

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 94/08
5127806

BETWEEN MEMO MUSA
 Applicant

AND WHANGANUI DISTRICT
 HEALTH BOARD
 First Respondent

AND CLIVE SOLOMON
 Second Respondent

Member of Authority: G J Wood

Representatives: Gerard Dewar for the Applicant
 Peter Churchman for the First Respondent
 Kenneth Johnston for the Second Respondent

Investigation: By consideration of papers received by 10 July 2008

Determination: 11 July 2008

DETERMINATION OF THE AUTHORITY

[1] The applicant, Mr Musa, claims that a settlement agreement he reached with the first respondent, the Whanganui District Health Board (the DHB), has been breached by it through the actions of the second respondent, Mr Solomon, who is a member of the DHB's Board.

[2] Mr Solomon agrees with Mr Musa's claim that an important question of law is likely to arise other than incidentally in this matter and that the matter be removed to the Employment Court under s.178.

[3] The DHB describes the question of law as being whether it is vicariously liable to Mr Musa for the actions of Mr Solomon in circumstances where Mr Solomon was not authorised to act on behalf of the DHB and did not purport to do so. The DHB claims that it is unaware of any decision of either the Authority or the Court which has directly considered this point. The DHB does not oppose the application accordingly.

[4] While Mr Musa has raised several purported important questions of law, I consider that the DHB summation is the best exposition of the issues in question. I agree with the DHB's assessment that this is a question of law that has not been directly considered by the Employment Court or even the Employment Relations Authority. It is an important question of law as it could apply to all bodies governed by a Board. It is also clearly central to the determination of the matters in issue and not merely incidental to them. Furthermore, given that three senior counsel are essentially in agreement over this application, the Authority should be slow to find otherwise. It therefore follows that grounds for removal have been made out under s.178(2)(a).

[5] The Authority has, however, a residual discretion not to remove a matter even where grounds for removal have been made out. In this case, issues of mediation and a *cross-claim* by the second respondent against the first respondent and (possibly) issues relating to non-publication orders have not been addressed. These are matters, however, that can be just as easily dealt with by the Court as the Authority. There are no other factors that would mitigate in favour of the Authority dealing with the employment relationship problem at first instance.

[6] I therefore order the removal of the employment relationship problem between Memo Musa and the Whanganui District Health Board and Clive Solomon (recorded as 5127806) to the Employment Court for the Court to hear and determine without the Authority investigating the matter.

G J Wood
Member of the Employment Relations Authority