

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2022] NZERA 340
3179299

BETWEEN	NEW ZEALAND NURSES ORGANISATION First Applicant
AND	PUBLIC SERVICE ASSOCIATION TE PUKENGA HERE TIKANGA MAHI Second Applicant
AND	TRACEY BLACK and JOY NEILSON and 36,000 others Third Applicants
AND	HEALTH NEW ZEALAND Respondent

Member of Authority: Helen Doyle

Representatives: Peter Cranney, counsel for the Applicants
Susan Hornsby-Geluck and Megan Vant, counsel for the
Respondent

Investigation Meeting: On the papers

Date of Determination: 21 July 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The parties have applied to the Authority jointly for removal of part of a matter to the Employment Court lodged with the Authority under file no. 3173886.

[2] The joint application relies on the grounds set out in s 178(b) and (d) of the Employment Relations Act 2000 (the Act). By agreement the matter is determined on the papers.

The application before the Authority under file no. 3173886

[3] There are two issues before the Authority in file number 3173886.

Pay Equity issues under the Equal Pay Act 1972

[4] The applicants seek determinations under s 13ZY of the Equal Pay Act 1972 (the EP Act) as follows:

- (a) A determination under s13ZY(d)(i) that fixes remuneration that does not differentiate between male and female employees in the manner set out in s 2AAC(b) of the EP Act.
- (b) A determination under s 13ZY(d)(ii) that specifies a process to review that remuneration to ensure that pay equity is maintained, including the frequency of reviews.

[5] These matters are within the exclusive jurisdiction of the Authority. The Authority has progressed this issue and set a timetable for disclosure of relevant documents and provision of statements of evidence. Investigation meeting dates are scheduled. The application for removal to the Employment Court does not include this issue.

Dispute as to the interpretation, application, and operation of the third applicants' employment agreements

[6] The third applicants are in dispute as to the interpretation, application, and operation of their employment agreements.

[7] They say that they are entitled under their employment agreements to have the pay equity remuneration rates, when settled, backdated to 31 December 2019 after deduction of any down-payment or further base salary adjustments.

[8] The respondent does not agree that the employment agreements of the third applicants include any requirement to backdate the pay equity rates once determined, to 31 December 2019.

[9] It is this issue that the parties have applied to remove to the Employment Court.

Sections 178 (2)(b) and s 178(2)(d) of the Employment Relations Act 2000

[10] There are two grounds relied on. The first is s 178(2)(b) of the Employment Relations Act 2000 (the Act). That ground is that 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. The second is s 178 (2)(d) that the Authority is of the opinion that in all the circumstances the Court should determine the matter.

[11] The application for removal was made jointly but the Authority still needs to be satisfied the grounds relied on are made out.

[12] The joint application sets out that there are about 36,000 third applicants and they are all advancing an argument that they have a contractual entitlement to be provided pay equity rates from 31 December 2019 rather than a significantly later date.

[13] There is a common view that the matter needs to be resolved as a priority in the public interest. Further, that a large sum of public money is at issue and the parties hold a common view that any decision from the Authority would inevitably be challenged.

[14] I observe that in applying jointly for removal of part of the matter lodged with the Authority, the parties have limited their rights of appeal. There is a full right of appeal against a decision of the Authority but only a limited right of appeal against the decision of the Employment Court.¹

[15] Weighed with that public interest in this matter is undeniable and significant. I accept that large sums of public money are at issue although the probability of challenge on its own is not a persuasive argument for removal.

[16] In weighing the discretionary factors under s 178(2)(d) of the Act removal of the dispute issue will enable the Authority to focus exclusively on the pay equity issues which as set out earlier have been progressed and fall within its exclusive jurisdiction.

[17] I also weigh that removal, from a perception perspective, may also be appropriate considering the involvement of the Authority in facilitation of the 2021 MECA bargaining

¹ *Gill Pizza v Labour Inspector* [2021] NZSC 184 [64] and [65]; *Labour Inspector v Gill Pizza Ltd* [2021] NZCA 192 [55].

between the parties and the recommendations it made that assisted in its ratification. The MECA being the basis for the employment agreements the third applicants rely on.

[18] I do not find there are discretionary factors that weigh against removal. The application to remove part of the proceeding in file number 3173886 is granted.

Order

[19] I remove part of file number 3173886 relating to the dispute about the employment agreements to the Employment Court for hearing and determination.

Helen Doyle
Member of the Employment Relations Authority