

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 389
5598687

BETWEEN NEW ZEALAND MEAT
 WORKERS & RELATED
 TRADES UNION INC
 Applicant

A N D AFFCO NEW ZEALAND
 LIMITED
 Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Peter Cranney, Counsel for the Applicant
 Paul Wicks QC, Counsel for the Respondent

Investigation Meeting: On the papers

Date of Determination: 9 December 2015

DETERMINATION OF THE AUTHORITY

A. The claims of the applicant, New Zealand Meat Workers and Related Trades Union Inc (the Meat Workers Union) under file No 5598687 are removed to the Employment Court pursuant to ss.178(2) (a) and (d) of the Employment Relations Act 2000 (the Act);

B. No order as to costs

Employment relationship problem

[1] On 1 December 2015, the Meat Workers Union filed a statement of problem in the Authority in which it sought a determination fixing the provisions of a collective agreement being bargained for with the respondent, AFFCO New Zealand Limited (AFFCO) under section 50J of the Act.

[2] The grounds for seeking the determination were (inter alia) that AFFCO had breached its duty of good faith in s.4 of the Act in relation to bargaining for the collective agreement and that such breaches were “*sufficiently serious and sustained so as to significantly undermine the bargaining*”.

[3] Contemporaneously with filing the statement of problem, the Meat Workers Union filed an application for urgency and an application for removal of the matter to the Employment Court.

[4] The parties, through their respective counsel, have attempted to resolve the matter and have attended mediation but such attempts at resolution have not been successful.

[5] Counsel have agreed that the application for removal to the employment relationship problem could be determined on the papers.

[6] Counsel agree that the matter before the Authority involves important questions of law. Counsel for AFFCO does not oppose the application by the Meat Workers Union that the matter accordingly be removed to the Court.

The facts

[7] The Meat Workers Union and AFFCO are engaged in disputes arising out of their bargaining for a new collective agreement. Two matters which came before the Authority earlier this year and which relate to the bargaining between the parties have been removed by the Authority to the Court¹. There has also been a recent Full Employment Court decision involving the Meat Workers Union and AFFCO arising from their bargaining for a collective agreement².

The removal application – s.178(2) of the Act

[8] Both Counsel agree that there are important questions of law likely to arise other than incidentally in relation to the issues contained in the statement of problem filed by the Meat Workers Union. Particularly, the employment relationship problem filed in the Authority appears to be the first substantive fixing application under s.50J of the Act.

¹ [2015] NZERA Auckland 253 and [2015] NZERA Auckland 284

² [2015] NZEmpC 204

[9] Further, both counsel accept that the Court has before it proceedings which are between the same parties and which involve the same or similar or related issues.

[10] I am persuaded that the matters arising are important questions of law concerning the application of s.50J of the Act. Further, the Court has before it other related matters.

[11] It is my view that a number of employees may be affected by the decision and given the issues and current bargaining position, it is my view that the matter should now be referred urgently to the Employment Court.

[12] In summary, there are important questions of law which arise other than incidentally as required by section 178(2)(a) of the Act. In addition s178(2)(d) of the Act requires the Authority to be of the opinion that in all the circumstances the Court should determine the matter. There are related matters currently before the Court and for this reason also, it is my view this matter should be removed to the Court.

Order

[13] The Authority orders, pursuant to ss.178(2)(a) and (d) of the Act, the removal of the statement of problem to the Employment Court.

Costs

[14] No order as to costs.

Anna Fitzgibbon
Member of the Employment Relations Authority