

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Service & Food Workers Union Nga Ringa Tota Incorporated
(Applicant)

AND Air New Zealand Limited (Respondent)

REPRESENTATIVES Timothy Oldfield, Advocate for Applicant
David France, Counsel for Respondent

MEMBER OF AUTHORITY Leon Robinson

CONSIDERATION ON PAPERS 27 September 2005

DATE OF DETERMINATION 27 September 2005

DETERMINATION OF THE AUTHORITY

The Authority orders that, pursuant to section 178 of the Employment Relations Act 2000, the whole of this matter is to be removed to the Employment Court for hearing and determination without investigation by the Authority.

The problem

[1] These parties concluded a collective employment agreement executed on 22 April 2005 (“the CEA”). The *Service & Food Workers’ Union Nga Ringa Tota Incorporated* (“the Union”) has sought the Authority’s assistance alleging that *Air New Zealand Limited* (“Air New Zealand”) has passed on certain terms and conditions of the CEA to non-member individual employees. The Union alleges that in doing so, Air New Zealand has not acted in good faith and has acted in breach of section 59B(2) of the *Employment Relations Act 2000* (as amended) (“the Act”).

The application

[2] By application dated 12 September 2005, the Union now asks the Authority to remove the problem to the Employment Court for hearing and determination, without first being investigated by the Authority.

[3] By memorandum of Counsel dated 21 September 2005, Air New Zealand does not oppose the application for removal.

[4] I have determined the application on the papers lodged in the Authority.

The grounds

[5] The grounds for removal are prescribed by section 178 of Act.

[6] The Union says the problem raises two principal issues:-

- (i) *whether Air New Zealand unlawfully passed on in individual employment agreements terms and conditions agreed to in a collective employment agreement; &*
- (ii) *whether Air New Zealand conferred an unlawful preference on non-union employees by offering them higher one-time payment for continuous service than the one-time payment agreed with the union’s members.*

[7] The first issue is said to require consideration of section 59B of the Act. That provision was enacted by an amendment to the principal Act in December 2004. The section has not yet been judicially considered. As such, the legal principles and its application have not yet been settled. I agree that the allegations raised by the statement of problem will call for a consideration of section 59B and that enquiry constitutes an important question of law. That question of law is a central issue and not one which arises only incidentally.

[8] It is next said that the second issue has general importance to many unions and their members, as well as employers in New Zealand. There will be an impact on future collective bargaining and the way in which employers bargain with non-union employees where collective agreements are in place. I am satisfied that this case is of such a nature and corresponding attendant urgency.

[9] I note that on 30 August 2005 the Authority ordered the removal of a matter to the Court also concerning the interpretation and application of section 59B(2) of the Act¹. The matters in issue in that proceeding are substantially the same as between these parties. It may be that these parties await the outcome of the Court’s determination in that other matter but I do not decline this present application solely because of the removal of those other proceedings. I expect this proceeding’s

¹ *National Distribution Union & General Distributors Limited*, unreported, AA335/05, 20 August 2005, Rosemary Monaghan

further progress in the institutions will be subject to the progression of that other proceeding in the Court.

The order

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

[11] No order for costs is sought.

Leon Robinson
Member of Employment Relations Authority