

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 156/08  
File Number: 5144003

BETWEEN                      NZ Meatworkers Union and  
   Related Trades Union Inc  
   Applicant

AND                              Silver Fern Farms Limited  
   Respondent

Member of Authority:        Denis Asher

Representatives:            Megan Gundersen for the Union  
   Tim Cleary for the Company

Investigation Meeting        By way of submissions received by 25 November 2008

Determination:                25 November 2008

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     By way of an urgent application received on 24 November 2008 the union asked that a dispute between itself and the company be removed to the Employment Court because of similar proceedings set down for a hearing on 5 December, following an earlier determination by the authority.

- [2] No statement in reply has yet been received from the company but by email dated 25 November Mr Cleary confirmed his client's instructions that the company did not object to a removal of the matter to the court.

### **Dispute**

- [3] The parties are in dispute as to the interpretation of clause 10 of their 2004-2007 collective employment agreement. At issue is the entitlement of those covered by the agreement to annual leave after 6-years continuous service. That matter is to be heard on 5 December.
- [4] A similar dispute also exists between the parties in respect of their 2007-2009 collective agreement because it contains an equivalent clause.

### **Findings**

- [5] Section 178 of the Employment Relations Act 2000 provides for removal of a matter before the Employment Relations Authority to the Employment Court if, amongst other grounds, the court has before it proceedings which are between the same parties and which involve the same or similar or related issues or the authority is of the opinion that in all the circumstances the court should determine the matter.
- [6] Because the wording of the disputed clause is almost identical to that contained in the current and live agreement between the parties, costs savings can be made for the parties because of an existing, almost identical proceeding before the court, and it is in the interests of justice, practicality and common sense, I accept that – consistent with ss. 178 (2) (c) & (d) of the Act – in all the circumstances the court should determine the matter.

### **Determination**

- [7] The Union's urgent application for removal to the court is granted.
- [8] Costs are reserved.

**Denis Asher**

Member of the Employment Relations Authority