedic Surgeon, who noted:

I saw this gentleman on 30 September 2015. He gives a history that he worked in a mussel factory and with using his hands so much in breaking open the mussels, he developed carpal tunnels involving both hands. He then stopped doing this work and he went on to heavy labour and he started using a chainsaw and his symptoms again reoccurred in both hands. He takes pain medication at his own discretion. He was taking Voltaren and this did improve his symptoms and by stopping work his symptoms do improve.

[13] On 20 November 2015, Mr Earl performed bilateral carpal tunnel releases, stating that "the median nerve was totally decompressed and care taken to protect the recurrent branch".

[14] On 9 December 2015, Mr Earl noted that Mr Pio was doing very well. He stated that Mr Pio would be unable to do heavy work for the next three weeks, but was otherwise discharged from his clinic.

[15] On 15 January 2016, Mr Pio's GP noted a vast improvement, good return of grip strength and minimal pain. He noted no neurological features were present.

[16] On 9 February 2016, Mr Pio's case manager discussed his return to work with him over the telephone. She explained that the Corporation's focus was in clearing him for his pre-injury employment packing mussels, but, if he wanted to return to forestry, that was up to him.

[17] On 12 February 2016, Mr Pio's GP noted that he was fit to return to work the next day and that Mr Pio felt "keen and ready to go".

[18] On 1 November 2018, Mr Pio was seen by a trainee GP intern. She noted that he presented with left third finger pain. He had had carpal tunnel surgery more than a year previously with relief of pain in the left hand, except for the third finger. The pain was described as a throbbing dull ache that woke him at night. An orthopaedic referral was arranged.

[19] On 3 January 2019, Mr Jeffrey Holman, Orthopaedic Surgeon, reviewed Mr Pio and requested that nerve conduction studies be carried out.

[20] On 20 March 2019, the neurology department at Wellington Hospital wrote that it was unable to accept Accident Compensation referrals due to waiting pressure for nerve conduction studies.

[21] On 2 April 2019, Mr Pio was reviewed by the neurosurgery department. Dr Abussuud, Registrar, noted the history including the bilateral carpal tunnel release in 2016 with "an uncomplicated postoperative course". He noted that Mr Pio mentioned that his right-sided symptoms had completely resolved, but he had never had any resolution or improvement of the left-sided symptoms.

[22] On 16 May 2019, Mr Pio told his case manager that his left wrist was "not right" and never had been since his carpal tunnel release. He told his GP the same thing.

[23] On 18 June 2019, nerve conduction studies were carried out. Dr Scott, Neurology Registrar concluded:

This is an abnormal study. There is evidence of a median neuropathy at the left wrist which is at least moderate in severity by electrodiagnostic criteria. There is no evidence on EMG of a C6 [i.e. cervical spine] radiculopathy and only some mild chronic neurogenic changes in the left triceps (C7/8). Further review with the orthopaedic surgeons is recommended to reconsider repeat surgery on the left carpal tunnel.

[24] On 21 June 2019, the Corporation wrote to Mr Pio's GP noting that it had received an ACC18 form relating to his carpal tunnel claim, which, it said, was not covered by Accident Compensation due to a lack of information. The Corporation asked Dr Clayson what the root cause of the symptoms was, and how the injury occurred. She replied that it was a left median nerve neuropathy as shown by his nerve conduction studies, which had been caused during his surgery in 2015.

[25] On 23 July 2019, Dr Michael Antoniadis, Occupational Medicine Specialist, undertook a complex medical case review on Mr Pio. Dr Antoniadis noted a current diagnosis of left carpal tunnel syndrome, with left middle finger trigger finger and minor osteoarthritis in the carpometacarpal joints of the thumbs. He noted that the left carpal tunnel was the likely primary disabling syndrome and that it had a (work-related) gradual process cause. He did not see any evidence of a nerve injury caused by the surgical procedure, and, instead, thought that the chainsaw work had caused the symptoms. Dr Antoniadis noted that the prognosis was guarded, and that it would be more likely that Mr Pio could return to a role within the mussel factory, as opposed to forestry or chainsaw work.

[26] Mr Pio was seen again by Mr Holman, who submitted an ARTF. Mr Holman noted that he believed that the scarring about the palmar cutaneous branch and recurrent median nerve might be a direct result of scarring from the previous surgery and, as such, considered that this was related to Mr Pio's previous carpal tunnel release. Mr Holman requested funding for a carpal tunnel release revision with exploration of the palmar cutaneous nerve and an injection of the CMC joint.

