

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 200/09
5285609

BETWEEN

BARRY EDWARD
BRUNTON
Applicant

AND

GARDEN CITY
HELICOPTERS LIMITED
Respondent

Member of Authority: Helen Doyle

Representatives: Julian Moran, Counsel for Applicant
Neil McPhail, Advocate for Respondent

Investigation Meeting: Dealt with on papers

Determination: 19 November 2009

**DETERMINATION OF THE AUTHORITY
ON APPLICATION FOR REMOVAL TO THE COURT**

[1] The respondent has applied to the Authority to remove this matter to the Court for the Court to hear and determine without the Authority investigating the matter, on the basis that there was an important question of law likely to arise in the matter other than incidentally under s. 178 of the Employment Relations Act 2000.

[2] The background to the matter before the Authority is that on 3 November 2009 the applicant lodged with the Authority a statement of problem and claimed, amongst other remedies, an order for interim reinstatement. The applicant provided an affidavit in support of his application and an undertaking as to damages.

[3] It was clear from the statement of problem and the affidavit provided that there is an issue as to whether the applicant was an employee or an independent contractor during his time with the respondent company.

[4] The Authority held a telephone conference with Mr Moran and Mr McPhail on 5 November 2009. A date was set for an investigation meeting to deal with the

interim application on 27 November 2009. The parties agreed that mediation would take place and timetabling directions were made for the respondent to lodge and serve affidavits in opposition to the application for interim reinstatement in the event the matter did to resolve. Mediation took place but did not resolve the issues between the parties.

[5] On 6 November 2009 Mr McPhail lodged an application for determination as to jurisdiction prior to consideration with the interim reinstatement application on 6 November 2009.

[6] On 10 November 2009 the Authority received the application for removal to the Employment Court.

[7] The issue that Mr McPhail relies on as an important question of law is that the respondent maintains that it never employed the applicant. The respondent maintains the applicant was an employee of Carbine Services Limited which contracted to the respondent. The respondent therefore denies that the applicant has standing to make an application for interim reinstatement and maintains that there is a preliminary threshold jurisdiction issue that arises which must first be resolved before the Authority can determine the interim injunction application. The application for removal was opposed by Mr Moran on behalf of the applicant.

[8] The Authority accepts in line with *Ferens v. French (Asia Pacific) Ltd* [1998] 1 ERNZ 303 which Mr McPhail relies on, that it will need to be satisfied that it has jurisdiction to deal with this matter before moving to consider the usual tests in terms of the interim injunction. Whilst the situation does not often arise before the Authority in terms of an interim matter because it is usually clear that there is jurisdiction to deal with the issue, I am not satisfied this raises an important question of law or that the matter should otherwise be removed to the Court.

[9] The Authority can consider that threshold jurisdictional issue on the basis of the affidavit evidence already before it or shortly to be lodged as part of investigation meeting already scheduled for 27 November 2009.

[10] The Authority does not consider that it needs to have a separate meeting in terms of the jurisdictional threshold issue or that it should not hear submissions in terms of the interim application as well on 27 November 2009.

[11] On the basis that there is no important question of law and Mr McPhail and Mr Moran will have an opportunity to make submissions on the basis of the affidavit evidence as to the jurisdictional issue there is no reason otherwise why the matter should be removed to the Employment Court and the application for removal to the Court under s.178(2)(a) is declined.

[12] Costs are reserved and will be dealt with after the matter has been finally determined.

Helen Doyle
Member of the Employment Relations Authority