



### **Ought the matter be removed to the Employment Court?**

[4] This application for removal is based on s.178(2)(c) and (d) of the Employment Relations Act 2000 (the Act).

[5] In effect then, reliance is placed on the fact that the Court already has before it proceedings between the same parties and involving the same or similar issues.

[6] It is the case that the Court has recently dealt with a substantive matter involving these parties and the dispute pleaded in this matter has its nexus in that same factual matrix. That being the case, it is difficult to see how the test has not been met.

[7] Concerning subparagraph (d) of s.178(2) of the Act, I agree with the categorisation advanced for A Limited that the Court will be familiar with litigation between these parties, that the parties are well resourced, that the question of interpretation is one that is likely to have wide application and that it is appropriate in all the circumstances for the Court to be seized of this matter.

[8] As is apparent from the decision in *NZEPMU Inc v. Carter Holt Harvey Ltd* [2012] 1 ERNZ at 74, the Authority has a residual discretion not to order removal even if the grounds for removal can be made out.

[9] I decline to exercise that residual discretion against removal in the present case; there are no matters in my view which would militate against removal and indeed the fact that the removal application is supported by H is, in my judgment, a factor I ought to take into account in making the decision to remove.

### **Determination**

[10] I order that this file is to be removed to the Employment Court for the Court to hear and determine the matter without the necessity for the Authority to conduct its usual investigation.

### **Costs**

[11] Costs are reserved.

James Crichton  
Member of the Employment Relations Authority