

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 312
5580396

BETWEEN	THE PULP AND PAPER INDUSTRY COUNCIL OF THE MANUFACTURING AND CONSTRUCTION WORKERS' UNION First Applicant
AND	THE PERSONS NAMED IN SCHEDULE A Second Applicants
AND	CARTER HOLT HARVEY LIMITED First Respondent
AND	CARTER HOLT HARVEY PULP AND PAPER LIMITED Second Respondent

Member of Authority: Vicki Campbell

Representatives: Tim Oldfield for First and Second Applicants
Rob Towner and Elizabeth Coats for First Respondent
David France for Second Respondent

Investigation Meeting: On the papers

Determination: 7 October 2015

PRELIMINARY DETERMINATION OF THE AUTHORITY

A. Matter 5580396 is removed in its entirety to the Employment Court.

Removal Application

[1] This is an application by the Pulp and Paper Industry Council of the Manufacturing and Construction Workers' Union (the Union) and the Second Applicants to remove this matter to the Employment Court without prior investigation by the Authority. The application is made in reliance on the ground that the Court already has

before it proceedings which are between the same parties and which involve the same or similar or related issues.¹

[2] Carter Holt Harvey Limited (CHH) and Carter Holt Harvey Pulp and Paper Limited (CHHPPL) have consented to the application for removal.

Employment relationship problem

[3] In a statement of problem lodged on 9 September 2015 the Applicant seeks determinations that:

- a) Arrears of wages are owing under the Holidays Act 2003 (HA) pursuant to the Employment Relations Act 2000 (the Act) section 131;
- b) Arrears of wages being employer superannuation contributions pursuant to section 131 of the Act;
- c) Determinations about the correct way to interpret and apply the Collective Agreement and the HA.

Submissions for Applicants

[4] The grounds for the application are:

- a) The Authority issued a determination on 25 June 2015² between the same parties, except the Second Applicants, who are members of the Union who were employed by the CHH and who are now employed by the CHHPPL.
- b) The determination involved the interpretation, application or operation of a collective agreement, which the Union and CHH were parties to, and which the Union and CHHPPL are now parties to. The collective agreement covered the Second Applicants at all relevant times.
- c) The Union has challenged the determination to the Employment Court on a *de novo* basis and intends to join the Second Applicants to those proceedings.³

¹ Employment Relations Act 2000 section 178(2)(c).

² [2015] NZERA Auckland 189.

- d) The issues involved in the challenge are the same or similar or related issues to those involved in this application and involve the same parties, except the Second Applicants, who intend to join the challenge anyway.
- e) The issues involved in the challenge also arise out of the termination of the Second Applicants' employment by CHH on 1 December 2014 and arise out of the same set of facts.
- f) The issues involved in the challenge also involve the interpretation of the collective agreement and the HA.
- g) The issues raised by the application affect approximately 120 of the Union's members. The potential arrears for each applicant in this application total around \$1,000,000.
- h) A challenge is virtually inevitable.

[5] I am satisfied that this is an appropriate matter for the Authority to exercise its discretion to remove the matter in its entirety to the Employment Court to determine.

Vicki Campbell
Member of the Employment Relations Authority