

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2016] NZERA Auckland 386  
5620158

BETWEEN                      NEW ZEALAND MEAT  
                                         WORKERS AND RELATED  
                                         TRADES UNION  
                                         INCORPORATED  
                                         First Applicant

AND                              WILLIAM RAKI CORBETT  
                                         AND 12 OTHERS  
                                         Second Applicants

AND                              AFFCO NEW ZEALAND  
                                         LIMITED  
                                         Respondent

Member of Authority:        Nicola Craig

Representatives:              Simon Mitchell and Jeremy Lynch, Counsel for the  
                                         Applicants  
                                         Graeme Malone and Max Williams, Counsel for the  
                                         Respondent

Investigation Meeting:        30 September 2016

Submissions received:        At the investigation meeting and on 1 and 11 November  
                                         2016 for the Applicants and 21 November 2016 for the  
                                         Respondent

Determination:                23 November 2016

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**DETERMINATION OF THE AUTHORITY**

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**A.        This matter is removed in its entirety under s 178 of the**

**Employment Relations Act 2000 for the Employment Court to hear and determine without first being investigated by the Authority.**

**Employment relationship problem**

[1] This claim is brought by the New Zealand Meat Workers and Related Trades Union (the Union) and 13 laid off employees, or former employees, from Rangiruru meat processing plant (the Employees). The Applicants seek compliance with provisions of individual employment agreements between themselves and the Respondent AFFCO New Zealand Limited (AFFCO).

[2] The individual employment agreements are based on the AFFCO New Zealand Core Employment Agreement in force from 1 May 2012 to 31 December 2013. The compliance orders sought relate to the layoff procedure set out in that collective employment agreement.

[3] AFFCO filed an application to stay these proceedings. That application was based on the existence of other relevant existing proceedings between itself, the Union and other parties. At that point, two judgments had been issued by the Employment Court (referred to as the Full Bench judgment<sup>1</sup> and the second judgment<sup>2</sup>) and subsequent applications for leave to appeal had been filed for both decisions.

[4] By the time the Authority held an investigation meeting into the stay application, the Court of Appeal had granted AFFCO's application for leave to appeal the Full Bench judgment. That appeal was set down to be heard on 26 July 2016. The application for leave to appeal regarding the second judgment had not been considered by the Court of Appeal at that time.

[5] The stay application was opposed by the Applicants. An investigation meeting regarding that application was held on 11 July 2016.

[6] Before a decision on the stay application was issued by the Authority, the Applicants filed an application to remove this proceeding to the Employment Court (the Court). AFFCO opposes the removal application.

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<sup>1</sup> [2015] NZEmpC 204

<sup>2</sup> [2016] NZEmpC 7

[7] Having heard from both parties on the question of process, I decided to hear the removal application before making a determination on the stay application.

[8] An investigation meeting was held on 30 September 2016 to hear from both parties regarding the removal application. Submissions in writing had been exchanged prior to the investigation meeting.

[9] After the 30 September investigation meeting into the removal application, the Authority became aware that the Court of Appeal had issued its decision on the appeal from the Full Bench judgment.<sup>3</sup> The parties were then given an opportunity to make further submissions on the removal issue, in light of the Court of Appeal decision. The Applicants filed further submissions.

[10] Subsequently the Applicants made additional submissions regarding the Court's decision in *Rossiter v AFFCO NZ Limited*<sup>4</sup> issued on 10 November 2016, which considered a challenge against a stay application in another proceeding involving AFFCO and the Union. AFFCO then filed further submissions. These included reference to AFFCO having filed in the Supreme Court an application for leave to appeal against the Court of Appeal decision. AFFCO's position is that the Authority proceeding should be stayed.

### **Removal to the Court**

[11] The application to remove relies on ss 178 (2) (a), (b), (c) and (d) of the Employment Relations Act 2000 (the Act).

[12] The Authority needs only be satisfied that one of those grounds exists in order to grant the application for removal.

### **Important question of law**

[13] The Applicants rely on important questions of law regarding issues that relate to the stay application and those surrounding the enforcement of the individual employment agreements. AFFCO does not accept that there are any important issues of law.

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<sup>3</sup> *AFFCO New Zealand Ltd v NZ Meat Workers etc Union Inc and Ors* [2016] NZCA 482

<sup>4</sup> [2016] NZEmpC 144

[14] The important question regarding the stay application is summarised as whether the Authority should address stay issues when it was neither the original decision maker, nor the body to which the appeal is being brought. The Applicants' position is that AFFCO was effectively asking the Authority to stay the Court's Full Bench judgment.

[15] The Applicants emphasise that the Authority did not have before it all or sufficient information on which to consider the stay, particularly, the effects of the stay, the bona fides of AFFCO as the appellant, the effect on third parties and issues such as the balance of convenience. Likewise the question of the likelihood of success of an appeal is not particularly within the knowledge of the Authority, and is important in the decision as to whether to grant a stay<sup>5</sup>.

[16] A similar stay issue is now before the Employment Court in the *Rossiter* case.

[17] AFFCO's position is that the Applicants' attempt to get the proceeding removed to the Court, so that the issue of a stay can be decided by the Court, is misconceived. It considers there not to be a question of law here, and even if there was, it was not an important question of law.

[18] AFFCO argues that the issues regarding the stay are not decisive or strongly influential, or material to the substantive determination of the issue of whether the Employees' layoffs complied with their terms and conditions of employment. Reliance was placed on *Hanlon v International Educational Foundation (NZ) Ltd Inc*<sup>6</sup>.

[19] I accept AFFCO's submission that the Applicants' submissions focused on the stay issues as the important issue of law, rather than issues related to the interpretation or enforcement of the terms and conditions of the employees.

