

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Christine Lorraine Coy (Applicant)
AND The Commissioner of Police (Respondent)
REPRESENTATIVES Scott Fairclough, Counsel for the Applicant
Raewyn Gibson, Advocate for the Respondent
MEMBER OF AUTHORITY Helen Doyle
SUBMISSIONS RECEIVED 23 March 2007
30 March 2007
DATE OF DETERMINATION 19 April 2007

DETERMINATION OF THE AUTHORITY

[1] The applicant applies to the Authority to have her personal grievance removed to the Court for the Court to hear and determine it without the Authority investigating the matter. There are specific grounds on which the Authority may order the removal of the matter under s.178(2)(a), (b) and (c) of the Employment Relations Act 2000. The applicant does not rely on these specific grounds but on s.178(2)(d) of the Act which is a discretionary provision and provides :

(d) the Authority is of the opinion that in all the circumstances the Court should determine the matter.

[2] The circumstances relied on by the applicant are as follows.

- The historical events that gave rise to the grievance when Ms Coy worked at the material time as a Constable at a rural Police Station.
- Issues about the interpretation and application of Police general instructions.
- The number of witnesses required to give evidence and the need for cross-examination in the more formal context of the Court's adversarial procedure to test evidential conflict and credibility issues.
- Disclosure issues needing the more prescriptive powers of the Court and the limited resources of the applicant who cannot afford two full hearings if there is a challenge to the Court.

[3] Another personal grievance was lodged at the same time as Ms Coy's by Bruce Ramsay, who was also a Constable at the same rural Police Station. There has been no application for joinder of

the proceedings at this stage. Mr Ramsay has also applied to have his personal grievance removed to the Court and that application will be the subject of a separate determination.

[4] The respondent opposes the application to remove Ms Coy's personal grievance to the Court and submits that none of the circumstances relied on by Ms Coy constitute valid grounds for the Authority to reach an opinion that in all the circumstances the Court should determine the matter.

The nature of the personal grievance

[5] Ms Coy says that her employment was affected to her disadvantage by unjustifiable actions on the part of the respondent that resulted in her disengaging from the Police and terminating her employment with them in circumstances in the nature of a constructive dismissal.

[6] Ms Coy was employed as a Traffic Officer with the Ministry of Transport until integration with the Police on 1 July 1992 when she served as a Constable. Ms Coy was transferred to the Fairlie Police Station and commenced duties there on 15 March 1993. Shortly after that time Ms Coy was transferred to the Temuka Station.

[7] Ms Coy says that over the next 9½ years she was subjected to a systematic campaign by her supervisor of intimidation, harassment, humiliation and abusive behaviour which had the effect of undermining her position and disadvantaged her. Ms Coy says that the respondent failed to deal with the issues raised by her in an appropriate or adequate manner.

[8] Ms Coy submitted a personal grievance on 20 March 2003 outlining in some detail the matters that formed the basis of her concerns. The applicant submitted a further personal grievance on 2 May 2003 which was described as an extension to her original personal grievance action.

[9] On 26 September 2003 Ms Coy applied to disengage from the respondent and on 31 October was advised that her application was accepted. On 11 November 2003 the applicant submitted a further personal grievance about her disengagement from the Police, but no proceedings were lodged with the Authority until 17 March 2006. The parties attended mediation but the matter was not resolved.

[10] The application for removal to the Court was lodged by the applicant and opposed by the respondent. A timetable for provision of submissions was agreed by Mr Fairclough and Ms Gibson. The determination has been on the basis of documentation lodged and submissions provided.

Removal application

[11] The discretion under s.178(2)(d) is wide, but there must be circumstances that would lead the Authority to be of the opinion the Court should determine the matter.

[12] Mr Fairclough could only refer me to one Authority determination where a case has been removed under s.178(2)(d) – *Griffiths v. Sunbeam Corporation Ltd* (WEA32/05, 23 September 2004). Both Mr Fairclough and Ms Gibson agreed that the determination was not particularly helpful in terms of the current application.

