

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 341/08  
5130868

BETWEEN EASTERN BAY  
INDEPENDENT  
INDUSTIRAL WORKERS  
UNION INCORPORATED  
First Applicant  
PHILLIP DILLON  
Second Applicant  
ANDREW WILLIAMS  
Third Applicant  
CRAIGE ROWE  
Fourth Applicant  
AND  
NORSKE SKOG TASMAN  
LIMITED  
Respondent

Member of Authority: Marija Urlich  
Representatives: Lou Yukich, Representative for Applicant  
Kylie Dunn, Counsel for Respondent  
Investigation Meeting: On the papers  
Submissions received: 31 August, 12 September 2008  
Determination: 29 September 2008

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**DETERMINATION OF THE AUTHORITY**

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[1] These proceedings relate to the application of s69 of the Employment Relations Act 2000 and in particular whether the parties have agreed an employee protection provision.

[2] The applicants seek removal of this employment relationship problem to the Employment Court on the grounds that the respondent's conduct amounts to an unlawful lockout and the proceeding is a test case. The respondent opposes this application.

[3] By agreement the removal application is to be determined on the papers. The Authority has received written submissions regarding the removal application.

### **The application for removal**

[4] The relevant statutory provisions state:

#### ***178 Removal to Court***

(1) Where a matter comes before the Authority, any party may apply to the Authority to have the matter, or part of it, removed to the Court for the Court to hear and determine it without the Authority investigating the matter.

(2) The Authority may order the removal of the matter, or any part of it, to the Court if –

- (a) an important question of law is likely to arise in the matter other than incidentally; or
- (b) the case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the Court; or
- (d) the Authority is of the opinion that in all the circumstances the Court should determine the matter.

#### **(i) lockout**

[5] The Authority does not have jurisdiction to deal with applications concerning strikes or lockouts. This jurisdictional barrier precludes a consideration of the issues the applicants have raised in this regard.

#### **(ii) important question of law**

[6] The employment relationship problem between the parties concerns an inquiry into whether the obligations under the employment agreement have been breached. The Authority has recently considered and determined a similar application<sup>1</sup>. I accept Ms Dunn's submission that in such circumstances this

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<sup>1</sup> *Pulp & Paper Industry Council of the Manufacturing & Construction Workers Union AND Norske Skog Tasman Limited* (AA 306/08, 26 August 2008).

application cannot be considered a test case. The Authority is well placed to investigate and determine this issue. This ground for removal is not made out.

**(iii) public interest**

[7] The restructuring will affect the three applicant workers. The urgency under which the application was originally sought is no longer present. The tentative date for an investigation of the substantive matter has been vacated by consent - 28 February 2009 is the date for redundancy if the applicant workers have not been redeployed. This ground for removal is not made out.

**Determination**

[8] The statute provides that the Authority is to determine matters at first instance and should generally do so unless it is satisfied that one of the removal criteria is met and that it is appropriate given the Authority's residual discretion for it to remove the matter.

[9] For the reasons set out above it is not appropriate to exercise my discretion and remove this matter to the Employment Court.

[10] Costs are reserved.

Marija Urlich

Member of the Employment Relations Authority