

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
ER AUTHORITY WELLINGTON OFFICE**

BETWEEN National Distribution Union
AND Capital & Coast District Health Board
REPRESENTATIVES Peter Cranney for Applicant
Hamish Kynaston for Respondent
MEMBER OF AUTHORITY G J Wood
INVESTIGATION MEETING By way of submissions received by 21 November 2008
DATE OF DETERMINATION 25 November 2008

DETERMINATION OF THE AUTHORITY

1. The respondent, the DHB, seeks to have the employment relationship problem between itself and the applicant, the NDU, removed to the Employment Court under s.178(2)(a) and (d). The important question of law is said to *concern the application and interpretation of a collective employment agreement in the light of the changes to the Holidays Act 2003 that increased the minimum annual holiday entitlement from three weeks to four.*
2. The DHB notes that the Court already has before it proceedings of a similar nature and that the decision in the present proceedings is likely to affect a large number of other employers and employees. The DHB also argues that there is a high likelihood that the matter would be challenged in the Court given the issues involved. On behalf of the NDU, Mr Cranney did not oppose the application.
3. I am satisfied that there is a question of law about the impact of the changes to the Holidays Act on the parties' agreement and that it is important because of its applicability to a large number of other employment agreements. The fact that similar issues are before the Court involving other parties also provides

grounds for removal under s.178(2)(d). The prospect of a challenge is irrelevant, however, as all parties have that right in most circumstances.

4. As I have determined that grounds for removal lie under s.178(2)(a) and (d) the Authority must then determine, in its overall discretion, whether to remove the proceedings to the Court. In so doing it should not be astute in finding reasons not to do so. The Authority is usually best placed to deal with matters at first instance. There is, however, no particular benefit in having the Authority deal with the matter first, simply because the issue is already before the Court in other proceedings and the Authority has already delayed, at the parties' request, its investigation, given the parties' expectation that the other proceedings would have been decided earlier. There are no other factors which justify declining the application for removal.
5. In the Authority's overall discretion therefore, I order the removal of the employment relationship problem between the National Distribution Union and Capital & Coast District Health Board, filed in the Authority as 5124382, to the Employment Court for it to hear and determine it without the Authority investigating the matter.

G J Wood
Member of the Employment Relations Authority