[27] On 5 August 2019, Mr Pio spoke with his case manager. Mr Pio confirmed that he had left his job "because he felt like he wasn't supported by the employer and was 'pushed to leave'". He was advised that his medical certificate was issued at a

time when he was a non-earner, and, if he wished to apply for weekly compensation, he would need a backdated medical certificate.

[28] On 6 August 2019, Simon Bates, a Corporation technical specialist, prepared a report. He noted that, from his review, it seemed possible that there was a new injury to the left median nerve possibly caused by chainsaw work, and recommended that a new WRGPI claim be lodged. He noted that, if cover was accepted, it would be appropriate to accept incapacity from 1 April 2019, as the clinical notes suggested incapacity from that date.

[29] On 27 August 2019, the Corporation declined a treatment injury claim on the basis that it was unable to identify any injury caused by treatment.

[30] On 20 September 2019, Mr Holman carried out revision surgery. His operation note recorded:

The median nerve was identified in its proximal extent. Of interest there were two palmar cutaneous branches, one leaving radially and the other ulnarly. These were preserved and dissected distally to the level of the distal palmar crease. The nerve had good vascularity at this level but there was significant scarring about the nerve and loss of the paravascularity to the median nerve at the level of the palmar crease distal...

The thenar palmar cutaneous nerve was dissected down to the level of the distal palmar crease where it was embedded in significant scar and was found to be no longer in continuity with its distal branch. The distal branch was isolated. There were both neuromas from proximal distal ends of the nerve where it was resected. It was mobilised sufficiently for primary repair. Using a 6-0 nylon suture, a primary repair of the palmar cutaneous branch of the nerve was performed.

[31] On 22 October 2019, Mr Holman noted that Mr Pio was “status post revision carpal tunnel release with palmar cutaneous branch anastomosis, i.e. neurorrhaphy”. He noted that Mr Pio had done well and reported excellent relief of symptoms and numbness in the hand, and had even seen early residual return of sensation in the palm of the hand. Mr Holman cleared Mr Pio to return to work on light duties from 22 November 2019, then full duties from 1 December 2019 once the neurorrhaphy had “quietened down”. Mr Holman released Mr Pio back to his GP. However, Mr Pio did not go back to work and obtained, on 10 February and 20 March 2020, backdated medical certificates.

[32] On 12 November 2019, the Corporation declined to cover a median nerve injury on the basis that it had already declined a claim for the same injury.

[33] On 23 March 2020, the Corporation wrote to Mr Pio informing him that it was unable to continue paying him weekly compensation, as his most recent medical certificate had expired.

[34] On 16 June 2020, Mr Holman submitted a treatment injury claim for “palmar cutaneous branch laceration”, caused by the left carpal tunnel release procedure on 20 November 2015. On 17 June 2020, Mr Holman wrote to Mr Pio’s GP that:

The patient underwent repeat carpal tunnel release and neurorrhaphy of his palmar cutaneous branch. This has gone on to unite well. He reports the hand numbness has completely resolved. He has no further complaints and he has been itching to go back to work ever since the operation.

[35] Mr Holman noted Mr Pio had told him that he was required to complete a three-month course of rehabilitation before he could return to work, when he was cleared on 1 December 2019. The three-month period was to terminate around the time of New Zealand’s first COVID lockdown, and Mr Pio reported that he had not been back to work since that time either. Mr Holman reiterated in his letter that Mr Pio’s condition had been the same for the past six months, he was able to return to work without restriction and he was wanting to do so.

[36] On 24 June 2020, Mr Pio’s GP recorded:

Call from Tina from ACC.

Daniel keeps telling different stories to different parties. He’s requesting to see specialist and physio again.

Kit has said he is fit for work.

Another treatment injury claim has been made by surgeon, awaiting notes.

I consider Daniel to be fit for work and have explained this to Tina, this is based on clinical findings and consistent report from Daniel that he feels fit for work, wants to return to work and is essentially symptom free.

[37] On 30 June 2020, the Corporation wrote another letter to Mr Pio noting that it had received a medical certificate from Dr Moore clearing him for normal work

duties from 24 June 2020. The Corporation informed Mr Pio that he was no longer eligible to receive weekly compensation, and asked him to contact the Corporation if his situation changed.

[38] On 27 July 2021, the Corporation wrote to Mr Pio accepting cover for “injury/laceration to palmar cutaneous branch of the median nerve – left”. The date of the covered injury was 21 March 2014.

[39] On 28 July 2021, Mr Pio contacted the Corporation to enquire about weekly compensation. He said that he had not worked since he was cleared for work on 24 June 2020.

