

[3] In the first of those Minutes which is dated 28 April 2014, His Honour makes this observation at para.[6]:

Having regard to the provisions in the Act there does not seem to be any alternative but for the plaintiffs, Mr and Mrs Cronin-Lampe, to apply to the Authority, pursuant to s.114(3) of the Act, for leave to raise personal grievances after the expiry of the 90 day period. As I understand it, once that application is filed, the Board of Trustees will consent to the matter also being transferred to the Court for resolution by the Court.

[4] In his subsequent Minute of even date, His Honour clarified that the respondent Board wished to preserve its position in respect of whether it consented to the removal or otherwise.

[5] Then on 4 June 2014, the respondent Board (the Board) filed its response to the documents filed by Mr and Mrs Cronin-Lampe. The burden of the Board's response is to not oppose the removal application but to oppose the application for leave to raise a personal grievance out of time.

Removal

[6] It is apparent from the pleadings before the Authority that the primary ground relied upon by Mr and Mrs Cronin-Lampe is s.178(2)(c) of the Act. That subsection provides broadly that where the Court already has before it proceedings between the same parties and involving the same or similar issues, the Authority can use its discretion to remove the matter either wholly or in part. Further, an overall discretion rests in the Authority whether to order removal or not.

[7] This is a case where the application to remove the matter to the Court is not contested. The absence of opposition is, I am satisfied, a factor which I ought to consider in respect of the residual discretion.

The underlying proceeding

[8] I am satisfied it neither assists the parties nor the Court for me to give any consideration to the underlying proceedings. The question whether it is just to grant leave to raise a personal grievance out of time ought to rest with the Court.

Determination

[9] I am satisfied that the proper course of action in the instant case is for the whole of the matter comprised within the pleadings in the instant case, to be removed to the Court for hearing and disposition by the Court, without the necessity for the Authority investigate the matter.

[10] I reach this conclusion because the Court has before it a number of proceedings involving the same parties and traversing the same, or similar issues, and it would make little sense to the parties, or make proper use of decision making resources, to require this solitary matter to be progressed in the Authority while the rest of the parties' proceedings are dealt with in the Court.

Costs

[11] Costs are reserved.

James Crichton
Member of the Employment Relations Authority