

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2021] NZERA 220
3136487

BETWEEN MICHAEL ROBERT JACKSON
 Applicant

AND THE AORERE COLLEGE
 BOARD OF TRUSTEES
 Respondent

Member of Authority: Geoff O’Sullivan

Representatives: Stanley Eda, advocate for the Applicant
 Richard Harrison, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: Up to and including 19 May 2021

Date of Determination: 24 May 2021

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Michael Jackson claims that the respondent, the Aorere College Board of Trustees, has discriminated against him, unjustifiably disadvantaged him, confiscated personal possessions and unjustifiably dismissed him. The Board of Trustees strenuously denies these claims.

[2] The substantive claims have yet to be scheduled for an investigation meeting for a variety of reasons but most recently because the applicant has filed an application for removal of his personal grievances to the Employment Court. The application is opposed by the respondent. The parties have agreed that the application for removal to Court should be dealt with on the papers and on the information currently before the Authority.

[3] The application for removal of the matter to the Employment Court was filed on 19 April 2021. The application puts forward the following grounds in support of removal to the Court, namely:

- (a) The mechanism of applications has already contributed to a significant delay to the case and further long sufferance of the applicant.
- (b) It is a matter of public interest that the applicant not face further and unnecessary hardship in the pursuit of his personal grievance for unfair dismissal.
- (c) It is a matter of public interest that the appointed representative of the Aorere Board of Trustees, at the time of the grievances, continues to operate in a position of significant influence and responsibility without necessary judicial review if indeed, as the applicant claims, he is guilty of any or all of the misdemeanours made part of the grievance itself.

Discussion

[4] Section 178(2) of the Employment Relations Act 2000 (the Act) provides:

- (2) The Authority may order the removal of the matter, or any part of it, to the court if—
 - (a) an important question of law is likely to arise in the matter other than incidentally; or
 - (b) the case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the court; or
 - (c) the court already has before it proceedings which are between the same parties and which involve the same or similar or related issues; or
 - (d) the Authority is of the opinion that in all the circumstances the court should determine the matter.

[5] In essence, the grounds for removal boil down to the fact there has been delays in Mr Jackson having his grievances heard. Whilst there are a number of reasons for this, on 24 November 2020 Mr Jackson's current representative, Mr Stanley Eda advised the Authority:

My client has requested to request you to remove his application to the Employment Court immediately without any delay and waive the fees as it has taken an unnecessary long time to finalise the case. My client has no intention to pursue the matter with ERA. Should you have any questions please do not hesitate to contact me.

[6] Mr Jackson has not put forward any grounds which persuade me this matter could or should be removed to the court. The Authority has recently attempted to set this matter down for an investigation meeting and under normal circumstances, the matter would have already been allocated a fixture. This case does not appear to have any unusual characteristics and would be the sort of case dealt with routinely by the Authority. I accept there have been delays, however virtually all of these can be attributed to issues Mr Jackson has had in advancing his application. Removal of the matter now is likely to result in further delay. Certainly it would seem unlikely the Court would be in a position to deal with this matter more expeditiously than the Authority can now do.

Conclusion

[7] For the above reasons this is not a matter that should, or in all probability given the law, can be removed to the court. The application is declined.

Costs

[8] Costs are reserved. I suggest the parties' leave consideration of costs relating to these proceedings, until Mr Jackson's substantive claim is determined.

Geoff O'Sullivan
Member of the Employment Relations Authority