

2013, found for Mr Hassan and Hamilton Taxi has now challenged that determination in the Employment Court, seeking a full *de novo* hearing.

[3] It follows that the Court already has before it proceedings between these two parties traversing the same or similar issues to the ones in consideration here, as s.178(2)(c) of the Employment Relations Act 2000 (the Act) contemplates.

[4] By agreement between the parties after a teleconference with the Authority, this application is dealt with on the papers.

Determination

[5] It is apparent that even if one of the grounds for removal is made out, the Authority still has a discretion not to order removal: *NZEPMU Inc v. Carter Holt Harvey Ltd* [2002] 1 ERNZ 74.

[6] However, in the particular circumstances of this case, the Authority is satisfied that the interests of justice are best served by the matter being removed to the Court. The bulk of the dispute between these parties is already before the Court by way of the *de novo* challenge brought by Hamilton Taxi. That determination referred in passing to the then counterclaim by Hamilton Taxi that Mr Hassan had effectively paid himself a higher salary than was approved by the board of directors of Hamilton Taxi, but the Authority did not deal definitively with the issue. The Authority ought to have dealt with the matter more explicitly in the original determination. That omission is regretted.

[7] Mr Hassan has yet to formally respond to the substantive allegations against him and has not, for example, filed a statement in reply. That notwithstanding, the Authority is satisfied after the telephone conference it conducted with Mr Hassan and counsel for Hamilton Taxi that Mr Hassan opposes the Hamilton Taxi claim.

[8] Because Mr Hassan has, to date anyway, acted for himself in respect of this whole proceeding, there has been some difficulty in Mr Hassan complying with directions. An example is his failure to file a statement in reply in respect of this particular matter. The Authority is satisfied that Mr Hassan simply misunderstood his obligations because there was a proceeding in the Court as well as another in the Authority.

[9] Of course, the difficulties posed by the failure by one party to comply with directions is effectively visited on both the Court or Tribunal and the opposing party. Counsel for Hamilton Taxi is to be commended for her efforts in endeavouring to assist the process by explaining to Mr Hassan via email what the position is.

[10] In all the circumstances, the Authority is satisfied that the best interests of justice are served by this matter being removed to the Court for the Court to hear and determine, without the Authority investigating the matter.

[11] The Authority is satisfied that it will smooth the process of getting resolution of this particular issue by having it joined with the proceeding that the Court is already seised of where, as the Authority has noted already, there is reference to the issue in any event.

Costs

[12] Costs are reserved.

James Crichton
Member of the Employment Relations Authority