

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA733/2025
[2026] NZCA 180**

BETWEEN AIR NEW ZEALAND LIMITED
Applicant
AND GARTH MCGEARTY
Respondent

Court: Ellis and Edwards JJ
Counsel: J G Miles KC and S R Worthy for Applicant
R E Harrison KC and R R McCabe for Respondent
Judgment: 14 May 2026 at 11.30 am
(On the papers)

JUDGMENT OF THE COURT

- A Leave to appeal on the three questions identified in the applicant’s application for leave is granted, on the condition referred to at [6] and [7] of this judgment.**
- B Costs are reserved pending determination of the appeal.**
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REASONS OF THE COURT

(Given by Ellis J)

[1] Air New Zealand has applied for leave to appeal the decision of the Employment Court in *McGearty v Air New Zealand Ltd*.¹ In that decision the Employment Court concluded:

¹ *McGearty v Air New Zealand Ltd* [2025] NZEmpC 223.

- (a) Captain McGearty was unjustifiably disadvantaged in terms of s 103(1)(b) of the Employment Relations Act 2000 (ERA) when Air New Zealand treated cl 3.2.3 of the relevant collective agreement as triggered, without inquiry and/or wrongly on the merits, and placing him on leave without pay; and
- (b) Air New Zealand unlawfully discriminated against Captain McGearty by reason of his age (s 103(1)(c) of the ERA) by failing to make adjustments not amounting to unreasonable disruption of Air New Zealand's business activities to ensure he could continue captaining Boeing 777 aircraft.

[2] Leave to appeal is governed by s 214 of the ERA, which relevantly provides:

- (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; ...
- ...
- (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.

[3] In this case, the three questions of law on which leave is sought have been articulated by Air New Zealand as follows:

Did the Employment Court err in law by failing to apply the orthodox and required principles of contractual interpretation when interpreting cl 3.2.3 of the Collective Agreement?

Did the Employment Court err in law by failing to apply the statutory test of justification in s 103A(2) [of the] ERA to the respondent's claim of unjustified disadvantage?

Did the Employment Court err in law when it found that the appellant had not made adjustments, not involving unreasonable disruption to its activities, as required by s 35 of the Human Rights Act 1993?

[4] The grant of leave is opposed by Captain McGearty.

[5] After considering the submissions made by the parties, and by reference to the settled criteria governing such applications, we have determined that leave should be granted on all three questions.

[6] Section 61 of the Senior Courts Act 2016 makes it clear that we are not required to give reasons for this decision. Nonetheless, because the first question does potentially engage the s 214(1) proscription on granting leave on a question relating to the construction of a collective employment agreement, we make it clear that leave on this question is conditional on Air New Zealand advancing its argument on the basis affirmed by the Supreme Court in *Bryson v Three Foot Six Ltd* and elaborated in *New Zealand Air Line Pilots' Association Inc v Air New Zealand Ltd*.² In *Bryson* the Court held that s 214(1) does not preclude appeals alleging errors in the application of interpretive principle.³ And in the latter case, the Court elaborated further:⁴

[I]t is possible to postulate examples where the stated principles are simply given lip-service ... It would be an odd result in the current statutory framework for the supervisory appellate jurisdiction to be removed by a recitation of the principles where one or more of the principles was then misapplied or not applied at all, with an operative effect on the outcome.

[7] We also note that, in the present case, the relevant interpretive principles may involve the interplay between the relevant provisions of the collective agreement and international law (in particular, the requirements and standards published by the International Civil Aviation Organisation). If so, the parties should address that issue.

[8] Lastly, we note that the New Zealand Airline Pilots' Association had intervener status in the Employment Court. The parties are to advise whether they seek or support a similar intervention in the appeal.

² *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 721; and *New Zealand Air Line Pilots' Association Inc v Air New Zealand Ltd* [2017] NZSC 111, [2017] 1 NZLR 948.

³ *Bryson v Three Foot Six Ltd*, above n 2, at [20], n 21.

⁴ *New Zealand Air Line Pilots' Association Inc v Air New Zealand Ltd*, above n 2, at [51].

Result

[9] Leave to appeal on the three questions identified in the applicant's application for leave is granted, on the conditions referred to at [6] and [7] of this judgment.

[10] Costs are reserved pending determination of the appeal.

Solicitors:

Kiely Thompson Caisley, Auckland for Applicant

New Zealand Air Line Pilots' Association Inc, Auckland for Respondent