

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
OFFICE**

BETWEEN Byron Knight, Paul Carrucan and Brian Webb (Applicants)

AND Transportation Auckland Corporation Ltd and Cityline (NZ)
Limited trading as Stagecoach Auckland (Respondents)

REPRESENTATIVES Byron Knight and Paul Carrucan In Person
Michelle Hall-Collins, Counsel for Respondents

MEMBER OF AUTHORITY Leon Robinson

INVESTIGATION MEETING 30 October 2006

DATE OF DETERMINATION 30 October 2006

DETERMINATION OF THE AUTHORITY

The Authority determines that:-

- A. It declines to investigate the matters raised in the Statement of Problem lodged on 5 October 2006; &**
 - B. It declines to make the formal orders sought by the Applicants.**
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The problem

[1] The applicants Mr Brian Webb ("Mr Webb"), Mr Paul Carrucan ("Mr Carrucan") and Mr Byron Knight ("Mr Knight") lodged a statement of problem in the Authority on 5 October 2006. The statement of problem sets out their wishes that the Authority: -

... refer a questions(sic) of law (the matter of annual leave under a collective employment contract and the effect of the Holidays Act Amendment) for which the Aauthority(sic) made a determination to the Employment Court for interpretation.

[2] The respondent limited liability companies have lodged a statement in reply. They say the Authority has no power to accede to the applicants' wishes.

[3] While I had formed a preliminary view on the papers lodged, I considered it appropriate to meet with the applicants and the respondents' counsel today to discuss the application and whether to commence to investigate it.

The facts

[4] The applicants are employees of the respondents and are members of the *New Zealand Tramways Union (Auckland Branch)* ("the union"). The union was a party to an investigation by the Authority in which a Determination dated 31 May 2006 was issued¹ ("the Determination"). The applicants were not parties in that investigation. The Determination related to the interpretation of the relevant collective employment agreement in respect of annual leave entitlements.

[5] The union, along with other union parties, challenged the Determination and the Authority is informed that the Employment Court will hear a *de novo* challenge next week on Thursday 9 November 2006.

[6] Mr Carrucan advises the Authority that the applicants have no knowledge of the basis or details of the challenge now before the Employment Court. He says too that this present application was lodged before the applicants became aware of the filing of the challenge.

¹ *Stagecoach New Zealand Limited & NZ Tramways Union (Auckland Branch), Akarana Public Transport Drivers Association, NZ Engineering Printing and Manufacturing Union, National Distribution Union, AA191/06, 31 May 2006, Marija Urlich*

The merits

[7] The Authority has issued its Determination on the matters in dispute between the union, other unions and the respondents. The Determination concluded the Authority's investigation and there is no longer any live issue or employment relationship problem for investigation by the Authority. That being so, there can be nothing to transfer to the Employment Court.

[8] As well, the applicants' union is a party to a challenge of the Determination. The substantive issue will be heard *de novo* and decided by the Employment Court. That being the case, the substantive issue is already before the Employment Court.

[9] Most significantly however, because none of the applicants were parties to the Authority's previous investigation, I understand them to be precluded from asking that the matter be removed to the Court under section 178 of the *Employment Relations Act 2000* ("the Act") or that the Determination be challenged under section 179 of the Act, were either of those applications properly founded. As lawyers say, these applicants have no standing.

The determination

[10] In my assessment, these applicants seek to be heard independently from their union. If that is so, it is an audience with the Court that is now best sought.

[11] I have given consideration as to whether, despite its appearance, this application is really one for rehearing (better described as reinvestigation). In its present form and having met with the applicants, I discern no proper grounds for rehearing but that is not to be mistaken for a conclusive final determination. Problematic too, is the fact that the actual parties in the substantive issue have no knowledge of this application or one for rehearing and their involvement must of course be properly sought. The *de novo* challenge or "rehearing" before the Court next week is very real however. That process ought to run its course so that the substantive matter may be judicially decided. But I decline to pursue this application now as one for rehearing. The applicants, still desirous of a rehearing after the Court's hearing of the *de novo* challenge, can make an assessment with the benefit of the Court's decided findings whether to pursue a new application for rehearing in the Authority but of course, on notice to the affected parties and with properly specified grounds.

[12] For all the above reasons, **I decline to investigate the matters raised in the statement of problem lodged on 5 October 2006 and there will be no formal orders.**

Costs

[12] In the event that costs are sought, Ms Hall-Collins is to lodge and serve a memorandum making and detailing a case for costs within 14 days of the date of this Determination. The applicants are to then lodge and serve a memorandum in reply but within 28 days of the date of this Determination.

Leon Robinson
Member of Employment Relations Authority