

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2015] NZERA Christchurch 102
5547991

BETWEEN SOUTH PACIFIC MEATS
 LIMITED
 Applicant

A N D NEW ZEALAND MEAT
 WORKERS & RELATED
 TRADES UNION INC
 Respondent

Member of Authority: James Crichton

Representatives: Rachel Webster, Counsel for the Applicant
 Peter Churchman QC, Counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 8 May 2015 from the Applicant
 21 May 2015 from the Respondent

Date of Determination: 22 July 2015

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant company (South Pacific Meats) lodged a statement of problem in the Authority dated 12 March 2015 in which it claimed that the respondent Union (the Union) had breached s.21 of the Employment Relations Act 2000 (the Act).

[2] The essence of the claim by South Pacific Meats is that the Union's right of access to South Pacific Meats plants has been exercised in an unreasonable way especially in regard to the frequency with which those access rights have been exercised.

[3] Orders were sought from the Authority confirming that the Union had breached s.21(2) of the Act, had breached good faith obligations as well, and that a compliance order should issue requiring the Union to stop accessing South Pacific Meats sites unreasonably and further, setting a limit on frequency.

[4] A statement in reply was filed by the Union dated 30 March 2015 wherein the Union maintained that the application had no appropriate legal basis because the Authority had no power to grant the relief sought therefore the claim should be dismissed.

[5] I held a telephone conference with counsel on 14 April 2015 in which I indicated that my provisional view was sympathetic to the arguments advanced for the Union and that it seemed to me in principle that the relief sought by South Pacific Meats was *ultra vires* the Authority's remit and could not therefore be countenanced.

[6] Counsel for the respondent then indicated she would take further instructions and in the result confirmed she wished to proceed. I convened a further teleconference with counsel on 18 June 2015 and by agreement with counsel, the matter was to be disposed with on the papers.

[7] For the avoidance of doubt, I confirm that in my telephone conferences with counsel I was explicit in my provisional view that the matter was outside the scope of the Authority's powers and that therefore my preliminary view was that I could not consider the application further. However, it seemed to me the proper course was to invite counsel to address me again in detail on the matter but that if I remained of the view that I had formed a preliminary conclusion about, I would issue a short determination on the matter which of course the parties could challenge if they felt so inclined.

The issues

[8] The only issue in contention here is whether the Authority has power to grant the relief sought by South Pacific Meats. I put the question in that way because it seems to me from the engagements I have had with counsel and the provisional conclusion that I have reached in the matter which I have already conveyed to counsel, the jurisdictional issue is front and centre in the disposition of this matter.

Can the Authority grant the relief sought?

[9] I have not been persuaded that the provisional view which I reached and which I conveyed to counsel in my telephone conference with them on 14 April 2015 is mistaken and therefore I confirm that provisional view that the Authority does not have power to grant the relief sought.

[10] While it is true, as South Pacific Meats maintains, that the Authority has a wide ranging jurisdiction it is nonetheless also true that the Authority is a creature of statute and may only do things that the statute contemplates.

[11] It seems to me self-evident in the present case that South Pacific Meats' objection to the access being sought by the Union to South Pacific's plants, is about frequency. Indeed they say as much in the statement of problem. The reference is to *unreasonable frequency* of the Union's access requests and/or to the Union's frequency in exercising its right as *unreasonable*.

[12] It seems to me the short point is that it is not available to me to decide that the Union's requests for access are happening too frequently because there is no such limitation in the statute. What s.21 says is that the Union may enter a workplace during what the section calls *reasonable times* when work is being performed in that workplace, and that the Union official is required to undertake access in a reasonable way. That reasonable way is qualified by reference to the normal business operations of the employer, health and safety or security issues.

[13] I make two points about these provisions. The first is that nowhere is there any suggestion that I have the power to limit the number of times that the Union may enter the work premises. There is simply nothing in the section that deals with issues around frequency of visit. There is a requirement relating to visits being at reasonable times but that does not address frequency and there is a further requirement that the relevant Union official should exercise access in a reasonable way having regard to the employer's operations, but again that does not address frequency.

[14] The second point that I make is that South Pacific Meats does not allege that the time that the Union official wanted to attend on the workers in the workplace was in some way unreasonable nor was it suggested that the official of the Union behaved unreasonably in respect to the employer's operations or health and safety or security matters. Moreover, as South Pacific Meats agreed to the access whenever it was to

take place it must have accepted that there was no legal basis on which it could deny access. That being the position, it cannot now retrospectively seek to revisit an issue that has already been properly dealt with by the correct application of the law made by Parliament.

Determination

[15] South Pacific Meats' application is denied because the relief sought by it is *ultra vires* the Authority's remit, there being no legal basis on which the Authority can limit or even consider the appropriateness or otherwise of the frequency with which the Union and its officials visit the workplaces operated by South Pacific Meats Limited.

Costs

[16] Costs are reserved. I note that the Union seeks indemnity costs but notwithstanding that, the proper course is for counsel to discuss the question of costs first and if matters are not able to be resolved by agreement then I will make orders after receipt of initiating submissions from one party followed two weeks later by responding submissions from the other.

James Crichton
Member of the Employment Relations Authority