

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2020] NZERA 481
3097272 & 3097312

BETWEEN	A LABOUR INSPECTOR Applicant
AND	SAMRA HOLDINGS LIMITED trading as TE PUNA LIQUOR CENTRE First Respondent
AND	SAMRA ENTERPRISES LIMITED trading as GREERTON LIQUOR CENTRE Second Respondent
AND	SAMRA BROTHERS LIMITED formerly trading as PAEROA LIQUOR CENTRE Third Respondent
AND	AKAL HOLDINGS LIMITED trading as CHERRYWOOD LIQUOR CENTRE Fourth Respondent
AND	PARAMJIT KAUR Fifth Respondent
AND	SUKDEV SINGH Sixth Respondent

Member of Authority: Robin Arthur

Representatives: Rebecca Dunmead, counsel for the Applicant
Sanjay Sharma, counsel for the Respondents

Investigation Meeting: On the papers

Determination: 23 November 2020

DETERMINATION OF THE AUTHORITY

A. This matter is removed to the Employment Court to hear and determine.

[1] Labour Inspector Nicole Kendrick sought removal of this matter to the Employment Court because she has also filed claims in the court seeking declarations that the respondents were involved in serious breaches of the statutory minimum entitlements of five workers in four liquor stores. If the court agrees the alleged breaches occurred and were serious, the Inspector has asked for various pecuniary penalty orders, compensation orders and banning orders to be imposed. Under Part 9A of the Employment Relations Act 2000 (the Act) only the court has jurisdiction to make those declarations about serious breaches of minimum entitlement provisions that have occurred after 1 April 2016 and to impose those specific orders.

[2] The Inspector's application to the Authority, that she wanted removed to the court, sought findings the first, second, third and fourth respondents had not paid minimum entitlements and had failed to keep required records of wages, time, leave and holidays and that the fifth respondent, who is a director of the first four respondents, and the sixth respondent, as a manager or administrator, were persons involved in breaches of employment standards. Remedies sought in the Authority included orders for payment of arrears of wages and holiday pay to the workers, for penalties against the four respondent companies for breaches of minimum standards legislation and for penalties against the fifth and sixth respondents for failing to keep accurate records.

[3] Some of the claims in the Authority proceeding concern breaches said to have occurred between 26 March 2013 and 31 March 2016, which is before the date of 1 April 2016 from which the court can consider whether such breaches are "serious". Other claims in the Authority concern other alleged breaches after 1 April 2016 and therefore overlap with the matters before the court in relation to the same alleged breaches.

[4] This overlap of issues, evidence and timing, along with the jurisdiction of the court to make findings of serious breaches and to impose more stringent remedies, was the reason for the Inspector seeking removal of the Authority proceedings to the court so the entire matter could be dealt with in one forum and in a single proceeding.

[5] The Respondents initially opposed the removal application and made their own application to have the matters involving the first, second, third and fourth respondents investigated and determined separately. Last week the Respondents changed their position on both points, withdrawing their opposition to removal of the Authority proceedings to the court and withdrawing their application for severance of proceedings against them.

[6] The court has already made some orders in relation to the proceedings filed there.¹

Grounds for removal

[7] Under s 178 of the Act the Authority may order removal of a matter where, among other reasons, “the court already has before it proceedings which are between the same parties and which involve the same or similar or related issues”. The Authority may also remove a matter where it “is of the opinion that in all the circumstances the court should determine the matter”. If either or both of those criteria are satisfied in assessing a removal application, the Authority must then also check the exercise of its discretionary power to order removal by considering whether there is any reason not to remove the matter.²

[8] The Inspector’s application in this case clearly met the ground that the court has before it proceedings between the same parties and involving related issues. The related issue involves exercise of the court’s jurisdiction to consider whether any breaches that occurred after 1 April 2016, when Part 9A of the ERA came into effect, were “serious”. Its answer to that question would then determine whether pecuniary penalties and other orders within the court’s jurisdiction were appropriate or whether only the ordinary penalties within the Authority’s jurisdiction should be imposed.

[9] Having heard the evidence about and made findings on the nature of any breaches, the court would also then be best placed to impose an ordinary penalties that were appropriate rather than have the parties undergo an additional and separate Authority investigation to determine any necessary sanctions. This would spare the Inspector and the respondents the time and expense of preparing for and participating in proceedings in both forums.

¹ *A Labour Inspector v Samra Holdings Limited* [2020] NZEmpC 184 and [2020] NZEmpC 196.

² *Auckland District Health Board v X (No. 2)* [2005] ERNZ 551 at [30].

[10] Accordingly this was also, in my opinion, a situation where removal to the court was appropriate in all the circumstances. It allows for efficient use of the resources of the Authority, the court and the parties while also ensuring the justice of the entire circumstances can be thoroughly considered and determined.

[11] No factors for nevertheless declining removal were apparent or identified. Having completed that cross check, an order for removal could be made.

[12] Accordingly, the removal application has been granted. Under s 178(1) of the Act, this matter is to be removed to the court to hear and determine.

Robin Arthur
Member of the Employment Relations Authority