

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 322/08
5136176

BETWEEN BRIAN WEBB
 Applicant

AND NEW ZEALAND
 TRAMWAYS AND PUBLIC
 PASSENGER TRANSPORT
 EMPLOYEES' UNION
 INCORPORATED
 Respondent

Member of Authority: Alastair Dumbleton

Representatives: Paul Carrucan, advocate for Applicant
 Simon Mitchell, counsel for Respondent

Telephone conference: 12 September 2008

Determination: 15 September 2008

DETERMINATION OF THE AUTHORITY

[1] Mr Brian Webb has lodged in the Authority and served on the Tramways Union papers titled "*Application for urgency and injunction relief sought to postpone National Council electoral and remit process.*"

[2] In the application Mr Webb has referred to the Authority's determination given on 27 June 2008 under AA221/08. That determination ordered the Tramways Union to conduct the election of national officers of the union and restore the National Council as it's the governing body, in accordance with the rules of the union.

[3] Mr Webb has also referred to the Authority's second determination in the same matter given on 1 August 2008 under AA221A/08. That determination varied the timetable ordered by the Authority for the conduct of the National Council elections through its various steps under the registered rules.

[4] By his latest application Mr Webb has sought an injunction from the Authority to postpone the elections for National Council which, under the Authority's timetable,

have progressed to the stage currently where the ballot has closed and remits to the AGM will close on 30 September. The AGM of the National Council is to be held on 30 November 2008.

[5] As I advised Mr Webb's advocate Mr Carrucan and the union's counsel Mr Mitchell in the telephone conference of 12 September 2008, the Authority viewed Mr Webb's application as an application for a stay of proceedings on the June and August determinations or orders varying those determinations.

[6] During the telephone conference of 12 September, Mr Carrucan confirmed that the application made the previous day with urgency was based on the documents as filed and could be determined on those papers. Mr Mitchell advised that the Tramways Union was opposed to any injunction or orders delaying the election of the National Council and he reserved the right to be heard further by the Authority.

[7] For the reasons that follow, at the end of the telephone conference I declined Mr Webb's application.

[8] It seemed to have been based on perceived links between the National Council case determined in June and August, and the subsequent substantive application by Mr Webb seeking an investigation into the elections held recently for the Auckland Branch of the union. In that application, which was lodged on 4 August 2008, Mr Webb amongst other things has challenged the eligibility of Mr Gary Froggatt and Mr Peter Cross to stand for election to the positions of Auckland Branch President and Auckland Branch Secretary respectively.

[9] Mr Cross had already been declared elected by the time the statement of problem was lodged with the Authority on 4 August 2008. The Auckland Branch elections had not previously been the subject of any earlier application, such as the claim in respect of the re-establishment of the National Council which was resolved by the Authority with the June and August determinations.

[10] An investigation of the Auckland Branch elections is scheduled to begin with a meeting on 3 October 2008. Mr Mitchell has advised that the union is strongly opposed to any adjournment of that fixture.

[11] One link between the applications regarding the National Council and the Auckland Branch arises through rule 18 of the Tramways Union's Rules, which

provides that elected union branch officers *ex officio* become members of the National Council.

[12] I do not view this link as one that should lead to a stay of the National Council determinations simply because subsequent to them being issued Mr Webb has challenged the Auckland Branch elections. As yet there has been no determination affecting in any way the election to branch office of Mr Froggatt and/or Mr Cross. There has not yet even been an investigation of that latest employment relationship problem raised by Mr Webb.

[13] The governing body of the union will not be prevented from continuing to perform its role under the rules if for any reason at some future time Mr Froggatt and/or Mr Cross cease to be members of the National Council. Provision has been made for casual vacancies on the Council by rule 25, which expressly provides for vacancies occurring "*for any cause whatsoever.*" That may include the death or resignation of a member, or the removal from qualifying office by order made by a court or tribunal.

[14] Given the lack of a National Council for so many years, it is vital that this national governing body of the Tramways Union should be re-established or restored as soon as possible, so that it can provide leadership and exercise responsibility over the conduct of branch affairs, including branch elections if they have not been properly conducted as claimed by Mr Webb. Delaying that process is unlikely to be in the best interests of the members.

[15] I also reject the claim by Mr Webb that the timetable ordered by the Authority in its second determination of August 2008, does not allow reasonable time for remits to be forwarded to the Secretary of the Union by any member or group of members, committee or branch, who or which may wish to propose an amendment to the Rules.

[16] Under the Authority's amended timetable remits opened on 14 September and do not close until 30 September 2008. There is therefore still over two weeks in which proposals for amendments to the Rules can be put forward in accordance with rule 44.

[17] The date of 30 September was fixed to allow the period of two months required under the Rules for remits to be presented before the date of the AGM which, also in accordance with the rules, has been fixed as 30 November 2008.

[18] Other matters raised by Mr Webb about the National Council and the need to stay its elections, such as “*disclosure of issues and knowledge*” to members, seem to be about electioneering and are not therefore matters for the Authority to become involved with or take account of in considering this application. The issues have been canvassed fully in the Authority’s determinations to date and how or when any information or views are disseminated to union members should not be for the Authority to decide.

[19] Mr Webb has referred to his very recently made application to the Employment Court seeking leave to challenge out of time the Authority’s June and August determinations about the National Council elections. There is some irony in that action taken by him, as it was upon Mr Webb’s application that those determinations were given, and the union against which the orders were made has not challenged the determinations but has carried out the directions of the Authority. Mr Webb’s application to the Court seems to have sprung from some link back he wants to make in retrospect from his most recent application about the Auckland Branch elections.

[20] For the above reasons, Mr Webb’s application to suspend the National Council elections now under way, is declined.

A Dumbleton
Member of the Employment Relations Authority