

Employment relationship problem

[1] The first applicant is Mr Stephen McPherson. The second applicant is the Manufacturing and Construction Workers Union Inc (the Union).

[2] On 22 June 2015 a statement of problem was filed by the applicants seeking resolution by the Authority of claims concerning outstanding annual holidays and outstanding alternative holidays paid out to Mr McPherson prior to the termination of his employment by the first respondent, Carter Holt Harvey Limited (Carter Holt).

[3] Carter Holt and the second respondent, Carter Holt Harvey Pulp & Paper Limited (Carter Holt Pulp & Paper) filed statements in reply refuting the claims and seeking an order from the Authority that the Union be struck out as a party together with its claims, on the grounds that it has no standing to bring any claims for remedies against Carter Holt and Carter Holt Pulp & Paper.

Issue

[4] The issue for determination by the Authority is whether the Union has standing as a party in the proceeding against Carter Holt and Carter Holt Pulp & Paper.

Investigation meeting

[5] The parties agreed that the Authority could investigate and determine the issue in para.[4] on the papers.

[6] In order for the Authority to deal with the matter as expeditiously as possible, Mr McPherson filed a brief of evidence, the advocate for the Union and counsel for Carter Holt and Carter Holt Pulp & Paper each provided the Authority with useful submissions.

[7] As permitted under s.174 of the Employment Relations Act 2000 (the Act), this determination has not set out all the evidence. The determination states findings and relevant facts and legal issues and makes conclusions in order to deliver speedy, informal and practical justice.

Carter Holt and Carter Holt Pulp & Paper

[8] Carter Holt and Carter Holt Pulp & Paper are in the business of manufacturing pulp, paper and packaging throughout New Zealand.

[9] In May 2014, Carter Holt entered into a conditional sale of its shares in Carter Holt Pulp & Paper to OJI Holdings Corporation and Innovation Network Corporation of Japan (OJI). The sale was finalised on 1 December 2014.

Mr McPherson's employment

[10] Up until 1 December 2014, Mr McPherson had been employed by Carter Holt. His terms and conditions of employment were contained in the Kinleith Mill Collective Agreement 2013 effective from 26 May 2013 to 28 November 2015 (the collective agreement).

[11] The parties to the collective agreement were Carter Holt, NZ Amalgamated Engineering, Printing and Manufacturing Union (EPMU), Amalgamated Workers Union of NZ Inc, and First Union.

[12] Upon the sale of Carter Holt's shares in Carter Holt Pulp & Paper, an agreed variation of the collective agreement to substitute Carter Holt Pulp & Paper as the employer party, for Carter Holt, took effect.

[13] From 1 December 2014, Mr McPherson became an employee of Carter Holt Pulp & Paper.

Mr McPherson's claims

[14] Mr McPherson claims the outstanding annual holidays and outstanding alternative holidays paid out to him by Carter Holt prior to the termination of his employment were incorrectly calculated. Mr McPherson disputes amounts paid to him and seeks arrears of wages together with interest and costs.

[15] These claims are made primarily pursuant to the Act and the Holidays Act 2003 (the Holidays Act).

Union's standing

[16] On 17 May 2014, Mr McPherson resigned as a member of EPMU and joined the Union. The terms of his signed authority state:

- *I hereby revoke any previous bargaining authority and/or membership of an employee organisation or bargaining agent.*
- *This authority shall continue in force until expressly revoked by me in writing and received by the Union or until I terminate my membership of the Union.*
- *I apply to become or wish to remain a member of the Union.*
- *I authorise the Union to represent me in any bargaining and to take any lawful action on my behalf.*
- *I appoint the Union to be my lawful attorney to act on my behalf at any time and to determine ratification procedures for any settlement of bargaining for an employment agreement for which the Union acted as bargaining agent.*
- *I authorise the Union in terms of section 45(c) of the Privacy Act 1993 to have at any time during my employment access to personal information about me including time and wage records requested under the provisions of the Employment Relations Act held by the employer.*

[17] Because Mr McPherson joined the Union and resigned from the EPMU, his employment is deemed an individual employment agreement based on the collective agreement by virtue of s.61(2)(a) of the Act.

[18] Accordingly, from 1 December 2014, Mr McPherson has been employed by Carter Holt Pulp & Paper pursuant to an individual employment agreement based on the collective agreement.

[19] The Union is not a party to Mr McPherson's individual employment agreement and is not a party to the collective agreement upon which Mr McPherson's terms and conditions are based.

