

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 257
5418315

BETWEEN

THE NEW ZEALAND
PUBLIC SERVICE
ASSOCIATION INC
Applicant

AND

CHIEF EXECUTIVE of the
MINISTRY FOR PRIMARY
INDUSTRIES
Respondent

Member of Authority: R A Monaghan

Representatives: S Mitchell, counsel for applicant
G Pollak, counsel for respondent

Investigation Meeting: On the papers

Determination: 19 June 2013

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The New Zealand Public Service Association INC (PSA) has lodged an employment relationship problem regarding a dispute with the Ministry for Primary Industries (the Ministry) about the application of a worksite agreement. It seeks a determination of whether the provisions of the worksite agreement continued, after the expiry of the agreement, to apply to employees who were subject to it.

[2] The PSA has also applied under s 178 of the Employment Relations Act 2000 for the removal of the matter to the Employment Court for hearing and determination. The particular ground relied on is that the Court already has before it proceedings which are between the same parties and which involve the same or similar issues.

[3] The Ministry consents to the application.

Background

[4] The PSA and the Ministry (having superseded the former Ministry of Agriculture and Forestry (MAF)) are parties to the MAF collective agreement in force from 1 October 2010 and expiring on 30 June 2012. The PSA and MAF were or are also parties to the 'MAF Quarantine Service Worksite Agreement for Duty Managers, Quarantine Officers and Quarantine Assistants Employed at Auckland International Airport ITB' (the ITB worksite agreement). The ITB worksite agreement contained an expiry date of July 2005, but the PSA considers it was a collective agreement whose terms continued as individual terms of employment after it expired.

[5] In *The New Zealand Public Service Association Inc v Ministry of Agriculture and Forestry*¹ the Authority had been asked to determine whether the ITB worksite agreement continued to apply, and to make certain findings regarding the correct rate of pay for affected employees. The MAF collective agreement in force at relevant times for the purposes of that determination was a predecessor collective agreement to the one now in question.

[6] The determination was challenged and a hearing date has been allocated in the Court. The parties say the present application for removal has been lodged to ensure the continued application of the ITB worksite agreement is appropriately before the Court, and relevant issues can be resolved in the course of the challenge without the need for a further referral to the Authority.

Order for removal

[7] I accept the Court already has before it proceedings which are between the same parties and which involve the same or similar issues.

[8] I am aware of a Minute of the Employment Court dated 29 April 2013 recording that the Court was advised there was another issue between the parties, which needed to be resolved in order to achieve an outcome. The Court was also advised that the present application would be lodged. The issue in question was not identified in the application in the Authority. However the brief statement of problem raised a concern with a 'lack of clarity' about 'the continued application of the Work

¹ Employment Relations Authority Auckland, AA 203/10, 30 April 2010

Site agreement'. I have assumed the concern relates to the issues already before the Court, but arises out of the superseding of the collective agreement considered in the determination now under challenge.

[9] If that is the case, then it is appropriate that all matters be resolved in the Court.

[10] Accordingly I order that this matter be removed to the Employment Court.

Costs

[11] Costs are reserved. If either party seeks an order for costs it 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 reply.

R A Monaghan

Member of the Employment Relations Authority