

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 108
5605232

BETWEEN ROBERTA RATU
 Applicant

A N D AFFCO NEW ZEALAND
 LIMITED
 Respondent

Member of Authority: Rachel Larmer

Representatives: Simon Mitchell and Garry Pollak, Counsel for
 Applicant
 Christine Pidduck and Rachel Webster, Counsel for
 Respondent

Investigation Meeting: On the papers

Submissions Received: 22 March 2016 from Applicant
 15 March 2016 from Respondent

Date of Determination: 08 April 2016

DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

Employment relationship problem

[1] Affco New Zealand Limited (Affco) has applied for a stay of Ms Ratu's unjustified disadvantage claim filed on 29 February 2016 which relates to her work in the tripe room and night shift work.

[2] Affco says that Ms Ratu's disadvantage claim relies on a judgment of the Employment Court dated 11 February 2016¹ (referred to as "the second judgment") which she says applies to her situation.

[3] The second judgment was based on an earlier judgment of the Full Employment Court dated 18 November 2015² (referred to as the "Full Court judgment") which related to the status of people who had previously been employed

¹ [2016] NZEmpC 7.

² [2015] NZEmpC 204.

by Affco under individual employment agreements based on the expired collective agreement between New Zealand Meat Workers & Related Trades Union Inc (the Union) and Affco.

[4] Affco claims that the Full Court judgement and the second judgment were both wrong in law and it has applied for leave to appeal both decisions. Affco seeks a stay of Ms Ratu's unjustified disadvantage claim.

[5] Affco submits that a stay should be granted because:

- (a) If the Authority investigates Ms Ratu's disadvantage claim a determination cannot be given with any confidence until the outcome of Affco's appeal is known;
- (b) It is necessary to preserve the position of the parties because if the Authority determines Ms Ratu's claim then the parties will need to appeal it.
- (c) Allowing Ms Ratu's claim to proceed is likely to cause prejudice to Affco and is an abuse of the Authority's process.

[6] Ms Ratu objects to the stay on the basis that it does not rely on the second judgement (although she acknowledges that would be helpful). Ms Ratu says that her claim does not depend on whether Affco is able to obtain leave to appeal the Employment Court decisions.

[7] Ms Ratu says that a stay would impose unreasonable delay on her and is therefore inappropriate.

[8] I decline to order of stay of Ms Ratu's disadvantage claim. I do not accept that any of the factors relied on by Affco warrant a stay. A stay will result in excessive delay which is undesirable given the objectives of the Authority process. A stay would therefore unreasonably prejudice Ms Ratu's right to have her matter resolved by the Authority in a timely manner.

[9] Ms Ratu's disadvantage claim will therefore be progressed before the Authority in the normal way.

[10] Costs on this application are reserved until the substantive disadvantage grievance has been resolved.

Rachel Larmer
Member of the Employment Relations Authority