

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2015] NZERA Auckland 235  
5563601

BETWEEN           STEPHEN McPHERSON  
                          First Applicant

                          MANUFACTURING AND  
                          CONSTRUCTION WORKERS  
                          UNION INC  
                          Second Applicant

A N D               CARTER HOLT HARVEY  
                          LIMITED  
                          First Respondent

                          CARTER HOLT HARVEY PULP &  
                          PAPER LIMITED  
                          Second Respondent

Member of Authority:     Anna Fitzgibbon

Representatives:         Lou Yukich, Advocate for the Applicants  
                              Rob Towner, Counsel for the First Respondent  
                              David France, Counsel for the Second Respondent

Investigation Meeting:   On the papers

Date of Determination:   07 August 2015

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**DETERMINATION OF THE AUTHORITY  
ON A PRELIMINARY MATTER (No 2)**

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- A.     The second applicant is struck out as a party to the proceedings along with claims for remedies made by it against the first and second respondents.**
- B.     Accordingly, the parties to the proceedings filed in the Authority under 5563601, are Mr McPherson, applicant, Carter Holt Harvey**

**Limited, first respondent and Carter Holt Harvey Pulp & Paper Limited, second respondent.**

**C. Costs are reserved.**

**Employment Relationship Problem**

[1] In a determination of the Authority dated 31 July 2015<sup>1</sup> the Authority determined as follows:

- The second applicant, the Manufacturing and Construction Workers Union Inc had no standing to bring any claims for remedies against the first respondent, Carter Holt Harvey Limited, and the second respondent, Carter Holt Harvey Pulp & Paper Limited; and
- Accordingly, the second applicant was to be struck out as a party to the proceedings along with claims for remedies made by it against the first and second respondents.

**File 5555141 – *Manufacturing & Construction Workers Union Inc v Carter Holt Harvey Ltd, Carter Holt Harvey Pulp & Paper Limited & Ian Whyte* (6 May 2015); *Peter Mathis & Manufacturing & Construction Workers Union Inc v. Carter Holt Harvey Limited, Carter Holt Harvey Pulp & Paper Limited* (26 May 2015).**

[2] On 6 May 2015, Mr Yukich filed proceedings in the Authority seeking a compliance order against the respondents. This statement of problem was rejected by the Authority as it did not comply with the requirements of the Employment Relations Authority Regulations 2000. On 26 May 2015, Mr Yukich filed further proceedings under the same matter number 5555141 but with new parties, namely Mr Peter Mathis and Manufacturing & Construction Workers Union Inc, first and second applicants and Carter Holt Pulp & Paper Limited, respondent. There was no application by Mr Yukich for parties to be amended, he simply filed a further proceeding with different parties but with the same file number.

**File 5555141 – *McPherson v. Carter Holt Harvey Limited, Carter Holt Harvey Pulp & Paper Limited & Ian Whyte* (Application on 3 August 2015).**

[3] On 03 August 2015, following the Authority's determination to strike out the Union in *McPherson*, Mr Yukich, filed a further proceeding in the Authority under file number 5555141. This was entitled an "*Amended Statement of Problem seeking*

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<sup>1</sup> *McPherson & Anor v Carter Holt Harvey Limited & Anor* [2015] NZERA Auckland 227

*Order*". The parties in this proceeding were Mr McPherson as applicant, Carter Holt Harvey Limited, first respondent, Carter Holt Harvey Pulp & Paper Limited, second respondent and Ian Whyte, third respondent.

[4] The issue in this matter in respect of which Mr McPherson sought a compliance order pursuant to s.137 of the Employment Relations Act 2000 (the Act) related to matters involving Mr McPherson's wage and time records including holiday records.

[5] In other words, other than the addition of Mr Whyte as a third respondent, the parties in the application of 3 August 2015, were the same as the parties in the current file, 5563601 and appeared to be concerned with similar matters. This was extremely confusing and unhelpful.

[6] In a determination of the Authority on 6 August 2015<sup>2</sup> in proceedings filed by the Union under File 5555141 were struck out for failing to comply with the provisions of the Employment Relations Act 2000 and the Employment Relations Authority Regulations 2000.

### **Orders**

[7] Further to the Authority's determination in *McPherson*, the Union is struck out as an applicant party to the proceedings along with claims for remedies made by it against the first and second respondents.

[8] Accordingly, the parties to the proceedings filed in the Authority under 5563601 are Mr McPherson, applicant, Carter Holt Harvey Limited, first respondent and Carter Holt Harvey Pulp & Paper Limited, second respondent.

### **Costs**

[9] Costs are reserved.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**

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<sup>2</sup> *Manufacturing and Construction Workers Union Inc v Carter Holt Harvey Limited & Anor* [2015] NZERA Auckland 234