

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 137/10  
5317358

BETWEEN                      NEW ZEALAND MEAT  
   WORKERS' AND RELATED  
   TRADES UNION INC  
   Applicant

AND                              AFFCO NEW ZEALAND  
   LIMITED  
   Respondent

Member of Authority:      P R Stapp

Representatives:              Simon Mitchell for Applicant  
   Graeme Malone for Respondent

Investigation Meeting:      By Telephone Conference 31 August 2010

Determination:                31 August 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The applicant has applied to the Authority to remove an employment relationship problem to the Employment Court to hear and determine without the Authority investigating the matter.

[2]     The application was filed with a request for urgency and has been dealt with by telephone conference. The Authority excused the Respondent from filing a statement in reply under regulation 8 of the Employment Relations Authority Regulations 2000 because the Respondent intends to file a statement of defence in the Court. I have considered mediation as I must under section 159 of the Act. The matter has not been to mediation, but given the urgency and the grounds being relied upon for removal I have decided not to direct the parties to mediation. Also, the

respondent has not opposed the removal, and indeed has agreed that the matter should be heard in the Court.

[3] There is another employment relationship problem currently in the Authority that has to do with an issue on whether or not AFFCO has the right to approach and speak directly with staff. This matter has been referred to by Mr Dale Robinson the Union Plant Secretary at Wairoa in his unsworn affidavit produced in the application. Both parties have agreed that the Authority's determination on that matter be put on hold until the outcome of the Court's hearing because of the events that have now occurred. I have agreed with that course, not only because of the events that have now widened the issues between the parties, but because there is the possibility of overlapping matters in both applications. The Court hearing may assist by removing the need for the Authority to issue a determination on that matter. I have issued a separate minute in regard to that file and attached it as background. I can confirm that the statement of problem and statement in reply attached to Mr Robinson's unsworn affidavit relate to that matter.

### **Issues**

[4] Is this a matter under section 178 of the Act to remove to the Employment Court?

### **The facts**

[5] The Union and AFFCO have a collective agreement called the AFFCO New Zealand Core Agreement in force from 1 January 2010 to 31 December 2011. This makes provision for site agreements to be negotiated. At Wairoa any such agreement (if there is one) has not been put in writing.

[6] An employment relationship problem has arisen between the Union and AFFCO on the terms that AFFCO intends to offer employment to Ovine workers from 6 September 2010.

[7] AFFCO invited the Ovine employees to attend a meeting on 26 August 2010 to discuss terms without the Union. AFFCO has written to the Ovine employees

inviting them to confirm their availability for work on terms that were attached to that letter and which are purportedly aligned with the core collective agreement.

### **Determination**

[8] The parties are in dispute in regard to the terms and conditions of employment that should apply from 6 September in the shadow of bargaining for a site agreement for the Ovine workers at Wairoa. The parties have a Bargaining Process Agreement. The parties have entered into a provisional settlement where they agreed that site agreements would be written up during the first season of the core collective agreement and be maintained by variation. The Union has an issue with the way AFFCO is allegedly seeking to run its Ovine operation at Wairoa including how it is treating the Union, having regard to the meeting with employees on 26 August and the company's letter dated 26 August with attached terms for reemployment.

[9] I am satisfied that pursuant to s 178 (2) (a) of the Employment Relations Act that there is an important question of law likely to arise in the matter other than incidentally. It is likely that the status and the enforceability of any oral agreement that the Union says it has with AFFCO will become an issue because AFFCO claims there is no site agreement that is enforceable. Further AFFCO claims it is entitled to offer reemployment to employees based only on seniority and terms of the core collective agreement that apply. In addition there is an issue about whether or not any such site agreement should be required to be put in writing.

[10] Other issues likely to arise in are the extent to which AFFCO can be required to change the site agreement by variation to existing terms and the enforceability of the BPA. Another matter likely to arise is the recognition of the Union and the extent to which AFFCO can negotiate directly with the Ovine employees in running its plant.

[11] I am also satisfied that pursuant to section 178 (2) (b) of the Act that the case is of such a nature and is of such urgency that it is in the public interest that it be removed immediately because there is a timeframe around 6-13 September 2010, AFFCO is a major employer in a small town, and there are wider economic and employment issues for the employees and the town of Wairoa for the plant to reopen, because AFFCO is such a major employer in the town.

[12] In terms of my overall discretion, I am satisfied that the Court's involvement in the matter is more likely to provide certainty in one hearing. The matter involves experienced Counsel.

### **Orders of the Authority**

[13] Pursuant to section 178 (2) (a) and (b) of the Employment Relations Act I remove the application of employment relationship problem in its entirety to the Employment Court to hear and determine without the Authority investigating the matter. I have attached the documents filed in the Authority and a minute putting on hold my determination of the employment relationship problem in the Wellington office of the Authority (file number 5305347).

[14] Costs are reserved.

P R Stapp  
Member of the Employment Relations Authority