

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 299
3016715

BETWEEN

MELISSA BOWEN
First Applicant

JESSICA LEWIS
Second Applicant

A N D

BANK OF NEW ZEALAND
Respondent

Member of Authority: James Crichton

Representatives: Applicants in person
Emma Butcher, Counsel for Respondent

Investigation Meeting: on the papers

Submissions Received: 22 September 2017 from Applicants
18 September 2017 from Respondent

Date of Determination: 28 September 2017

**FIRST DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

Employment relationship problem

[1] The applicants filed a Statement of Problem in the Authority on 4 August 2017 claiming a personal grievance for disadvantage caused by unjustified actions of their employer, the Bank of New Zealand.

[2] In that Statement of Problem, amongst other things, the applicants raised the possibility of unconscious bias because Mr Leon Robinson, now the head of Employment Law and Employee Relations at the Bank of New Zealand, was, for seven years until 2010 a member of the Employment Relations Authority at Auckland.

[3] It is suggested that because of Mr Robinson's former membership of the Authority, it may be difficult for the Authority to mitigate the risk of unconscious bias, given that Mr Robinson may be called as a witness in the proceedings.

[4] As Chief of the Authority, I was immediately apprised of the claim being made in the Statement of Problem and by email dated 11 August 2017, I caused the applicants to be advised that their file would be dealt with by a Christchurch member, Member Appleton, who had never met Leon Robinson in any capacity and who was appointed a Member of the Authority in Christchurch after Mr Robinson's tenure as an Auckland member ceased.

[5] Moreover, I directed that the file would be managed by an Authority Officer who was also new to the Authority, had never worked with or for Mr Robinson and had never met him.

[6] Notwithstanding those efforts, the applicants indicated by email dated 17 August 2017 that they did not consider those steps mitigated the risk, and they wished to have the Authority remove the matter to the Employment Court in consequence.

[7] Exclusively to discuss that proposition, I convened a telephone conference with the applicants on the one hand and counsel for the Bank of New Zealand on the other, that telephone conference taking place on 11 September 2017. In that case management conference on that date, I timetabled submissions on the removal application and those submissions have now come to hand.

[8] Counsel for the Bank of New Zealand helpfully adopted a suggestion of mine that they file and serve their submissions first to assist the applicants to master the process.

[9] In the result, helpful submissions have been filed by both parties and the short point is that the applicants now concede that the matter can continue to be dealt with in the Authority; or to put it another way, their application to have the matter removed to the Employment Court is no longer being persevered with.

Determination

[10] On that basis then, and for the avoidance of doubt, I now decline to order the removal of this file to the Employment Court on the basis that the parties now accept that the matter can appropriately be dealt with in the Employment Relations Authority at first instance.

Costs

[11] Costs are reserved.

James Crichton
Chief of the Employment Relations Authority