

IN THE COURT OF APPEAL OF NEW ZEALAND

**CA686/2009
[2010] NZCA 22**

BETWEEN LINDA GATES
 Applicant

AND AIR NEW ZEALAND LIMITED
 Respondent

Hearing: 16 February 2010

Court: O'Regan, Arnold and Baragwanath JJ

Counsel: Applicant in person
 K M Thompson for Respondent

Judgment: 23 February 2010 at 11.30 am

JUDGMENT OF THE COURT

- A We grant an extension of time to apply for leave to appeal.**
- B We dismiss the application for leave to appeal.**
- C We make no award of costs.**
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REASONS OF THE COURT

(Given by O'Regan J)

[1] The applicant, Ms Gates, seeks leave to appeal against a decision of the Employment Court¹ dealing with personal grievances arising from the termination of her employment by her former employer, Air New Zealand.

[2] Ms Gates' application for leave was made a few days outside the 28 day time frame for such applications provided by s 214(2) of the Employment Relations Act 2000. She provided an adequate explanation for this short delay and we grant her an extension of time to commence the application for leave. However, for the reasons we give below we dismiss the application.

[3] The application falls to be determined under s 214, the relevant part of which provides as follows:

214 Appeals on question of law

(1) A party to a proceeding under this Act who is dissatisfied with a decision of the Court (other than a decision on the construction of an individual employment agreement or a collective employment agreement) **as being wrong in law** may, with the leave of the Court of Appeal, appeal to the Court of Appeal against the decision; and section 66 of the Judicature Act 1908 applies to any such appeal.

...

(3) The Court of Appeal may grant leave accordingly if, in the opinion of that Court, **the question of law involved in that appeal is one that, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision.**

...

(Emphasis added.)

[4] There are two important limitations on the ability to bring appeals from the Employment Court to this Court. The first is that the applicant must identify an aspect of the Employment Court's decision which is "wrong in law". The second is that this Court may not grant leave unless it forms the view that the question of law involved is one that by reason of its general or public importance or for any other reason ought to be submitted to this Court for decision.

¹ *Gates v Air New Zealand Ltd* Emp C Auckland AC 33/09, ARC 40/04, 11 September 2009.

[5] It is important, therefore, for an applicant to this Court for leave to appeal against a decision of the Employment Court to identify the alleged error of law made by the Employment Court, in his or her application for leave.²

[6] Ms Gates filed her application for leave to appeal without assistance from counsel and appeared for herself at the hearing before us. It is clear from the material she provided to the Court that she strongly takes issue with the outcome of the case before the Employment Court. But the difficulty which her application poses for us is that she has not identified a question of law, less still a question which is of public or general importance or which for any other reason should be the subject of a further appeal to this Court.

[7] Two matters were of particular concern to Ms Gates. The first was that the Employment Court found that her claim that she had been subject to workplace bullying before being made redundant was made outside the statutory time limit. The second was that the Court did not accept her contention that the termination of her employment was based on a false, rather than a genuine, redundancy. However, both of these matters are questions of fact and, in relation to the former, the Court did consider the issue of workplace bullying and made a finding of fact that Ms Gates had not been subject to such bullying.

[8] In those circumstances, the Court cannot properly grant leave to appeal. We therefore dismiss the application for leave to appeal.

[9] We make no award of costs.

Solicitors:
G L Norton, Air New Zealand for Respondent

² *Air New Zealand Ltd v Cliff* [2007] NZCA 181. [2007] ERNZ 350 at [5].