

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 236/07
5096024

BETWEEN SERVICE AND FOOD
 WORKERS UNION NGA
 RINGA TOTA
 Applicant

AND SPOTLESS SERVICES (NZ)
 LIMITED
 Respondent

Member of Authority: Alastair Dumbleton

Representatives: Mr Peter Cranney, Counsel for Applicant
 Ms Shan Wilson, Counsel for Respondent

Conference: 7 August 2007

Determination: 8 August 2007

DETERMINATION OF THE AUTHORITY

Removal application

[1] This is an application under s 178 of the Employment Relations Act 2000 to remove a matter to the Employment Court, for the Court to hear and determine it without the Authority investigating the matter. The particular matter is a claim for arrears of wages. It was commenced at the same time the removal application was made, yesterday 7 August 2007.

[2] The removal application was made with a request that it be disposed of urgently by the Authority. To meet that request the Authority has conferred with Mr Cranney and Ms Wilson, to hear anything further they wished to say in relation to removal.

[3] Attached to the application lodged yesterday was a Minute of the Chief Judge of the Employment Court dated 3 August 2007. It was issued to the parties' counsel and it refers to the arrears of wages claim that has now been commenced in the Authority.

[4] Before the removal application had been made and the arrears claim commenced, in the Court's minute it was assumed that the arrears claim would not be investigated by the Authority and would go instead to the Court. Directions were given to the parties on this assumption and a timetable was set for the case to be heard by the Court.

[5] Nevertheless I am satisfied that the statutory grounds are made out for removal, particularly under s 178(2)(a), in that one or more important question of law is likely to arise in the matter other than incidentally.

[6] I accept that in the circumstances of the entire dispute that has arisen between the parties, a key aspect of which has already been decided by the Court, important questions of law likely to arise are as follows:

- 1.1 *Whether an employer who unlawfully locks out by way of a complete and continuous cessation of the employees' employment for the duration of the unlawful lockouts is liable to the unlawfully locked out employees for wages lost.*
- 1.2 *Whether such an employer's liability for lost wages (if any) is reduced or eliminated if the employer has received strike notices in respect of the period of such an unlawful lock out.*

[7] The second question more so than the first, I accept raises an important point of law other than incidentally.

[8] It was also contended by Mr Cranney that the application could be granted under s 178(2)(b) of the Act, on the basis that the case was of such a nature and of such urgency that it is in the public interest for it be removed immediately to the Court.

[9] I am less persuaded that this ground is present in this case. Also, it remains a real concern as to whether genuine circumstances of urgency are likely to be met by removing a matter to the Court. Where parties are anxious to resolve disputes promptly, this Authority does not wish to lightly commit them to undertake a process

of dispute resolution elsewhere that may leave them waiting 12 months or more for a decision, as seems to occur from time to time in the Court.

[10] Where that scale of delay is anticipated, and where an investigation meeting and issue of a determination is likely to be completed in a fraction of that time by the Authority, it seems to me a preferable course for the parties to get their determination from the Authority first and then decide whether a visit to the Court (by *de novo* challenge) is really necessary after all. The problem may not arise in this case, as I am told that counsel have been given an assurance by the Court of a quick disposal of the case.

[11] It appears from its Minute of 3 August that the Court is going to immediately deal only with the questions of law it has presumed will be removed to it and it is not going to dispose completely of the application to recover arrears of wages. A practicable alternative to removal might therefore have been for the Authority under s 177 of the Act to refer the questions of law to the Court.

[12] I accept in this case that because the Court in dealing with the injunction cases has become familiar with the entire dispute, it will be more efficient for the Court to have before it the whole application to recover arrears of wages. For this reason s 178 (2)(d) is invoked, as well as s 178(2)(a).

Determination

[13] Accordingly, the application for removal is granted.

A Dumbleton

Member of the Employment Relations Authority