

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2012] NZERA Christchurch 78
5375989

BETWEEN NZ AMALGAMATED
 ENGINEERING, PRINTING &
 MANUFACTURING UNION INC
 Applicant

A N D HOLCIM (NEW ZEALAND)
 LIMITED
 Respondent

Member of Authority: Helen Doyle

Representatives: Anne-Marie McNally, Counsel for Applicant
 Rob Towner, Counsel for Respondent

On the papers

Date of Determination: 1 May 2012

**DETERMINATION FOR REMOVAL OF MATTER
TO EMPLOYMENT COURT**

Employment relationship problem

[1] The parties have a dispute about the interpretation and application of clauses 11 and 33 of the Holcim Westport Collective Employment Agreement 2011-2013 in relation to the annual leave entitlements of the applicant's members employed by the respondent.

[2] The parties have undertaken mediation but the employment relationship problem remains unresolved.

Application for removal

[3] By way of joint application dated 16 April 2012 the applicant and the respondent ask for the removal of the matter lodged under file number 5375989 to the Employment Court.

[4] The application is made on the ground in s.178(2)(a) of the Employment Relations Act 2000 that an important question of law is likely to arise in the matter other than incidentally and also in reliance on s.178(2)(d) that the Authority should exercise its discretion in the circumstances of this case and the Court should determine the matter.

[5] The joint application provides that this matter involves the annual leave entitlements of long serving employees and shift workers and that there is a likelihood of a challenge. Also relied on is that important questions of law are likely to arise in the matter other than incidentally, namely whether first, evidence of prior negotiations between the parties is admissible and, secondly, whether evidence of the parties' subsequent conduct is admissible.

[6] The application is made on the basis that removal of the matter will expedite a judgment of the Employment Court and that in all the circumstances, and particularly in light of the likelihood of the challenge by one of the parties to a determination of the Authority, the important questions of law which are likely to arise in the matter, and the joint application of the parties, the Court should determine the matter.

Determination

[7] I have considered the statement of problem and statement in reply together with the joint application for removal.

[8] It is not enough simply that the parties jointly agree the matter should be removed. I accept in the circumstances of this case though that there is value in a judgment from the Employment Court about the annual leave entitlements to long serving employees and shift workers and that the application has been made jointly by senior counsel about an issue affecting an ongoing relationship. There are also important questions of law that arise other than incidentally.

[9] I am of the opinion that in all circumstances the Employment Court should determine the matter.

[10] Accordingly, the matter lodged under file 5375989 is to be removed to the Employment Court at Christchurch without the Authority carrying out an investigation.

Costs

[11] I reserve the issue of costs.

Helen Doyle
Member of the Employment Relations Authority