

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 244/08
5126904

BETWEEN PULP & PAPER INDUSTRY
COUNCIL OF THE
MANUFACTURING AND
CONSTRUCTION WORKERS
UNION
Applicant

AND NORSKE SKOG TASMAN LTD
Respondent

Member of Authority: Vicki Campbell

Representatives: Kathryn Beck for Applicant
Richard McIlraith for Respondent

Investigation Meeting Consideration of the papers received on 2 July 2008

Determination: 10 July 2008

DETERMINATION OF THE AUTHORITY

[1] The applicant union has applied to have an employment relationship problem over alleged breaches of good faith and contract, removed to the Employment Court under s.178. For its part Norske Skog Tasman consents to the matter being removed because the Court already has before it proceedings which are between the same parties dealing with the same or similar related issues.

[2] The issues for resolution in the Employment Court are based on identical facts. This alone satisfies the requirements of s.178(2)(c) (*Cocks v Foote Cone & Belding* [1994] 1 ERNZ 180 and *United Food & Chemical Workers Union of NZ v Talley* [1992] 1 ERNZ 756).

[3] By consent, I have determined the matter on the papers, before a statement in reply has been filed and the issue of mediation addressed, because it is clear that a statutory criterion for removal has been met, and steps have already been set in place by the Employment which includes a judicial settlement conference which has been timetabled to take place on 8 and 9 September 2008.

[4] There is always a residual discretion by which the Authority can determine not to remove an employment relationship problem even if a statutory criterion for removal is met. Given that the parties already have to deal with linked issues in the Court it is clearly more efficient that the Court deal with this matter as well. There are no other factors which would mitigate in favour of the Authority dealing with this matter at first instance.

[5] I therefore order the removal of the employment relationship problem between the Pulp & Paper Industry Council of the Manufacturing and Construction Workers' Union and Norske Skog Ltd to the Employment Court for the Court to hear and determine without the Authority investigating the matter.

Costs

[6] Costs are reserved. In the event that costs are sought, the parties are encouraged to resolve that question between them. If the parties fail to reach agreement on the matter of costs, the parties may file and serve a memorandum as to costs within 28 days of the date of this determination. I will not consider any application outside that timeframe.

Vicki Campbell
Member of Employment Relations Authority