

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2012] NZERA Christchurch 237  
5388365

BETWEEN NEW ZEALAND  
MEATWORKERS AND  
RELATED TRADES UNION  
INC  
Applicant

A N D ALLIANCE GROUP LIMITED  
Respondent

Member of Authority: M B Loftus

Representatives: Peter Churchman, Counsel for the Applicant  
Kerry Smith, Counsel for the Respondent

Investigation meeting: By joint application (24 October 2012) and telephone  
conference (29 October 2012)

Date of Determination: 29 October 2012

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**DETERMINATION OF THE AUTHORITY**

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[1] The parties, via a joint application, seek the removal of proceedings currently before the Authority to the Employment Court. The proceedings concern a dispute over the interpretation, application and operation of a couple of annual leave provisions contained in collective agreements between the parties.

[2] The relevant section of the Act, s.178(2), provides that:

*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*

*(c) the court already has before it proceedings which are between the same parties and which involve the same or similar or related issues;*  
*or*

*(d) the Authority is of the opinion that in all the circumstances the court should determine the matter.*

[3] The application relies on both sections 178(2)(a) and 178(2)(b). It is submitted there is an important question of law and the outcome could affect numerous employees thus justifying removal in the public interest. There is an additional observation that the issue is of sufficient importance to the parties it will most likely end up before the Court irrespective of the outcome in the Authority.

[4] As said earlier the dispute concerns the annual leave provisions contained in various employment agreements between the parties. In particular they disagree over whether or not the 2007 changes to the Holidays Act 2003 which saw the minimum entitlement increase from three to four weeks per annum alters the entitlement of longer serving employees covered by these clauses.

[5] This is an issue which has seen considerable litigation though most has, in recent times, involved clauses which talk of an initial entitlement along with an *additional* one for longer serving employees. Here there is a subtle, but possible, difference in that each category of employee is granted a specified amount of leave and there is no express reference to *additional* leave. This leaves a question over just how far the recently enunciated dicta that *The critical question was whether the parties' agreed purpose was to provide long serving employees with a special benefit* (see *Service and Food Workers Union Nga Ringa Tota v Cerebos Gregg's Limited* [2012] NZCA 25 at [24]) applies when faced with an express provision which may be argued to leave no room for interpretation. This must be especially so when contrary, though arguably distinguishable, precedents remain such as *New Zealand Tramways and Public Transport Union Inc v Transportation Auckland Corporation Limited* [2008] ERNZ 584.

[6] It is my view that clarification of such a question is properly the domain of the Employment Court and not the Authority.

[7] I have already concluded there is question of law that justifies removal but, that said, I also conclude there is an issue of public interest. There will be many

covered by clauses such as this which, given the subtle differences from those the Courts have previously considered, may still have debatable effect. Parties so affected, and there are potentially many, are entitled to clarification.

[8] Lastly I note the claim the matter would most likely end up before the Court irrespective. In considering this I note the Court's view such claims should be treated with considerable caution but there are rare instances where it is the case (*Vice-Chancellor of Lincoln University v Stewart (No 2)* at para 40). Here I am of the opinion this is a case where it is an issue. I reach this conclusion for two reasons. First, this is not a personal grievance as was the *Stewart* case - it is a dispute with significant financial implications for both these parties and, possibly, other potential litigants. Second the parties are represented by senior Counsel with considerable employment experience. Their opinions are ones I take note of.

[9] Having considered the issues, and for the above reasons, I conclude the grounds required by s.178(2) have been made out and this is a matter that should be removed to the Court. It is so ordered.

### **Costs**

[10] Cost are reserved though I note for the parties benefit, and given costs can be revisited, a preliminary view that costs should, at least in respect to this application, lie where they fall.

Mike Loftus  
Member of the Employment Relations Authority