NOTE: EMPLOYMENT COURT ORDER PROHIBITING PUBLICATION OF NAMES AND IDENTIFYING PARTICULARS OF THE APPLICANT AND ANOTHER PERSON REMAINS IN FORCE.

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 72/2026
[2026] NZSC 166

BETWEEN	VXO Applicant
AND	HEALTH NEW ZEALAND | TE WHATU ORA Respondent

Court: Ellen France, Williams and Cooke JJ

Counsel: Applicant in person
D M Grindle for Respondent

Judgment: 30 October 2026

JUDGMENT OF THE COURT

A The application for an extension of time to seek leave to appeal is granted.

B The applications to file further materials and for a stay are dismissed.

C The application for leave to appeal is dismissed.

D The applicant must pay the respondent costs of $4,850.

REASONS

[1] The applicant applies for leave to appeal directly against a judgment of the Employment Court and for an extension of time to do so.[1] The Court upheld determinations of the Employment Relations Authority relating to his dismissal, and to an earlier misconduct investigation and subsequent disciplinary process.[2]

Background

[2] The applicant was employed as a senior medical officer by a District Health Board (DHB). The DHB investigated a complaint from a resident medical officer in his department, alleging that he had subjected her to inappropriate texts, actions and conduct. Some time later, the applicant was admitted to hospital due to a serious health issue, and then took sick leave. The disciplinary investigation was adjourned. After the applicant was absent for work due to illness for over nine months, with no clear return date in sight, the DHB terminated his employment.

[3] The applicant lodged a personal grievance with the Employment Relations Authority claiming unjustifiable disadvantage in the initial investigation and disciplinary process, unjustifiable dismissal and a breach of good faith. The Authority's substantive decision, dated 1 March 2023, dismissed the applicant's claims.[3]

[4] The applicant appealed to the Employment Court, again alleging errors in the DHB's processes and decisions. The Court upheld the Authority's decision that, despite the minor flaw in the applicant being placed on paid special leave during the investigation and disciplinary process, the applicant had not been unjustifiably disadvantaged or dismissed, and there were no breaches of good faith by the DHB.[4]

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1 *VXO v Health New Zealand* [2025] NZEmpC 114, (2025) 21 NZELR 771 (Judge Holden) [EmpC judgment].
2 *VXO v Northern District Health Board* [2023] NZERA 97 (Eleanor Robinson) [ERA decision]; and *VXO v Northern District Health Board* [2023] NZERA 210 (Eleanor Robinson).
3 ERA decision, above n 2.
4 EmpC judgment, above n 1, at [111].

[5] The applicant sought and was declined leave to appeal to the Court of Appeal. The Court concluded that none of the proposed grounds were of general or public importance.[5] His later application to recall that decision was also declined.[6]

[6] The applicant now seeks leave to appeal to this Court directly against the Employment Court decision. The application for leave is brought under s 214A of the Employment Relations Act 2000 (the Act) and ss 74 and 75 of the Senior Courts Act 2016. To be granted leave, the applicant must establish that the proposed appeal raises a question of law meeting the leave criteria in s 74, as well as exceptional circumstances under s 75. The applicant argues that the criteria are satisfied. He also seeks leave to file an affidavit and reply submissions, and he seeks a stay of the Court of Appeal costs orders.

[7] The application for leave was filed out of time on 8 July 2026, over a year after the Employment Court judgment was delivered. However, this was within 20 working days of the Court of Appeal's recall judgment being delivered.[7] Following the approach in *Dowlut v Aurecon New Zealand Ltd*,[8] we consider that an extension of time should be granted.

Analysis

[8] We do not accept that the applicant's proposed grounds of appeal meet the statutory criteria for the grant of leave to appeal. The proposed grounds concern Employment Court practice and procedure, or involve criticisms of the factual findings of the Court and the analysis undertaken to make these findings. We do not accept that these grounds involve arguable questions of law. To the extent that they can be categorised as questions of law, they do not involve matters of general or public importance, nor do they give rise to a substantial miscarriage of justice in the

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5 *VXO v Health New Zealand* [2026] NZCA 84 (French P, Jagose and McQueen JJ) at [5]–[6].

6 *VXO v Health New Zealand* [2026] NZCA 242 (French P, Jagose and McQueen JJ).

7 The usual period for filing an application for leave is within 20 working days, where, as in this case, the legislation under which the application for leave is brought does not specify an alternative period: Supreme Court Rules 2004, r 11(1)(b). 8 July 2026 is exactly 20 working days after 10 June 2026, when the recall judgment was delivered.

8 *Dowlut v Aurecon New Zealand Ltd* [2026] NZSC 68 at [16].

civil sense.[9] Nor are there exceptional circumstances that justify a direct appeal to this Court. For these reasons, the application for leave to appeal is dismissed.

[9] We have considered the additional materials the applicant seeks leave to have considered, but they do not alter our conclusions. Leave to file them is formally dismissed. Given these conclusions, the application for a stay is also dismissed.

[10] The respondent is entitled to a standard award of costs for opposing an application for leave to appeal determined on the papers.

Result

[11] The application for an extension of time to apply for leave to appeal is granted.

[12] The applications to file further materials and for a stay are dismissed.

[13] The application for leave to appeal is dismissed.

[14] The applicant must pay the respondent costs of $4,850.

Solicitors:
WRMK Lawyers, Whangārei for Respondent

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[9] See *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].