

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
ER AUTHORITY WELLINGTON OFFICE**

BETWEEN Department of Prime Minister and Cabinet
AND Robert Sissons-Stretch
REPRESENTATIVES Bruce Corkill for Applicant
Francis Cooke for Respondent
MEMBER OF AUTHORITY G J Wood
INVESTIGATION
MEETING By way of submissions received by 17 July 2006
DATE OF
DETERMINATION 17 July 2006

DETERMINATION OF THE AUTHORITY

1. The respondent, Mr Sissons-Stretch, seeks to have the employment relationship problem between himself and the applicant, the Department of Prime Minister and Cabinet, as self-identified, (hereinafter referred to as the DPMC), removed to the Employment Court under s.178(2)(a) and (d). The question of law is said to be the extent to which mediated settlement agreements can be entered into where the parties were operating under a mistake and, in particular, whether the Contractual Remedies Act 1979 and Contractual Mistakes Act 1977 may apply.
2. Mr Sissons-Stretch also argues that it is almost inevitable that the matter would be challenged in the Court given the questions of law involved, and that there can be no promises of an urgent decision from the Employment Relations Authority.
3. On behalf of the DPMC, Mr Corkill neither consented to nor opposed the application. The DPMC considers that the matter is a straightforward one of interpretation of the settlement agreement, although it accepts that there is an important question of law that may arise in relation to the claim for statutory relief.

4. It was also submitted that it was not inevitable that any determination by the Authority would be challenged. In essence the DPMC considered that the removal application would need to be decided by the Authority in its residual discretion.
5. This matter has arisen as a result of a disputed interpretation of a mediated settlement between the parties. I determined not to order mediation on the matter because, on the advice of the parties' representatives, I am satisfied that it would not contribute constructively to resolving the matter.
6. I have previously determined that the question of the applicability of other statutory remedies in relation to a s.149 settlement was in fact an important question of law in *Timmins v. Asure New Zealand Limited* (unreported, WA 73/05, 9 May 2005). As I noted in that determination, I was unaware of any decisions by the Court over that question, which was potentially further complicated by the provisions of s.149(3)(ab).
7. Unfortunately, no judgment has been made on the case referred to above, and it therefore remains that this unsettled question has potential implications for a wide range of employees and employers. Therefore an important question of law is likely to arise in this matter other than incidentally.
8. I do not accept that there are grounds for removal under s.178(2)(d), however. The Authority is able to deal with the matter speedily and issue a determination speedily. The prospect of a challenge is irrelevant, as all parties have that right in most circumstances.
9. As I have determined above, however, that grounds for removal do lie under s.178(2)(a), the Authority must then determine, in its overall discretion, whether to remove the proceedings to the Court. In so doing it should not be astute in finding reasons not to do so.
10. I do not accept that there is a great deal of urgency in this matter, as the payment of interest may cover any further costs that Mr Sissons-Stretch would incur while waiting for a determination by the Authority or a judgment from the Court.

11. There is, however, no particular benefit in having the Authority deal with the matter first and there are no other factors which justify declining the application for removal.
12. In the Authority's overall discretion therefore, I order the removal of the employment relationship problem between the Department of Prime Minister and Cabinet and Robert Sissons-Stretch, filed in the Authority as 5043192, to the Employment Court for it to hear and determine it without the Authority investigating the matter.

G J Wood
Member of the Employment Relations Authority