



[2] The Authority sought a reply from the Ports of Auckland (POAL). During a telephone conference on 16 January the POAL advised that it does not oppose the application.

### **The matter before the Authority**

[3] The matter before the Authority, the removal of which is sought, comprises applications for orders that the POAL comply with, as MUONZ has put it:

- . its obligation of good faith and in particular by not engaging employees at a time when it has declared that it has excess employees in stevedoring;*
- . clause 5.5.6 of the Stevedoring Schedule of the Collective Agreement, by offering an opportunity to permanents to work two extra time shifts, prior to such shifts being offered to casuals.*

[4] Clause 5.5.6 of the Stevedoring Schedule reads:

*The company shall offer employees when available and subject to the company's hours of work policy, the opportunity to work up to two extra time shifts prior to using casuals except where the company has selected the employees allocated day off as per clause 6.1.5*

*(a) An employee may be available to work extra time on their allocated day off by agreement between the company and the employee.*

[5] According to the facts set out in the statement of problem, MUONZ and the POAL are parties to a collective employment agreement (the cea) which expired on 30 September 2011 but continues as a collective agreement during the bargaining for its renewal. The agreement covers stevedores who are members of MUONZ and are employed by POAL.

[6] On 20 December 2011 POAL advised MUONZ that it considered it had an excess number of stevedores, and commenced the redundancy procedure contained in the cea. MUONZ says that, despite this, POAL has engaged employees who are understood to be permanent, guaranteeing 32 hours' work per week to the employees. MUONZ says this action is in breach of the obligation of good faith.

[7] MUONZ also says POAL has failed to meet its obligations under clause 5.5.6 to offer two extra shifts prior to using casuals. It says, for example, that on 28

December 2011 five named employees requested additional shifts but their requests were declined. The work was completed by casual employees.

[8] The application for removal was lodged before POAL had lodged a reply to the application for compliance orders.

### **Proceedings in the Employment Court**

[9] Details of the proceedings in the Employment Court were provided to the Authority on 16 January 2012. Copies of a memorandum of counsel for the plaintiff (MUONZ), a draft notice of interlocutory application for interim injunction, a draft statement of claim and a Minute of Judge BS Travis were provided. Until then, the Authority had simply been advised that proceedings had been filed alleging a lockout and a breach of s 97 in respect of the engagement of the new stevedores.

[10] According to the draft statement of claim the matter before the court also concerns the actions of POAL in:

- . commencing a redundancy process on 20 December 2011; and
- . employing casual employees on individual employment agreements to do certain work normally done by stevedores, with a minimum of 32 hours' work per week guaranteed, contrary to provisions in the cea including clause 5.5.6.

[11] With reference to s 82(1)(b) of the Act, MUONZ says the action of the POAL amounts to a lockout in that the POAL has failed to engage its existing employees in work in which they are usually employed, and the action was taken with a view to compelling those employees to accept terms of employment or comply with the employer's demands.

[12] With reference to s 97 of the Act, MUONZ says among other things that the POAL has used or intends to use the '32 hour employees' during the lockout and for the purpose of performing the work of the locked out employees.

[13] As a result MUONZ seeks: an injunction restraining the use of employees engaged on individual employment agreements; and a compliance order requiring the POAL to act in accordance with its obligation of good faith, and in particular restraining it from engaging new stevedores while considering the redundancies advised on 20 December.

[14] According to the draft notice of application for an interim injunction, orders are also sought restraining the POAL from:

- . using employees engaged on individual employment agreements after 1 December 2011 from completing specified work in preference to the classes of employees specified, including permanently-employed stevedores; and
- . engaging stevedores on employment agreements providing any guarantee of work while redundancies are considered for stevedores employed pursuant to the cea.

### **The application for removal**

[15] It is not necessary to go beyond s 178(2)(c) and (d) of the Act in order to determine this matter.

[16] The court already has before it proceedings which are between the same parties, and which involve the same or similar or related issues. In his Minute dated 13 January Judge Travis indicated that the matter before the Authority appeared to be closely related to the interim injunction application, although he also noted that the application for interim relief would depend on establishing the court's jurisdiction to deal with an alleged lockout.

[17] This removal will cure any difficulty should the court not be so satisfied, and will pre-empt any entry into an undesirable multiplicity of proceedings in the court and in the authority.

[18] For these reasons the entire matter before the Authority is removed to the Employment Court.

**Costs**

[19] Costs are reserved. Any party seeking an order for costs shall have 28 days from the date of this determination in which to file and serve a memorandum on the matter. The other party shall have a further 14 days in which to file and serve a memorandum in reply.

R A Monaghan

Member of the Employment Relations Authority