

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2012] NZERA Auckland 151
5354352**

BETWEEN FUGRO PMS PTY LTD &
PAVEMENT SERVICES LTD
Applicant

AND BRYCE TINKLER
Respondent

Member of Authority: Eleanor Robinson

Representatives Caroline McLorinan, Counsel for Applicant
Mark Ryan, Counsel for Respondent

Investigation Meeting On the papers

Determination: 07 May 2012

DETERMINATION OF THE AUTHORITY ON A PRELIMINARY MATTER

Employment Relationship Problem

[1] In a Statement of Problem filed with the Authority on 24 August 2011 the Applicant, Fugro PMS Pty Ltd & Pavement Management Services, (“Fugro”), sought compliance by the Respondent, Mr Bryce Tinkler, with a mediated settlement agreement (“the Record of Settlement”) which had been entered into by the parties on 1 July 2011.

[2] On 12 September 2011 the Respondent, Mr Bryce Tinkler, had filed a Statement in Reply asserting that the Record of Settlement had been signed by him under duress.

[3] The issue of whether the Record of Settlement had been obtained by duress was heard by the Authority as a preliminary matter on the papers. The matter had been determined by the Authority in favour of Fugro in a determination issued on 28 November 2011.

[4] On 20 December 2011 a joint memorandum from the parties was filed requesting that the substantive matter be heard and costs for the preliminary matter reserved.

[5] On 21 December 2011 the Authority issued a minute recording the parties’ agreement to have the original application for a compliance order heard on the papers.

[6] However on 20 December 2011, Mr Tinkler had, in addition to the joint memorandum which had been filed in the Authority, filed a challenge to the preliminary matter in the Employment Court seeking a full hearing de novo.

Issues

[7] The Respondent seeks an order for removal to the Employment Court pursuant to s 178(2) of the Employment Relations Act 2000 (“the Act”), on the grounds that:

c. The court already has before it proceedings which are between the same parties and which involve the same or similar or related issues.

d. The Authority is of the opinion that in all the circumstances the court should determine the matter.

[8] Mr Tinkler is in agreement with Fugro’s application for removal.

Determination

[9] In its application for removal Fugro has outlined its concern regarding the ongoing nature of the proceedings, given the behaviour of Mr Tinkler in agreeing to the substantive matter being heard by the Authority and filing the de novo application the Employment Court on the same day. I consider this to be a reasonable concern on the part of Fugro.

[10] It is not necessary for the Authority to consider whether the grounds for removal as set out in s178(2)(a) and (b) have been established, as it is clear that the grounds supporting a removal to the Employment Court as set out in s 178(2) (c) and (d) of the Act have been established.

[11] Accordingly the Authority determines that the entire matter before it is removed to the Employment Court.

Costs

[12] Costs are reserved. Any party seeking an order for costs shall have 28 days from the date of this determination in which to file and serve a memorandum on the other. The other party shall have a further 14 days in which to file and serve a memorandum in reply.

Eleanor Robinson
Member of the Employment Relations Authority