### **Urgency**

[20] The Applicants also rely on the matter becoming increasingly urgent and s 178 (2) (b) of the Act being relevant. This argument relates to urgency for the Employees in this case, but also focused on other employees at various AFFCO plants dealing with layoffs and re-engagements.

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<sup>5</sup> *Keung v GBR Investments Ltd* [2012] NZAR 17 at [11]

<sup>6</sup> [1995] ERNZ 1 at [7]

[21] AFFCO says that there was effectively no evidence before the Authority on those matters, and that no proceedings had been filed, other than those which were filed some time ago.

[22] The Applicants' response is some employees were delaying the filing of proceedings as there seemed little purpose when cases were met with stay applications, as had occurred in this and the *Rossiter* case in the Authority.<sup>7</sup>

[23] The parties agreed that various relevant grievances had been raised with AFFCO.

[24] The Applicants also argue that it is important in layoff disputes to get the issue resolved promptly, although I note that urgency was not originally applied for in this proceeding.

[25] In terms of speed of outcome, although it is often suggested that the Authority's low level process can allow for more speedy resolution of issues, the Applicants point to the promptness of the recent decision from the Court following on from the second judgment, considering remuneration issues.<sup>8</sup>

[26] AFFCO does not accept that there is any urgency associated with this matter, nor any public interest in the matter being removed to the Court. As regards other employees, it considers that layoffs and re-engagements are highly fact dependent and that the determination of this matter would be of very little precedent value in other situations.

### **Proceedings involving similar or related issues**

[27] There are a number of current proceedings which involve AFFCO and the Union. Some of these are in the appellate courts but the Applicants emphasise that there also remain proceedings at the Employment Court.

[28] The Applicants submit that the issue of the validity of the individual employment agreement formed a part of the proceedings which lead to the Full Bench judgment, but that those proceedings are on-going and parts have not yet been

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<sup>7</sup> *Rossiter v AFFCO New Zealand Ltd* [2016] NZERA Wellington 108

<sup>8</sup> *NZMWU Inc & Ratu and Ors v AFFCO New Zealand Ltd* [2016] NZEmpC 117

determined. There remain a number of causes of action which have not been addressed and damages issues also remain live.

[29] The second judgment is also subject to a leave to appeal application. The following decision on remuneration considered what counsel agreed were preliminary issues relevant to the calculation of quantum.<sup>9</sup> There was an indication that there were some further disclosure issues and a possible quantum issue.<sup>10</sup> The Applicants in the present case considered that the same issue of compensation for not being able to work as a meat worker exist in this case.

[30] The Applicants acknowledged that the substantive issues involved in the Wairoa situation (the second judgment) are not the same as are involved in the present proceeding. However, they consider that the remedies issues are sufficiently close for s 178 (2) (c) of the Act to apply.

[31] The Applicants also refer to the issue of stays while appellate proceedings continue as being before the Court in the *Rossiter*<sup>11</sup> case, whilst acknowledging that that proceeding is not between the same parties as the current one.

[32] AFFCO denies that the same or related issues arise in any of the Court proceedings, considering that there is no overlap to this proceeding.

### **Overall discretion**

[33] The Applicants also seek to have the Authority exercise its overall discretion to remove the case, due to the Employees' need for the matter to be dealt with, along with the issue becoming more general or widespread.

[34] AFFCO identifies several factors which it considers favour non-removal. These include the speedy, low-level manner in which the Authority operates, which will take fewer resources of the parties and the Crown, than a Court hearing. Another factor is the statutory right to challenge the Authority's substantive determination, which would be lost as a general appeal right if the Court decided the matter at first instance.

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<sup>9</sup> [2016] NZEmpC 117 and [7]

<sup>10</sup> *Ibid* at [40]

<sup>11</sup> [2016] NZEmpC 144

[35] AFFCO also referred to the Union's delay in not seeking removal earlier and the fact that time and resources have already been taken in the stay application.

### **Conclusion**

[36] I have carefully considered all the arguments by both sides regarding each of the grounds under s 178 (2) of the Act.

[37] I am satisfied that removal should be granted under ss 178(1) and 178(2) (b), (c) and (d) of the Act.

[38] In terms of urgency and public interest, given the nature of the industry's seasonal employment, as referred to for example, in the Court of Appeal decision, it seems likely that there will be repeated layoffs and re-engagements at AFFCO's plants. Therefore when there is a dispute between the Union and AFFCO regarding the interpretation of relevant agreement provisions, further disputes and litigation also seem likely.

[39] The Employees here may be affected by the same issues repeatedly, when they are laid off and re-engaged, and this issue thus becomes more urgent for them. There is also the wider public interest of employees at other AFFCO plants in this proceeding.

[40] The parties agreed that a number of personal grievances had been raised by workers at various plants around the country with AFFCO. I consider that the case is of such a nature and urgency that it is in the public interest for it to be removed immediately to the Court.

[41] I am also satisfied that at least some of these various proceedings which are with the Court concern similar or related issues. The fact that not all the parties are exactly the same, particularly some of the groups of employees, does not prevent s 178 (2) (c) of the Act from applying.<sup>12</sup>

[42] In all the circumstances I am of the opinion based on s 178(2)(b), (c) and (d) of the Act, that the Court should determine this matter. This matter is removed in its entirety under s 178 of the Act for the Court to hear and determine without first being investigated by the Authority.

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<sup>12</sup> *Flight Attendants and Related Services (New Zealand) Assoc Inc v Air New Zealand Limited* [2013] NZEmpC 125 at [44]

**Costs**

[43] No costs were sought in connection to the removal application.

Nicola Craig  
Member of the Employment Relations Authority