[40] On 23 August 2021, a GP consultation note recorded that Mr Pio was requesting backdated weekly compensation payments, but also noted:

Problem is Daniel was signed off fit for work based on the [fact] he told me he felt fit for work, separate letter from specialist Mr Holman June 2020 corroborates the same and says the same.

Even if he was signed off he would not get weekly compensation now as he has not worked since being signed off and is classed as a non-earner.

Over 1 year between being signed off and contacting ACC, myself or specialist regarding being unfit for work.

[41] On 24 August 2021, the Corporation declined Mr Pio’s application for weekly compensation. The basis for that decision was that Mr Pio was not an earner at his date of certified incapacity. Mr Pio applied to review this decision.

[42] On 13 October 2021, Mr Holman saw Mr Pio and noted that the revision surgery had left him “quite sensitive about the surgical site”. Mr Pio is recorded as reporting that this left him “unable to return to his position in the woods as a handler of a chainsaw”. A medical certificate signed by Mr Holman on 20 October 2021 certified Mr Pio fit for some work from 25 June 2020 to 20 October 2021, with restrictions as to temperature and vibration.

[43] On 22 November 2021, Dr Paul Noonan, medical advisor for the Corporation, reviewed the file. He noted that Mr Pio’s condition had been successfully treated by

the revision surgery and he had been cleared for work. He said “once such a condition has been successfully treated there is no medically plausible reason for any subsequent incapacity resulting”. In respect of the median nerve injury, Dr Noonan stated that any effects of this injury would have been apparent when Mr Pio was seen by Mr Holman on 17 June 2020 and would not have deteriorated since then.

[44] On 24 November 2021, the Corporation declined the weekly compensation request again on the basis that it did not accept that Mr Pio was incapacitated by the covered injury at the earlier time he was certified unfit. The decision letter noted (erroneously) that he was not an earner at the deemed date of his injury (21 March 2014). Mr Pio applied to review this decision.

[45] On 23 February 2022, Mr Pete Larking, director of Neuromedtec, prepared a report. This noted that Mr Pio had presented with pain in both wrists along the median nerve distribution since his initial injury in March 2014, and was also suffering insomnia due to pain and high levels of stress and emotional difficulties due to ongoing loss of income. Mr Larking noted that Mr Pio had responded well to neuromedtec, a type of acupuncture.

[46] On 15 March 2022, Dr Noonan prepared another comment. He stated that there was no medical information indicating a change in Mr Pio’s condition between 24 June 2020 and 13 October 2021, and that Mr Holman’s report did not set out any clinical examination that would support incapacity. Dr Noonan stated that “scar sensitivity would not be expected to be to the extent that it would cause incapacitating pain, even for working with chainsaws”.

[47] On 15 July 2022, following proceedings on Mr Pio’s review applications, a Reviewer upheld the Corporation’s decisions. She found that there was no record of Mr Pio seeking treatment between 24 June 2020 and his treatments with Neuromedtec in 2022. She noted that there were no records of three months’ rehabilitation that Mr Pio retrospectively told Mr Holman and his GP that he had to undergo prior to resuming work. There was no evidence of any rehabilitation programme or provider. She noted the Courts’ guidance that retrospective certification is to be treated “with the utmost caution” and that there was no credible

evidence from which she could draw an inference to support the retrospective incapacity claimed by Mr Pio. Mr Pio lodged an appeal against the Reviewer's decision.

[48] On 18 October 2022, Dr James Harman, Occupational Medicine Specialist, undertook an impairment assessment. He set out a detailed history of Mr Pio's condition and current status and noted:

Mr Pio is not working. He has been unable to return to his forestry work due to his left hand symptoms. He now cannot use a chainsaw and he also cannot use a lawnmower at home. He is right handed. His left hand function is limited by his pain and numbness. He cannot use it for more forceful gripping tasks and he has a tendency to drop things such as cups and plates.

[49] Dr Harman assessed Mr Pio's whole person impairment at 16%.

[50] On 15 March 2023, Mr Pio's appeal was heard in the District Court by Judge Carter. On 6 September 2023, Judge Carter dismissed the appeal for the reason outlined below.

[51] On 6 October 2023, Mr Pio applied for leave to appeal Judge Carter's judgment.

The Court's judgment of 6 September 2023

[52] Judge Carter's judgment addressed two issues raised by the appeal.

