

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 372
3018214

BETWEEN

A LABOUR INSPECTOR
OF THE MINISTRY OF
BUSINESS, INNOVATION
AND EMPLOYMENT
Applicant

AND

PRABH LIMITED
Respondent

Member of Authority: Nicola Craig
Representatives: Alastair Dumbleton for the Applicant
Stephen Clews for the Respondent
Investigation Meeting: On the papers
Determination: 4 December 2017

DETERMINATION OF THE AUTHORITY

- A. This matter is removed in its entirety under s 178 of the Employment Relations Act 2000 for the Employment Court to hear and determine without first being investigated by the Authority.**

Employment relationship problem

[1] A Labour Inspector of the Ministry of Business, Innovation and Employment, Christine McLean, claims that Prabh Limited breached the Minimum Wages Act

1983, the Holidays Act 2003 and the Employment Relations Act 2000 (the Act). Penalties are sought for breaches. Prabh Ltd admits various breaches of those pieces of legislation and has made an arrangement to pay arrears of minimum wages, holiday pay and interest to the workers concerned. The Labour Inspector continues to pursue penalties.

[2] The Labour Inspector has sought removal of these proceedings to the Employment Court on the basis that the Court already has before it proceedings which are between the applicant and respondent and which involve similar issues and related issues. Prabh Ltd consents to the removal application.

[3] The parties agreed to have the removal application determined on the papers.

Removal to the Court

[4] For the reasons set out below, I have reached the view that this matter should be removed to the Employment Court for hearing and determination. My decision is based on the provisions of ss 178(1) and 178(2)(c) of the Act.

[5] I have received the Statement of Claim from the Court proceedings. The case concerns the Labour Inspector and Prabh Ltd and deals with the same employment relationships as the Authority case. The Labour Inspector seeks orders in the Court under Part 9A of the Act which may only be made for breaches and non-payment occurring on or after 1 April 2016 when Part 9A came into force. If breaches are found to be serious, the Court has first-instance jurisdiction to make orders under Part 9A.

[6] If the breaches in the relevant period are found not to be serious, then upon removal the Court will be able to make orders under s 135 of the Act exercising the Authority's jurisdiction to order penalties against the respondent for simple breaches, including those which occurred before 1 April 2016.

[7] Removal avoids the possibility of the Authority and the Court both having to determine whether breaches of the Minimum Wage Act and the Holidays Act occurred from 1 April 2016 in the same employment relationships.

[8] I consider that the Court should hear all matters so that the issues can be addressed in a rational and cost effective manner.

Nicola Craig
Member of the Employment Relations Authority