

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 305
5426961

BETWEEN	GREG HARRINGTON Applicant
A N D	FLAVOUR CREATIONS PTY LIMITED First Respondent
A N D	BERNADETTE ERIKSEN Second Respondent

Member of Authority: Rachel Larmer

Representatives: Claire Mansel, Counsel for Applicant
Sian Wilson, Counsel for First and Second Respondents

Investigation Meeting: On the papers

Submissions Received: 19 June 2014 from Applicant
09 July 2014 from Respondents

Date of Determination: 15 July 2014

DETERMINATION OF THE AUTHORITY

A. Mr Harrington's application to have his substantive matters removed to the Employment Court is declined.

Employment relationship problem

[1] Mr Harrington applies under s.178 of the Employment Relations Act 2000 (the Act) for the whole of his employment relationship problem to be removed to the Employment Court. The application for removal is opposed by both respondents.

[2] Mr Harrington's substantive claims are still currently before the Authority but they have been adjourned *sine die* pending the outcome of both respondents' challenge to the Authority's preliminary determination on the jurisdiction issue, which

was resolved in Mr Harrington's favour. This means that Mr Harrington's substantive matter will not be heard by the Authority until the Employment Court has dealt with the challenge.

Issues

[3] The following issues require determination:

- (a) Do any of the grounds for removal under s.178 of the Act apply?
- (b) If so, should the Authority exercise its discretion to remove the entire matter to the Employment Court?

[4] Mr Harrington's submissions do not make it clear what subsection in s.178(2) of the Act he seeks to rely on. By implication, I assume it is s.178(2)(c) which potentially applies where the Court already has before it proceedings involving the same parties "*which involve the same or similar or related issues*".

[5] I acknowledge that the Employment Court currently has a matter before it involving the same parties but I accept Ms Wilson's submission that the jurisdiction issue is a separate and discrete matter (much in the same way as a challenge to an interim reinstatement determination is discrete and separate from a substantive investigation into an employment relationship problem) than the investigation of the substantive matter.

[6] I am therefore not satisfied that Mr Harrington's matter falls within s.178(2)(c) or for that matter any of the other possible grounds in s.178(2) of the Act because the matter before the Employment Court does not involve the same or similar or related issues.

[7] If the mere fact that a challenge has been filed bought a matter automatically within s.178(2)(c) of the Act, then many matters may need to be removed. That is inconsistent with the scheme of the Act.

[8] The Employment Court has also made it clear that personal grievances are to be dealt with by the Authority in the first instance in all but the very few cases which satisfy one of the grounds in s.178(2) of the Act.¹ Removing Mr Harrington's

¹ *Vice Chancellor of Lincoln University v. Stewart (No.2)* [2008] ERNZ 249

substantive claims to the Employment Court to be dealt with in the first instance will also deprive all parties of one level of challenge and I consider that is undesirable.

[9] Mr Harrington is concerned about the potential delay and cost associated with having to revert to the Authority if the challenge to jurisdiction does not succeed. He therefore prefers to have all aspects of his employment relationship problem dealt with by the Employment Court in first instance.

[10] Such concerns may apply to many parties involved with challenges which arise from a determination which has been issued by the Authority which is not a substantive determination of the underlying matter. The Employment Court provides clear guidance in *Abernethy v Dynea New Zealand Ltd*² about what jurisdiction is appropriate to hear the substantive matter when challenges are filed.

[11] On the basis of that guidance it is clear that notwithstanding Mr Harrington's concerns about costs and delay his substantive matter must stay with the Authority as the preliminary determination was in his favour so did not dispose of the matter before the Authority. His claims which are currently before the Authority must remain here.

[12] Having determined that Mr Harrington's proposed grounds for removal do not fall within one of the specified grounds in s.178(2) of the Act there is no basis on which the Authority's discretion to remove may be exercised. Accordingly, Mr Harrington's application for removal does not succeed.

Costs

[13] Costs are reserved pending the outcome of the substantive matter.

Rachel Larmer
Member of the Employment Relations Authority

² [2007] ERNZ 271.