IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

[2014] NZERA Auckland 260
5464516

	BETWEEN	MARITIME UNION OF NEW ZEALAND INC Applicant
	A N D	PORTS OF AUCKLAND LIMITED Respondent

Member of Authority:	James Crichton
Representatives:	Simon Mitchell, Counsel for the Applicant Kylie Dunn, Counsel for the Respondent
Investigation Meeting:	On the papers
Date of Determination:	25 June 2014

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant union (the Union) filed a statement of claim in the Authority on 9 June 2014. Contemporaneously, an application for removal of the matter to the Employment Court was filed supported by a memorandum of counsel and a copy of the statement of claim filed much earlier in the Employment Court seeking to consolidate proceedings.

[2] Subsequently, an amended statement of claim in draft was filed identifying in bold type the portions of the statement of claim which were affected by the removal application. That amended statement of claim in draft was supported by a further memorandum of counsel for the Union.

[3] After that clarification, counsel for the respondent (Ports of Auckland), filed a memorandum on 20 June 2014, confirming its understanding of the instant

application, namely that the matters bolded in the draft statement of claim are the matters that the Union seeks to have removed to the Court, the balance of the statement of claim being already before the Court, and that Ports of Auckland *"will abide by the Authority's decision in relation to the removal application"*.

[4] I convened a telephone conference with counsel and as a consequence, secured agreement from counsel that the matter could be dealt with on the papers.

[5] I explored whether counsel wanted to have the opportunity of filing submissions in support but each were happy to rest on the basis of the material already before the Authority.

Removal

[6] The proceedings before the Authority rely on s.178(2)(a), (c) and (d) of the Employment Relations Act 2000 (the Act). Those subsections list the bases on which the Authority may contemplate removal and relate respectively to an important question of law being likely to arise other than incidentally, the Court being already seized of proceedings between the same parties involving the same or similar issues and the Authority being of the view that, in all the circumstances, the Court should determine the matter.

[7] While it cannot be said that the Union's application is supported by Ports of Auckland, it is apparent that Ports of Auckland does not oppose the application.

Discussion

[8] I am satisfied it assists neither party for the Authority to retain for investigation the matters which the Union now proposes should be consolidated with the remainder of the disputes between these parties so that the whole matter can be progressed in the Court and determined there.

[9] The Court is already seized of the bulk of the employment relationship problems between these parties and the new material identified in the present application is a comparatively small part of the totality of the disagreement between the parties.

[10] It seems to me an affront to common sense and justice for this small portion of the dispute to be retained by the Authority when the bulk of the dispute between these parties is already before the Court.

Determination

[11] I am satisfied that the proper course of action in the present case is for the subject matter of this application to be removed to the Court for hearing and disposition by the Court, without the necessity for the Authority to investigate the matter.

[12] I reach this conclusion primarily because the Court has before it proceedings involving the same or similar matters between these two parties and it would make little sense or indeed proper use of decision-making resources to require the subject matter of this application to be dealt with in the Authority while the balance of the parties' proceedings are progressed in the Court.

Costs

[13] Costs are reserved.

James Crichton
Member of the Employment Relations Authority