**IN THE EMPLOYMENT RELATIONS AUTHORITY**
**WELLINGTON**

WA 83/09
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| | BETWEEN | RACHEL BLACKABY<br>Applicant |
| | AND | PAREX INDUSTRIES LTD<br>Respondent |

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| Member of Authority: | G J Wood |
| Representatives: | J Blake-Palmer and G Ballara for the Applicant<br>P McGrath for the Respondent |
| Investigation Meeting: | 12 June 2009 at Wellington |
| Determination: | 12 June 2009 |

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**DETERMINATION OF THE AUTHORITY**

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[1] This matter was filed by Ms Blackaby against her employer Parex Industries Limited today. The application for an interim injunction restraining Parex from dismissing her from her employment, supported by an affidavit, has had to be dealt with in extreme urgency as a result. No material has been able to be provided directly from Parex, given the time constraints, and I appreciate Mr McGrath taking on the file with limited time and instruction.

[2] Ms Blackaby's claim is that she had raised concerns about her manager. These concerns were investigated and discounted by Parex. She then raised a personal grievance and there were then some initiatives from her employer about whether and how she might leave the employment of Parex. Then she was dismissed, effective from 12 June 2009. She was told of this dismissal on 10 June and is to be paid her notice period in lieu.

[3] There are three issues that need to be addressed in deciding whether or not the applicant should get the interim injunction she seeks. This is set out in *Clifford v. Air New Zealand Limited* [2005] 1 ERNZ 1 at page 9.

[4] The first is whether the plaintiff has an arguable case of unjustified dismissal. In this case this is about restraining an intended dismissal. The second is whether the balance of convenience (including the existence of alternative remedies sometimes said to be a separate test) favours the plaintiff. The third, the remedy being discretionary, is where the overall justice of the case lies until it can be heard, including particularly the respective strengths of the parties case so far as they can be ascertained at this stage.

[5] There is no doubt that on the basis that the Authority has to assess this matter, i.e. that the applicant will be prove in evidence all the claims that she has made in her statement of problem, that there is an arguable case in this matter.

[6] As far as the balance of convenience goes, there are alternative remedies for the applicant. With the co-operation of the parties the Authority has set an investigation meeting date of 1 July 2009. During that period, because pay during the notice period continues to be available to the applicant, there will be limited loss of income to her, relating only to commission. But as is made clear in the case of *Melville v. Chatham Islands District Council* [1999] 2 ERNZ 76 the balance of convenience also deals with issues of relative hardship and moral justice. It was held at 100:

> *Where an employee has been dismissed from gainful employment, it is not often that the employer can convincingly argue that the hardship of being required to take the unwanted employee back for a short time is greater to it than the hardship of keeping out an employee who has been unjustifiably dismissed. The hardship from the employer's point of view is simply that it has been prevented from doing what it wants. Any injunction is unwelcome and in that sense inconvenient. However, in terms of concept, that is rarely a greater hardship than that suffered by the employer of having something done to the employee that the employee does not want because of the consequences for the employee are more drastic.*

[7] This seems to apply in this case. If Ms Blackaby is reinstated in the interim (i.e. not dismissed) she will be working, and the employer will get the benefit of that work. It seems to me that that this is a marginal call, but the balance of convenience marginally favours the applicant, despite the existence of alternative remedies.

[8] Now it is a matter of standing back and looking at the overall justice of the case, and particularly the respective strengths of the parties' cases in so far as they can be ascertained. That is difficult without evidence from the employer, but the documentary evidence seems to show a very strong temporal connection between the raising of the personal grievance and the notice of redundancy.

[9] Also every employee is entitled to consultation before they are made redundant. That is clear from the judgment of the Employment Court *Simpson Farms Ltd v. Aberhart* [2006] ERNZ 825. There does not appear to be any consultation whatsoever over redundancy. In fact, Ms Blackaby, if she is right, has stated that, to the contrary, the employees had recently been told that their jobs were secure despite the difficult economic environment. My conclusion is that the overall justice favours the injunction.

[10] I therefore issue an interim injunction restraining the respondent from dismissing the applicant from her employment, at least until after the issuing of the Authority's determination on the substantive claims between the parties.

**G J Wood**
**Member of the Employment Relations Authority**