

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Sealord Group Limited and Amaltal Fishing Company (Applicants)
AND New Zealand Fishing Industry Guild Inc (Respondent)
REPRESENTATIVES Graeme Malone , Counsel for the applicant
Pier Davies, Counsel for the respondent
MEMBER OF AUTHORITY Philip Cheyne
CONSIDERATION OF PAPERS 7 July 2005
DATE OF DETERMINATION 7 July 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Sealord Group Limited and Amaltal Fishing Co Limited are the applicants and the New Zealand Fishing Industry Guild Incorporated is the respondent in this problem lodged in the Authority on 6 July 2005. They seek urgency and an order that the problem be removed to the Employment Court for the Court to hear and determine the matter without the Authority investigating the problem. I am asked to determine those issues on the papers lodged with the application.

[2] Because the problem is about the application of the Minimum Wages Act 1983 and the Wages Protection Act 1983, the Department of Labour is interested in the proceedings and has written to the Authority supporting the application for urgency and removal. The Department has indicated its intention to seek an appearance in the proceedings in due course.

[3] The other procedural matter that should be mentioned is that a statement in reply from the Guild was lodged at the same time as the application. The application includes an agreed statement of facts. The Guild says that it supports the removal application for the reasons set out in the application.

[4] Having reviewed the application for removal, I accord it urgency and I will deal with it on the papers as requested by the parties.

Removal

[5] Section 178 (2) (a) of the Employment Relations Act 2000 empowers the Authority to remove all or part of a matter to the Court if an important question of law is likely to arise in the matter other than incidentally.

[6] There are collective employment agreements that stipulate the wages to be paid to employees who work on the applicants' fishing vessels. Wages are calculated by reference to the value of the catch. The parties to the agreements are satisfied with the various arrangements and it is not suggested that the applicants have not complied with those contractual provisions. The Department of Labour, following an investigation, has concluded the applicants are in breach of the Minimum Wages Act 1983 and other statutory provisions. That conclusion depends on the correct interpretation of those statutory provisions. That is a question of law and it is central to the problem.

[7] I find that the question of law involved is important because it potentially affects a large number of employers and employees.

[8] The Authority is not obliged to remove a matter even if grounds are made out, but there is no reason to decline the order in the circumstances of this matter which is effectively a joint application for removal.

Orders

[9] I order the whole of the matter removed to the Court for the Court to hear and determine it without the Authority investigating the matter.

[10] No order of costs is sought.

Philip Cheyne
Member of Employment Relations Authority