

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 135
5470310

BETWEEN

BRENDA COOKE,
DENISE HERBERT,
JENNY PICKERING,
CAROLYN PRITCHARD and
GILLIAN REED
Applicants

A N D

KINGS COLLEGE BOARD OF
TRUSTEES
Respondent

Member of Authority: Rachel Larmer

Representatives: Peter Cranney, Counsel for Applicants
Shan Wilson, Counsel for Respondent

Date of Investigation Meeting: On the papers

Date of Determination: 12 May 2015

DETERMINATION OF THE AUTHORITY

A Matter 5470310 is removed to the Employment Court in its entirety pursuant to s.178(a) of the Employment Relations Act 2000

Employment Relationship Problem

[1] The parties have jointly applied to the Authority to remove this matter to the Employment Court at Auckland for hearing and determination. The removal application is made in reliance on s.178(a) and (d) of the Employment Relations Act 2000 (the Act).

[2] Section 178(a) of the Act allows the Authority to order removal of a matter to the Employment Court if an important question of law is likely to arise in the matter, other than incidentally. The parties submit that this matter involves a potentially complex and novel question of law involving the value of the applicants' accommodation and utilities costs and the effect that value has on the respondent's compliance or otherwise with the Minimum Wage Act 1983 (MWA).

[3] The parties say that the role and significance of accommodation and payment of utility costs was not a point substantively argued by the defendants in *Law and Ors v. Board of Trustees of Woodford House and Ors*¹ and has therefore not been previously determined by the Court. It will therefore involve new law.

[4] The parties also submit that s.178(d) of the Act applies because:

- (a) A significant sum of money is involved;
- (b) The parties jointly hold the view that an appeal is inevitable and that either or both may suffer a disadvantage by having to have their case heard twice if it is heard by the Authority in the first instance;
- (c) Other parties in the education sector are likely to benefit from a decision of the Employment Court in relation to the question of law involved.

[5] I am satisfied that the parties have established that this matter falls within the criteria specified in s.178(a) and (d) of the Act. The gateway criteria has been met so it is now necessary to turn to the Authority's residual discretion to determine whether or not there are any factors which warrant not removing this matter to the Employment Court.

[6] I am not aware of any considerations which favour declining removal. The parties did not identify any factors which make it undesirable to remove this particular case, nor am I aware of any.

[7] I accept the parties' submissions that consideration of the question of law in this matter will have a potential impact on a significant number of employees, employers and Unions and that there are significant sums of money potentially involved.

[8] The parties also say that although currently only private schools have subject to similar (formal) claims, the decision in this matter will also potentially affect public schools which have boarding hostels. Therefore with the large potential liability exposure (up to six years' back pay if the applicants' succeed with their claims) the determination of this matter has potentially serious fiscal implications for not only these parties but also others in a similar situation to these parties.

[9] I agree that it is desirable for there to be early guidance from the Employment Court on an issue that remains uncertain following *Woodford House* decision, particularly in respect of the impact of the minimum wage requirements in the MWA on an employer that is providing accommodation and paying utility costs for employees.

¹ [2014] NZEmpC 25

[10] Given this is a joint application I do not consider that either party would be unfairly deprived of one general right of appeal.

[11] I am therefore satisfied that this is an appropriate matter for the Authority to exercise its discretionary to remove the matter in its entirety to the Employment Court to determine in the first instance.

Outcome

[12] I order that matter 5470310 is removed to the Employment Court in its entirety pursuant to s.178(a) and (d) of the Employment Relations Act 2000.

Costs

[13] Because this is a joint application I do not consider it appropriate to award costs. Costs therefore lie where they fall.

Rachel Larmer
Member of the Employment Relations Authority