Is Mr Pio unable, because of his covered injury (injury/laceration to palmar cutaneous branch of the median nerve – left) to engage in employment in which he was employed when he suffered the personal injury (mussel packing)? (Section 103, cl. 32(1)(a))

[53] Mr Pio made two claims for backdated weekly compensation:

- (a) From his General Practitioner on 23 August 2021, an ACC18 form for the period 13 August 2021 to 10 November 2021, in relation to the original bilateral carpal tunnel syndrome injury in March 2014.

- (b) An ACC18 form from Mr Holman, for the period 25 June 2020 to 20 October 2021, made on the treatment injury claim of 24 June 2020, which appears not to have been sent to the Corporation until 25 May 2021. The treatment injury claim was accepted by the Corporation on 16 July 2021.

[54] The first issue on appeal is framed as if there is just one covered personal injury (carpal tunnel syndrome) diagnosed on 21 March 2014 and one immediately prior employment (mussel packing). However, in this case, there is a second covered personal injury (lacerated nerve) caused by a treatment injury during surgery on 20 November 2015 and Mr Pio's employment immediately prior to the treatment injury was forestry work/tree feller/skiddy. It is not in dispute that Mr Pio was an earner at the time of both injuries in 2014 and 2015. The question of incapacity under s 103(2) is to be determined in respect of either employment. I have therefore considered whether the evidence establishes incapacity to do either kind of employment.

[55] When determining the question of incapacity of an earner claimant, the question required to be answered by section 103(2) is whether the claimant is "unable , because of his or her personal injury, to engage in employment in which he or she was employed when he or she suffered the personal injury. In arriving at the answer, it is necessary to consider the assessments of medical practitioners and any other relevant evidence.

[56] The contemporaneous medical evidence relating to Mr Pio's condition in 2020 is quite clear:

- (a) Mr Holman, the orthopaedic surgeon, noted on 17 June 2020 that Mr Pio was fully able to return to work, and that he wanted to do so. In addition to this, Mr Holman noted that this had been the case for the previous six months. Mr Holman submitted an ACC18 form backdated by 16 months on 10 October 2021 but his consultation notes recorded on that date do not support Mr Pio being fully unfit for any work for the preceding 16 months during which Mr Holman had not heard from Mr Pio. Mr

Holmans' reports of June 2020 and October 2021 recorded that most of the significant symptoms had resolved. The recorded remaining symptoms in October 2021 were similar to the symptoms recorded in June 2020 when Mr Pio was cleared to return to work.

- (b) Mr Pio's General Practitioner confirmed his agreement with this conclusion in a detailed consultation note on 24 June 2020.

[57] As a result, the Corporation ceased paying Mr Pio weekly compensation on 30 June 2020.

[58] There is no retrospective medical evidence from either medical practitioner that suggests Mr Pio became incapacitated again after 24 June 2020.

[59] After 24 June 2020 there is a significant gap in Mr Pio's medical history. There were no presentations for treatment throughout the rest of 2020. It was not until August 2021 (nearly fourteen months later) that Mr Pio visited his General Practitioner complaining of symptoms. It is not clear that when Mr Pio did present for treatment again, he was incapacitated. Mr Holman noted that he had sensitivity around the surgical site but does not go into any detail regarding his ability to engage in employment. He simply signed a backdated medical certificate certifying him for some duties, without any further analysis.

[60] There is no evidence of Mr Pio having sought or received any treatment for his injuries from the time he was cleared to return to work on 24 June 2020 until his treatments at Neuromedtec in February 2022. The Neuromedtec report simply records symptoms as reported by Mr Pio and notes that Mr Pio responded well to neuropuncture.

[61] None of the doctors suggest there was incapacity after 24 June 2020 to do either kind of work previously undertaken – forestry work or mussel packing. Comments made by Dr Antoniadis in his 23 July 2019 report suggest that Mr Pio's prospects of engaging in the mussel packing role were better than for returning to forestry work. This means that even if Mr Pio was unable to return to forestry (which

is not at all clear on the evidence), it is not a complete answer to his entitlement to weekly compensation. It is notable that Mr Holman and Mr Pio's General Practitioner cleared Mr Pio to work from 24 June 2020 without qualification as to the nature of the work. Mr Holman's backdated medical certificate of 20 October 2021 certified that Mr Pio was "fit for some work". The evidence does not establish that Mr Pio was incapacitated by being substantially unable to undertake either of his pre-injury employed roles in forestry or mussel packing.

[62] There is no reason to doubt the correctness of the Specialist's and General Practitioner's assessments, which were not challenged by Mr Pio at the time they were given.

