

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN National Distribution Union (First Initiating party)
AND NZ Amalgamated Engineering, Printing and Manufacturing
Union (Second Initiating party)

AND General Distributors Limited (First Responding party)
AND The Supply Chain Limited (Second Responding party)

REPRESENTATIVES Peter Cranney, Counsel for Applicants
Stephen Langton, Counsel for Respondent

MEMBER OF AUTHORITY Leon Robinson

INVESTIGATION MEETING 5 September 2006

DATE OF DETERMINATION 5 September 2006

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] The applicant Unions have commenced proceedings against the respondent companies in the Employment Court at Auckland for various injunctive orders and penalties. The penalties in those proceedings are sought pursuant to section 97(6) of the *Employment Relations Act 2000* ("the Act").

[2] That section however, provides that any such penalties are to be imposed by the Authority.

The application

[3] By statement of problem lodged in the Authority, the Unions ask the Authority to investigate their claims that penalties be imposed in respect of the respondent companies' alleged breaches of section 97 of the Act.

[4] The Unions contemporaneously ask the Authority to remove the problem to the Employment Court and further, that the Authority do so urgently ("the applications").

[5] I have considered the merits of the applications sought on the papers lodged by the parties.

The merits

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

[7] In support of their applications, the Unions refer the Authority to proceedings already before the Employment Court intituled ARC58/06. I have perused copies of pleadings filed in the Court together with a Minute of the Chief Judge dated 31 August 2006, a Memorandum to the Court dated 4 September 2006 and a judgment of the Chief Judge dated 4 September 2006.

[8] The respondents by their counsel today advise the Authority of their consent to the applications.

[9] Parliament has conferred the power of sanction in relation to breaches of section 97 of the Act on the Authority. In the Court's judgment of 4 September 2006, the Court states in relation to that section: -

[18] The section had no precedent before the Act came into force in 2000 and there have been few, if any, cases interpreting and applying it since then.

[10] The relevant principles, interpretation and application of section 97 is deserving of judicial consideration so as to provide instructive guidance for the Authority where similar applications are made in the future. I consider then that this problem should properly be transferred to the Court principally for that purpose, and of course to assist the parties, but by way of judicial hearing.

[11] I note that the Court has set the substantive matter down for hearing over four days commencing on 18 September 2006.

The determination

[12] **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.**

[13] I am not asked to deal with costs.

Leon Robinson
Member of Employment Relations Authority