

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

**[2020] NZERA 129  
3091892**

BETWEEN

IGOR GRIGOROVICH  
Applicant

AND

PRECISE LIMITED  
Respondent

Member of Authority: Eleanor Robinson  
Representatives: Applicant in Person  
Simon Martin Counsel for the Respondent  
Investigation Meeting: On the papers  
Determination: 25 March 2020

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The Applicant, Mr Igor Grigorovich, seeks an order for removal to the Employment Court pursuant to s 178(2) of the Act, on the grounds that:

- a. an important question of law is likely to arise in the matter other than incidentally;
- b. the case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the court; or...
- c. the court already has before it proceedings which are between the same parties and which involve the same or similar or related issues; case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the court;
- d. the Authority is of the opinion that in all the circumstances the court should determine the matter.

[2] The Respondent opposes the removal of this matter to the court.

## **Brief Background Facts**

[3] Precise is an IANZ Accredited Laboratory specialising in providing consultancy services including in asbestos testing and surveys, hazardous materials management, and methamphetamine testing.

[4] Mr Grigorovich commenced employment with Precise on 22 January 2018 as a Trainee HAZMET Consultant.

[5] Mr Grigorovich claims that he attempted to re-negotiate a new agreement with Precise following a restructure of Precise's administration processes and in retaliation that Precise took disciplinary action against him, up to and including the termination of his employment.

[6] Following a raising of a disciplinary matter with Mr Grigorovich and a formal investigation procedure, Mr Grigorovich's employment was terminated for serious misconduct on 5 March 2019.

[7] Mr Grigorovich filed a statement of problem with the Authority on 2 May 2019 (subsequently amended 23 May 2019) claiming unjustifiable dismissal and unjustifiable disadvantage.

### *Submissions by the Applicant*

[8] Mr Grigorovich submits that the matter should be removed to the Employment Court on the basis that the Authority Member who has been dealing with this matter:

- (a) Failed and/or neglected its duty to treat him in good faith thereby severely prejudicing his position;
- (b) Acted in bad faith by not ordering the Respondent to produce various documents and/or by advising that a matter of alleged telephone harassment would be addressed at a teleconference, and subsequently advising that the matter was outside of the Authority's jurisdiction;
- (c) Not allowing the Applicant to discuss: "false allegations" made by the Respondent's counsel at a teleconference;

And:

- (d) The Court has proceedings before it involving the same parties and involving similar or related matters.

*Submissions by the Respondent*

[9] The Respondent submits that:

- (a) There is no important question of law likely to arise in this matter. The fundamental matter for the Authority to determine is an alleged personal grievance for unjustifiable dismissal. While the question of whether or not the Applicant's dismissal was justified is of importance to these proceedings, but it is of no greater significance in employment law generally and will not have a broad effect on other parties.
- (b) The nature of the Applicant's proceedings are not such that it is in the public interest for them to be removed to the Employment Court. There is no important question of law, and there is no urgency attached to the Applicant's proceedings. Noting regarding the latter submission that the Applicant has failed to meet Authority deadlines for the filing of witness statements and relevant information.
- (c) The matter currently before the Employment Court concerns the Authority's decision not to join another party to the present proceedings. That matter is limited to a procedural aspect of these proceedings and not related to the substantive matter between the parties.
- (d) It is submitted there is no need for the Authority to exercise its general jurisdiction to remove this matter to the Employment Court. This particular case is best suited for resolution by use of the Authority's investigative processes, rather than the more formal adversarial processes in the Employment Court.
- (e) Further that there are cost implications to the more formal step in the Employment Court, and given the history of these proceedings it is submitted that any step that may unnecessarily increase the parties' costs should be avoided if possible.

**Should the application for removal be granted?**

- (i) *On the basis of s 178(2)(a) of the Act?*

[10] The substantive matter before the Authority is a claim for unjustifiable dismissal and unjustifiable disadvantage. These are areas in which the law and the principles are well established. I find that there is no important question of law likely to arise in the matter other than incidentally.

[11] I do not find that removal should be granted pursuant to s 178(2)(a) of the Act.

*(ii) On the basis of s 178(2)(b) of the Act?*

[12] The Authority is an investigative body and I find that the substantive issues before the Authority of unjustifiable dismissal and unjustifiable disadvantage are factual areas of a nature that is appropriately dealt with by the Authority and which the Authority has been statutorily charged with investigating.

[13] I find that there is no urgency in this matter and the issues are not such that it is in the public interest that it be removed to the Court immediately.

[14] I do not find that removal should be granted pursuant to s 178(2)(b) of the Act.

*(iii) On the basis of s 178(2)(c) of the Act?*

[15] The challenge presently before the Court is in relation to an issue of joinder of a third party to the proceedings before the Authority.

[16] That issue is procedural in nature and will not affect the determination of the substantive matter before the Authority.

[17] I do not find that removal should be granted pursuant to s 178(2)(c) of the Act.

*(iv) On the basis of s 178(2)(d) of the Act?*

[18] Pursuant to s 178(2)(d) of the Act I have discretion whether or not to remove the matter to the Employment Court. Such discretion should be used in a principled manner.

[19] After carefully considering this matter I determine pursuant to s 178(2)(d) that this is not a case in which to exercise my discretion by removing the matter to the Employment Court.

[20] In summary, I do not find that the grounds for removing a matter to the Employment Court pursuant to s 178(2) of the Act have been satisfied.

[21] In these circumstances I decline to order the removal of this matter to the Employment Court.

### **Next Steps**

[22] Following the outcome of the challenge before the Court the Authority will contact the parties to arrange a case management call to progress Mr Grigorovich's substantive claims.

### **Costs**

[23] I am minded to reserve the issue of costs until resolution of the substantive matter. However if the parties wish to seek costs on this interlocutory matter, the Respondent may lodge and serve a memorandum as to costs within 28 days of the date of this determination. The Applicant will have 14 days from the date of service to lodge a reply memorandum. No application for costs will be considered outside this time frame without prior leave.

[24] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**