

[3] That determination was challenged in the Employment Court as ARC 55/13 *Cronin-Lampe & Anor v. The Board of Trustees of Melville High School* (de novo challenge to determination).

[4] Subsequently, I issued a costs determination in regard to the same matter and that costs determination was issued as [2013] NZERA Auckland 446. That too was challenged in the Court as ARC 79/13 *The Board of Trustees of Melville High School v. Cronin-Lampe & Anor* (de novo challenge to determination).

[5] Then by a Statement of Problem filed in the Authority on 4 April 2013, Mr and Mrs Cronin-Lampe advance a legally different claim which relies on the same factual matrix. Together with that Statement of Problem is an application for removal of the matter to the Court.

[6] That application is not opposed by Melville High School although Melville High School contends that it would have been available to Mr and Mrs Cronin-Lampe to simply seek to file an amended statement of claim in the Court which would have had the same effect.

[7] Moreover, counsel for Melville High School indicates that in its view, the Authority is not able to deal appropriately with these new matters because of the doctrine of *res judicata*.

[8] Melville High School also emphasise that its failure to oppose the removal of the matter to the Employment Court ought not to be taken as indicative of its consenting to any or all of the claims pleaded by Mr and Mrs Cronin-Lampe.

[9] Moreover, Melville High School, by reason of the foregoing submissions, indicates that in its view, no Statement in Reply needs to be filed.

Grounds for removal

[10] The application for removal proceeds essentially on the footing that the Employment Court now has before it a challenge to the Authority's substantive determination of the personal grievance claim together with another challenge against the costs decision that I issued in the same matter and that it would be convenient and appropriate for the Court to also deal with this latest filing which, as counsel for Mr and Mrs Cronin-Lampe makes clear, reflects my observations in the substantive

determination that there was no breach of contract claim before the Authority. Put shortly, this latest filing advances a breach of contract claim.

[11] I am also told in the memorandum from counsel for Mr and Mrs Cronin-Lampe that the Court is aware that this matter is to be lodged in the Authority and aware that an application will be made for removal.

[12] By s.178(2)(c) of the Employment Relations Act 2000 (the Act), the Authority may order removal where the Court already has before it proceedings between the same parties involving the same or related issues and by s.178(2)(d) of the Act, the Authority has power to remove a matter where it is of the opinion that the circumstances support the Court dealing with the issue.

[13] I am satisfied this is such a case. The Court already has before it both a challenge to my substantive determination in respect of the personal grievance claim together with a challenge in respect of the costs determination that I issued on the same matter. The effect of the current filing by Mr and Mrs Cronin-Lampe is to add to the legal basis on which they seek recovery against Melville High School and it seems to me to be an affront to justice as well as commonsense to have that latest claim dealt with in a forum different from the forum where the other matters are to be reconsidered.

[14] I reach that conclusion without even having to address the submission made by counsel for Melville High School to the effect that *res judicata* applies, and that on that footing, there is no legal basis on which I could consider the latest filing, in any event.

Determination

[15] I am satisfied that the proper course in the present case is to remove the whole of the matter filed in the Authority on 4 April 2014 to the Employment Court for that Court to hear and determine the matter without the Authority investigating it first.

[16] I conclude that the only sensible way of dealing with this latest filing is for it to be dealt with in the Court and I apprehend that the Court will issue appropriate directions as to how the matter is to be addressed in the Court.

[17] For the avoidance of doubt, I direct that no Statement in Reply is required from Melville High School in respect of the Statement of Problem filed by Mr and Mrs Cronin-Lampe and I am happy to rest on the basis of the memorandum of counsel for Melville High School dated 3 April 2014.

James Crichton
Member of the Employment Relations Authority