

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2024] NZERA 738
3340860

BETWEEN	SLEAKTEK LIMITED First Applicant
AND	ROBERT LAWRENCE Second Applicant
AND	JULIET HULL Respondent

Member of Authority: Claire English

Representatives: Robert Lawrence, for the Applicants
Tanya Preston and Angela Evans counsel, for the
Respondent

Date: 12 December 2024

DETERMINATION OF THE AUTHORITY

Issues

[1] The applicants (Sleaktek Limited and Mr Lawrence, which I will refer to as SLRL for convenience) have filed an application to remove this matter in its entirety to the Court. The applicant Ms Hull has filed an objection to that application. This minute considers the application for removal.

[2] SLRL raise several grounds as to why this matter should be removed. They may be summarised as follows:

- a. Ms Hull's grievance claims are "connected to a much wider cluster of documented events which point to a conspiracy to defraud";
- b. Ms Hull participated in several unlawful attempts to take over Sleaktek Limited or its intellectual property, which matters are being investigated by other official bodies;
- c. This involves laws and torts "not normally dealt with by the Authority", and should be dealt with by the Employment Court;
- d. There are implications for the public interest in gauging possible corruption as a problem for start-up businesses. SLRL believe that external entities subverted fiducial duties, which could have an inhibiting effect on investment into new technologies.

[3] Ms Hull has filed an objection, and the grounds of that objection may be summarised as follows:

- a. The issues that arise in this matter do not give rise to difficult or novel questions of law. They are matters that are regularly transversed by the Authority;
- b. SLRL have not identified any such questions of law. Insofar as SLRL refer to wider issues, (being as Mr Lawrence explained at a case management conference, claims against Ms Hull and others under the Crimes Act, the Defamation, and a conspiracy), neither the Authority or the Court have jurisdiction to consider claims that are not as set out in s 161 or 187 of the Employment Relations Act 2000 (the Act);
- c. The matter is not of such a nature and urgency that it is in the public interest to be removed immediately to the Court. There is no urgency to the matter, and the issues between the parties are factual, with no wider implications other than for the parties involved. In addition, the alleged issues around possible corruption affecting startup companies would not be matters within the jurisdiction of either the Authority or the Court;

- d. For completeness, there are no other proceedings already before the Court which might warrant the removal of this matter.

[4] I will consider the application for removal in accordance with the requirements of s 178 of the Act.

[5] As set out in that section, the removal of a matter to the court is a matter of discretion. This discretion may be exercised if any of the following characteristics exist:

- a. An important question of law is likely to arise other than incidentally;
- b. The case is of such a nature and of such urgency that it is in the public interest it be removed to the court;
- c. The court already has before it proceedings between the same parties involving similar or related issues; or
- d. The Authority is of the opinion that in all the circumstances, the Court should determine the matter.

[6] At a CMC held to discuss SLRL's request for removal, Mr Lawrence explained that his reasoning for applying to have the matter removed was on the basis that he believed there were claims against Ms Hull that were in the nature of "crimes, torts, and defamation". He said that in filing to have the matter removed to the court, he was acting on the assumption that the court had jurisdiction to hear matters such as crimes, torts, and defamation which the Authority did not have.

[7] I have chosen to view this as a general submission that either there is an important question of law likely to arise other than incidentally, or that the case is of both such a nature and such an urgency that it is in the public interest it be removed.

[8] The fundamental issues in this case are Ms Hull's claims of unjustified dismissal, unjustified disadvantage, and breach of good faith. SLRL resist these claims, on the basis that Sleaktek Limited was entitled to dismiss Ms Hull on the grounds of either serious misconduct or redundancy, and in the alternative, that Ms Hull's contributory conduct should reduce any remedies that might be awarded. These are claims which commonly arise in the Authority, and

although they may be hotly contested between the parties, are matters about which there is much settled case law.

[9] In addition, matters involving crimes, torts, and defamation are not matters which would be determined in the employment jurisdiction, either by the Authority or the court. Mr Lawrence advised that he is not aware that any such claims have been lodged against Ms Hull by the official bodies referred to in the application for removal. Nor have SLRL raised any such claims against Ms Hull in other jurisdictions.

[10] My view is that insofar as SLRL allege wrongdoing by Ms Hull against them in the conduct of her employment, these matters are ones which can and properly should be considered as part of SLRL's own responses to Ms Hull's claims in the Authority. In saying this, I take into account the Authority's exclusive jurisdiction in employment matters as set out in s 161 of the Act.

[11] Looking at these matters overall, my view is that this matter does not meet the tests for removal as set out in the Act. There is no important question of employment law that is likely to arise in this case. The disputes between the parties stem from the nature of Ms Hull's employment obligations and her performance of them, the nature of Sleaktek Limited's obligations as an employer, and disputes between the parties about the way in which the employment relationship ended. These are matters of settled law.

[12] When considering whether the matter is of such a nature and urgency that it is in the public interest that it is removed to the court, SLRL have referred to "possible corruption" and "external entities subvert[ing] fiducial duties". Mr Lawrence's description of these matters makes clear that that this is again a reference to other types of claims that are not within the employment jurisdiction, including claims against persons other than Ms Hull. If and when such claims are brought against Ms Hull, such claims would fall to be determined by bodies other than the Authority or Court. This does not support an application for removal.

[13] When considering the criteria of urgency, I note that the matter was set down to be heard in early December, but was delayed by SLRL's filing of the application for removal, and

the filing of a counter-claim. In these circumstances, both parties agreed it would be preferable for the scheduled investigation meeting to be adjourned.

[14] There is nothing in the above to suggest that this matter is of such a nature or urgency that it is in the public interest to remove it to the court.

[15] For completeness, I note that there are no other proceedings between the same parties which are already before the court, and there are no other relevant circumstances which suggest that the court should determine this matter.

[16] The tests for removal of this matter to the Employment Court are not met. The application for removal is therefore declined.

Potential liability for costs

[17] The Authority has power to award costs to a successful party under clause 15 of schedule 2 of the Employment Relations Act 2000. The Authority uses a “tariff” based approach in awarding such costs. This approach has been approved by the Employment Court. If asked to do, the parties can expect the Authority to apply this approach. The current tariff for a one day investigation meeting is \$4,500.00.

Contacting the Authority

[18] If either party has any questions they should contact the Authority Officer by phoning (04) 9159550 or emailing wellingtonera@era.govt.nz. Information about the Authority can be found on our website: www.era.govt.nz.

Claire English
Member of the Employment Relations Authority