[63] There is no other credible evidence from which to draw an inference on incapacity as claimed by Mr Pio. Mr Pio's self-assertion that he was incapacitated is insufficient.

[64] Mr Pio's explanation that Mr Holman did not forward the ACC18 form for over a year is not disputed by the Corporation. However the absence of any seeking of medical treatment between June 2020 and 2022 is consistent with Mr Pio having capacity to work. Mr Pio waited for 14 months for some further communication from Mr Holman or the Corporation. It is implausible that he would have waited that long without seeking treatment if symptoms had reached the level of incapacitating him from work.

[65] In any event, the delay in forwarding does not affect Mr Pio's entitlement to weekly compensation under the mandatory requirements for eligibility for weekly compensation. Had the ACC18 form been forwarded to the Corporation earlier, it would have made no difference as Mr Pio would still have not been able to satisfy the earner eligibility requirement.

[66] It is not at all clear that Mr Pio became incapacitated after 24 June 2020. The available evidence considered in its entirety does not establish on the balance of probabilities a clear picture that Mr Pio was incapacitated from working in either of

his pre-injury employment roles immediately before the claimed periods of incapacity.

Was Mr Pio an earner immediately before his incapacity commenced? (Clause 32(1)(b))

[67] Clause 32(1)(b) of Schedule 1 requires that immediately before becoming incapacitated, a claimant for weekly compensation must be an earner.

[68] Mr Pio was cleared for work from 24 June 2020 and did not work from then on. That is not in dispute. He could not be an earner after 24 June 2020.

[69] Even if Mr Pio had subsequently become incapacitated after 24 June 2020 by a deterioration of his injury, he could still not satisfy the requirement to be an earner immediately before commencement of incapacity.

[70] As Mr Pio was not an earner immediately before the claimed periods of incapacity after 24 June 2020, he does not meet the key eligibility requirement under clause 32(1)(b) of Schedule 1.

[71] In conclusion, Mr Pio was substantially able and had capacity to engage in his pre-injury employment either as a mussel packer or forestry worker/tree feller/skiddy immediately before the claimed periods of incapacity after 24 June 2020. Mr Pio was not an earner immediately before the claimed periods of incapacity after 24 June 2020, 13 August to 10 November 2021, and 25 June 2020 to 20 October 2021. Mr Pio is accordingly not entitled to weekly compensation for the periods claimed.

The applicant's submissions

[72] The applicant submits as follows. There are matters capable of raising serious argument and these have not been carefully traversed in Judge Carter's decision and need to be re-explored in a High Court appeal. The matter at hand has far-reaching application within a multi-layer jurisdictional environment, and cannot be fully ascertained as meeting those requirements without some type of acknowledgement, answers, indication or whatsoever from the Courts and the Corporation. There

should be an inquiry into the Corporation's breaches and violations, and into other government departments.

Discussion

[73] Mr Pio has made a claim to weekly compensation relating to his covered injury. To be entitled to weekly compensation, Mr Pio must establish that he is unable, because of his covered personal injury, to engage in employment in which he was employed immediately before he suffered the injury and that he was an earner immediately before the start of any period of incapacity.

[74] Judge Carter, in his judgment, carefully analysed the relevant factual and medical evidence. The evidence showed that Mr Pio was substantially able and had capacity to engage in his pre-injury employment either as a mussel packer or forestry worker/tree feller/skiddy immediately before his claimed periods of incapacity; and that he was not an earner immediately before the claimed periods of incapacity.

[75] Mr Pio's submissions in support of his application for leave to appeal are of a wide-ranging nature, and he considers that there are important issues involved in his claim and appeal. However, Mr Pio has not demonstrated that Judge Carter's decision was wrong in law, or that there was no evidence to support the decision, that the evidence was inconsistent with, and contradictory of, the decision, or that the true and only reasonable conclusion on the evidence contradicted the decision.

The Decision

[76] In light of the above considerations, the Court finds that Mr Pio has not established sufficient grounds, as a matter of law, to sustain his application for leave to appeal, which is accordingly dismissed. The applicant has not established that Judge Carter made an error of law capable of *bona fide* and serious argument. Even if the qualifying criteria had been made out, this Court would not have exercised its discretion to grant leave, so as to ensure the proper use of scarce judicial resources and the finality of litigation. This Court is not satisfied as to the wider importance of any contended point of law.

[77] Costs are reserved.

A handwritten signature in dark ink, appearing to read 'P R Spiller'. The signature is fluid and cursive, with the first name 'P' being a large, stylized capital letter.

Judge P R Spiller,
District Court Judge