

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** New Zealand Meatworkers' Union Inc (Initiating party)

**AND** Alliance Group Limited (Responding party)

**REPRESENTATIVES** Christine French, for the Applicant  
Richard Cunliffe, for the Respondent

**MEMBER OF AUTHORITY** Paul Montgomery

**INVESTIGATION** On the papers, Christchurch 1 March 2005

**DATE OF DETERMINATION** 1 March 2005

**DETERMINATION OF THE AUTHORITY**

**Employment relationship problem**

[1] In an application received by the Christchurch registry of the Authority on 5 December 2004, the applicant outlined the problem it sought to have resolved.

[2] The problem as stated is;

*A dispute about the proper application of the provisions of the Holidays Act 2003 relating to bereavement and sick leave in respect of meat workers covered by the Alliance Group Collective Agreement 2002-2005.*

[3] In response to the application the respondent filed a statement in reply and also an application for removal of the matter to the Employment Court, both being received by the Authority on 23 December 2004.

[4] On 21 January 2005 the Authority received a letter from counsel for the respondent inquiring whether the Authority was able to deal with the application for removal on the papers. Mr Gallen responded in an e-mail of the same date confirming that I was agreeable to deal with the application in the manner proposed however, the Authority sought submissions by 18 February 2005 in support of the application.

[5] In reply counsel for the respondent duly lodged submissions in support of his client's position for the Authority's consideration.

**The relevant statute**

[6] Section 178 of the Employment Relations Act 2000 sets out the circumstances in which the Authority may remove a matter to the court on the application of any party to the matter. At

s178(2);

**178 Removal to Court**

.....

- (2) *The Authority may order the removal of the matter, or any part of it, to the Court if-*
- (a) *an important question of law is likely to arise in the matter other than incidentally;*  
*or*
  - (b) *the case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the Court; or*
  - (c) *the Court already has before it proceedings which are between the same parties and which involve the same or similar or related issues; or*
  - (d) *the Authority is of the opinion that in all the circumstances the Court should determine the matter.*

**The submissions**

[7] In essence the respondent through counsel submits that the resolution of this matter will affect a large number of people within this and other industries employing seasonal workers; that the amount (of wages) and the significance of the legal issues are such that if the Authority determined the matter that determination *would very likely be the subject of a challenge whatever the determination*; an additional cost is likely to be incurred if the Authority determines the matter in the first instance; and that removal to the Employment Court is likely to resolve the matter. Counsel cites various Employment Court decisions in support of the respondent's position. Further, counsel correctly submits that this is a matter in which facts are not disputed and that the parties agree that mediation assistance is unlikely to resolve the issues.

[8] The applicant through its counsel does not oppose removal. In a letter to the Authority dated 23 February 2005 Miss French accepts that the respondent's submission *...correctly identifies the questions of law that arise in the proceeding and that such issues ....arise other than incidentally and they do affect a significant number of employees.*

[9] Further, counsel states...*Given however the respondent's attitude to the inevitability of an appeal, the costs are likely to be greater...the practicalities are such that it does not oppose the application for removal.*

**Determination**

[10] I have considered the respondent's submissions specifically in reference to s178(2)(a) and s178(2)(d). The weight of those submissions have been sufficient to convince the Authority that the matter is to be removed to the Employment Court for decision. The primary reason for this determination is the unopposed submission that important questions of law are likely to arise while I have also borne in mind the very considerable number of employees likely to be affected by the decision.

[11] Having determined that removal is appropriate on the grounds I have specified, I observe that the respondent's submission at 13(b)...*that if the matter was first determined by the Employment Relations Authority it would be very likely be the subject of a challenge whatever the determination* has carried no weight in my determination. The Authority, in exercising its powers under s178 must also consider whether a determination to remove a matter to the Court would be prejudicial to either party as such a determination effectively eliminates one stage of the dispute resolution process and thus an opportunity for challenge by either party. It is for that reason that consent between the parties in respect of a removal of a matter to the Court is insufficient grounds to effect such a

removal.

**Costs**

[12] Should costs be an issue between the parties in respect of this application for removal, leave is reserved for either to approach the Authority for a determination.

Paul Montgomery  
Member of Employment Relations Authority