

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**CA 72/07  
5091813**

BETWEEN                      NEW ZEALAND  
   AMALGAMATED  
   ENGINEERING PRINTING  
   AND MANUFACTURING  
   UNION INC  
   Applicant

AND                                      AIR NELSON LIMITED  
   Respondent

Member of Authority:        Philip Cheyne

Representatives:                J A Wilton, counsel for applicant  
   David France, counsel for respondent

Determination:                 2 July 2007

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**DETERMINATION OF THE AUTHORITY**

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[1] This is an application for a penalty and a compliance order arising from Air Nelson Limited allegedly using contractors to perform some work normally done by employees who are currently engaged in lawful strike action. When lodged there was also an application for an interlocutory injunction restraining Air Nelson Limited from employing or engaging any person to perform the work of the striking employees except in accordance with section 97 of the Employment Relations Act 2000. Urgency is sought. Finally, there is also an application for the proceedings to be removed to the Employment Court.

[2] The proceedings were lodged in the Authority on 28 June 2007 and a phone conference was convened with the parties the same day. Counsel for Air Nelson Limited indicated that the respondent did not oppose the application for removal. In light of that I indicated that I would remove the whole of the proceedings immediately but it was agreed that I should wait until Monday 2 July to finalise a determination in light of some discussions to take place between counsel. I have now been advised that the interlocutory injunction application is withdrawn.

[3] There are already proceedings before the Court between these parties. The Authority removed those proceedings in *NZ Amalgamated Engineering Printing & Manufacturing Union Inc v Air Nelson Limited* 21 June 2007, H Doyle (Member) CA 59A/07. The Court is apparently considering convening a Full Court for the important question of law likely to arise in that

matter being the interpretation and application of section 97 of the Employment Relations Act 2000. The same, similar or a related issue is likely to arise in the present proceedings for a penalty and a compliance order. The present proceedings should be removed for the Court to hear and determine them without the Authority investigating the matter.

[4] Removal of the proceedings pursuant to section 178 (2) (c) and (d) of the Employment Relations Act 2000 is ordered.

[5] No doubt the Court will deal with cost in due course, but I will reserve the point.

P Cheyne  
Member of Employment Relations Authority