[13] Ms Gibson relied in her submission on the determination of the Employment Relations Authority *Dr Y v. Bay of Plenty District Health Board* (AA132/06, Member Robin Arthur). I have had regard to that determination but recognise that each application turns on its own circumstances.

An application was made in that case to remove the matter to the Court under s.178(2)(d) of the Act but was not successful.

[14] In exercising my discretion, I have also had regard to the object section in Part 10 of the Act which is concerned with Institutions.

[15] Nearly all personal grievances are determined by the Authority at first instance. Parliament must, however, have intended that a very limited number of cases could be removed, not because they meet the specific criteria set out under s.178(2)(a), (b) and (c) of the Act, but because the Authority is of the opinion, in all the circumstances, that the Court should determine the matter under s.178(2)(d). Ms Gibson quite correctly submits that it is not enough that one party or even both parties simply want the matter to go to the Court. I have, in exercising my discretion, had regard to the circumstances in Ms Coy's case.

[16] Cross-examination or witness numbers are not factors that I find in exercising my discretion are sufficient on their own to favour removal. Whether this matter is dealt with in the Authority or the Court it will occupy considerable investigation/hearing time and there will be a need for the Authority or Court to be involved, in all likelihood, in matters of an interlocutory nature before hearing or investigation. These are not factors sufficient on their own to favour removal. I do not find the likelihood of a challenge as a factor that would favour removal to the Court.

[17] Ms Gibson submits that if the matter is removed it will take away the respondent's right to have the personal grievance claim dealt with by the Authority which would, in all likelihood, result in a significantly reduced hearing time and less associated costs. She submits that the facts relied on by the applicant are applicable to many cases that are determined by the Authority on a day-to-day basis.

[18] I do not accept that the facts relied on by the applicant in this case are applicable to the cases that the Authority determines on a day-to-day basis. Ms Coy's case involves consideration of historical issues and there are issues in relation to disclosure. It may well be, as submitted by Ms Gibson, that the scope of the substantive hearing could be reduced if it is found in relation to any historical matters that Ms Coy has not raised the personal grievance claim within the requisite time. There is no certainty, though, about that matter.

[19] Ms Fairclough submits that Ms Coy has spent a number of years trying to obtain disclosure of documents. There has been piecemeal disclosure, often only when the office and powers of the Privacy Commissioner have been brought to bear, but disclosure is still incomplete. Mr Fairclough submits that the Court has more prescriptive powers in relation to discovery of documents than the Authority and that is a factor favouring removal in this case. Ms Gibson submits that discovery is not a valid reason for the Authority to exercise its discretion to remove the matter to the Court and that the respondent would cooperate in the provision of documents.

[20] The benefit of discovery from the early stage of proceedings is that it gives the parties an opportunity to assess the strengths and weaknesses of both their own case and that of the other party. Discovery of documents in Ms Coy's case has to be considered in light of the historical nature of her claim and the fact that some personnel involved in the matter have since departed from the Police.

[21] Whilst Mr Fairclough has, quite properly, in his application for removal said that no complex issues of law are likely to arise, there is a possibility that documents/information disclosed as a result of the discovery process may have a bearing on interpretation and application of Police general instructions. In the circumstances of this case I am of the view that more prescriptive

procedures and powers in respect of discovery in the Court is a factor favouring removal to the Court.

[22] Ms Coy makes serious allegations with respect to her treatment whilst she was employed as a Constable. There is, in my view, public interest in how Ms Coy was treated and whether it was in accordance with the Police general instructions. I consider that the public interest in this matter is a factor favouring removal in this case.

[23] The circumstances in relation to this case relied on by the applicant would not, on their own, be sufficient for the Authority to exercise its discretion to remove the matter to the Court. Considered together, however, I am satisfied that the Authority should exercise its discretion in favour of removing the matter to the Court.

Determination

[24] This matter is to be removed in its entirety to the Employment Court under s.178(2)(d) of the Employment Relations Act 2000.

Costs

[25] Costs are reserved and will no doubt be dealt with by the Court when it considers it appropriate to do so.

Helen Doyle
Member of Employment Relations Authority