

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 107/10  
5147762 and 5151553

BETWEEN                      BRUCE WHITE & OTHERS  
   Applicants 5147762

AND                                IAN HARRISON  
   Applicant 5151553

AND                                RESERVE BANK OF NEW  
   ZEALAND  
   Respondent

Member of Authority:        G J Wood

Representatives:              Geoff O’Sullivan for the Applicants  
   Peter Chemis for the Respondent

Investigation Meeting:        By way of written submissions

Submissions Received:        By 21 May 2010

Determination:                1 June 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     These two applications have been joined because they cover the same issues.

[2]     The issues between the parties relate to the respondent’s (Reserve Bank) alleged failure to review the applicants’ salaries in accordance with their employment agreements and hence ongoing issues relating to their superannuation. Some of the applicants are currently receiving a pension, while others expect to collect it upon their retirement.

[3]     On behalf of all the applicants, Mr O’Sullivan applied to have the matters removed to the Employment Court under ss.178(2)(a), (b) and (d), for the

Employment Court to hear and determine the matters without any further investigation by the Authority.

[4] The Reserve Bank rejects the need for the matter to be removed to the Employment Court at first instance.

### **Mediation**

[5] Mediation has been attempted by all parties, but unfortunately has proved unsuccessful.

### **Important Question of Law**

[6] The applicants claim that the Reserve Bank's decision to unilaterally remove a previously in force review mechanism for each applicant's superable salary constitutes a breach of a key condition of the applicants' employment, and thus a question of law exists as to whether any provisions allowing the Reserve Bank to change or amend benefits under the superable salary scheme permit it remove the scheme and its entitlements entirely.

[7] Similarly, it is claimed that there is a question of law as to whether or not a failure to adhere to the requirements for review can be said to have caused that condition to expire.

[8] A further question of law is said to be whether the employment agreements entered into by the applicants after the existence of the superable salary scheme superseded or terminated that policy, taking into account any representations made by the Reserve Bank in offering subsequent employment agreements.

[9] The applicants rely on *Manning v. Hewlett Packard NZ Ltd* unreported R Arthur AA175/07 13 June 2007, where it is claimed the Authority ordered removal in similar circumstances.

[10] The Reserve Bank accepts that there are issues in this case around the *alleged obligation to review the superable salary percentage from time to time and adjust it*, but claims that this was not a condition of employment and, even if it was, no longer remained so after new employment agreements were entered into. Alternatively, it claims that the Reserve Bank had the ability to change the review mechanism. However, it considers those matters are all questions of fact.

[11] I conclude that these are mixed questions of fact and law. Contrary to the Reserve Bank's submissions that there is a clear legal delineation between conditions of employment and other arrangements between parties that may be varied by notice, this issue is not subject to simple analysis, despite significance jurisprudence. I therefore accept that the questions raised by the applicants are important questions of law.

[12] Greater clarity on the responsibilities of parties to superannuation schemes may have impact on other employees and employers (particularly those in the State sector) and therefore answers to the issues may be of assistance in employment law generally: *Hanlon v. International Educational Foundation (NZ) Inc* [1995] 1 ERNZ 1 applied. I therefore conclude that the test of an important question of law has been met.

### **Removal in the Public Interest**

[13] The applicants claim that their 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.

[14] Whatever public interest there is in removing these matters, it can not be described as urgent. The issues between the parties have existed for approximately twenty years, if the applicants are to be believed. The statements of problem were not filed until December 2008 and even then it was not until April 2010 that the applicants filed for removal.

[15] On this basis, the applicants can not realistically argue that the matter is of any urgency whatsoever. I reject this ground.

### **All the Circumstances**

[16] The Authority has the jurisdiction under s.178(2)(d) to remove a matter if it is of the opinion in all the circumstances that the Court should determine the matter.

[17] The important questions of law identified are sufficient, I conclude, to remove the matter to the Employment Court. However, there are other circumstances which also support the removal under this subsection. First, there may be jurisdictional issues, in relation potentially to matters which arose before 1991 and implications for the trustees of the super fund, who are not parties to the employment relationship

problem, but some of whom were also employees of the Reserve Bank, which the Court may have wider jurisdiction to deal with.

[18] This is a complex and wide ranging employment relationship problem which would benefit from the Court hearing and determining the matter in the first instance. However, just because it is complex and many of the issues are not at this stage well delineated is no reason to remove it to the Court. Nonetheless, given the potential jurisdiction difficulties and the important questions of law I am also of the opinion that in all the circumstances the matter should be removed to the Employment Court.

[19] I therefore order the removal of the employment relationship problems between Bruce White and others and Ian Harrison and the Reserve Bank, documented as employment relationship problems 5147762 and 5151553, to the Employment Court, for it to hear and determine without the Employment Relations Authority investigating them.

#### **Costs**

[20] Costs are reserved.

**G J Wood**  
**Member of the Employment Relations Authority**