[20] Mr Yukich for the Union, submits that although the Union is not a party to Mr McPherson's individual employment agreement, it has standing and has the right to bring an action in its own name before the Authority. I do not accept Mr Yukich's argument.

[21] Mr Yukich relies on s.74(1) of the Holidays Act which provides that provisions of the Holidays Act can be enforced by an employee, an authorised representative, a representative of a Union of which the employee is a member, an employer or a Labour Inspector. As contended by counsel for Carter Holt, the Union, under s.74(1)(c) of the Holidays Act, is an authorised representative and can bring proceedings, on behalf of its members, to enforce its provisions as a representative, not as a party to those proceedings.

[22] In the current case, the Union is not a party to the collective agreement. Both Mr Yukich and counsel for Carter Holt and Carter Holt Pulp & Paper referred to the Employment Court decision in *Maritime Union of New Zealand Inc v. Ports of Auckland*¹ where Chief Judge Colgan stated:

[[8] Standing is a question in each case of the degree of involvement in, or proximity to, the matter in issue of a person seeking to affect by litigation an outcome in which that person has arguably no direct interest. The causes of action in which the Union's standing is challenged in this case are not referable to an express statutory provision allowing directly the Union to bring the claim. That does not, however, determine standing.

...
[12] Here, the Union alleges that it has been affected by the company's non-observance or non-compliance with both the statute and the Union's collective agreement.

[13] I am satisfied that the Union's claim in respect of breaches of sections 61 or 66 is neither frivolous nor vexatious. The Union is not a mere busybody interfering where it has no real interest. It is claimed to be adversely affected and I consider that its claims have sufficient substance to give it standing.

[23] In the current case, the Union is attempting to bring proceedings against Carter Holt and Carter Holt Pulp & Paper as a party and in its own name and is seeking remedies. The Union is not a party to the collective agreement, does not directly or indirectly have an interest in the issues as to Mr McPherson's holiday entitlements as set out in the Statement of Problem and will not be adversely affected by the Authority's determination as to Mr McPherson's claims. The Union cannot seek party status, in my view.

[24] Counsel for Carter Holt Pulp & Paper referred the Authority to the Employment Court judgment in *Service and Food Workers Union Nga Ringa Tota v.*

¹ [2010] NZEmpC 32

*Spotless Services (NZ) Ltd*². That case concerned an arrears of wages claim under s.131 of the Act. The Employment Court found the Service and Food Workers Union Nga Ringa Tota, (SFWU) had no standing to bring wage arrears claims on behalf of its members. The Court held that s.131(1)(b) of the Act which provides that arrears:

*... of any such wages or other money may be recovered by the employee by action commenced in the prescribed manner in the Authority”, means that it is for an employee to bring such proceedings*³.

[25] In the *Service and Food Workers Union* case counsel for the defendant made a submission that claims for arrears of wages must be brought by, and in the names of, individual employees in respect of whom an employer may be liable. In that case, the SFWU was the plaintiff party and not entitled to wages and therefore the submission was that the SFWU had no standing to pursue wages claims on behalf of its members.

[26] Chief Judge Colgan found that the SFWU was able to bring wage arrears claims pursuant to s.18(1) and (3) and s.236 of the Act on behalf of its members, but those sections only went as far as permitting:

... representation of members by Unions in Authority or Court proceedings. ...

Such an employee may be represented by his or her Union pursuant to sections 18 and 236 but that representation does not extend to the Union issuing the proceedings in its own name as the plaintiff purported to do in this case.

[27] The Employment Court in *Pacific Flight Catering Ltd v Service & Food Workers’ Union Nga Ringa Tota Inc*⁴ referred to the *Service and Food Workers Union* judgment above, and stated at para.[47] that:

... The Union's proper role in seeking time, wage and holiday records on behalf of its members was as their agent. It was not entitled to do so in law for itself but, if authorised to do so by its members, it was entitled to do so on their behalf.

[28] In my view, this analysis can be applied to the Holidays Act. The Union in this case can represent members in respect of claims under the Holidays Act, but this does not extend to the Union becoming a party to such proceedings.

² AC 50/07, 23 August 2007

³ Ibid, para.[4]

⁴ [2012] NZEmpC 61

Orders

[29] The Union has no standing to bring any claims for remedies against Carter Holt and Carter Holt Pulp & Paper.

[30] Accordingly, the Union is to be struck out as a party to the proceedings along with claims for remedies made by it against Carter Holt and Carter Holt Pulp & Paper.

Costs

[31] Costs are reserved.

Anna Fitzgibbon
Member of the Employment Relations Authority