

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 49/09
5136412

BETWEEN

MARY MACFARLANE
Applicant

AND

CANTERBURY DISTRICT
HEALTH BOARD
Respondent

Member of Authority: Paul Montgomery

Representatives: Amy Shakespeare, Counsel for Applicant
Penny Shaw, Advocate for Respondent

Submissions received: 7 April 2009

Determination: 16 April 2009

PRELIMINARY DETERMINATION OF THE AUTHORITY

[1] The respondent, by its representative, seeks an order from the Authority that the applicant withdraw her notice of dispute with the respondent on the grounds that:

- The applicant has no standing to bring a claim of dispute about the agreement under s.129(1) of the Employment Relations Act 2000; and
- The applicant has failed to comply with the requirements of s.129(2) of the Employment Relations Act 2000 regarding the giving of notice; and
- There is no dispute or problem in relation to the applicant's entitlement to annual or long service leave.

[2] Ms Shakespeare accepts that the collective employment agreement had expired by the time the dispute was initiated but that insofar as historical obligations are concerned, Mrs Macfarlane remains a *person bound by the agreement*. Further, she submits that, in spite of the expiry of the collective agreement, the CDHB and

PSA continued to be parties to that agreement. Those parties continue to have standing as parties despite the expiry of that particular agreement.

[3] In respect of the applicant's standing, Ms Shakespeare submits that as Mrs Macfarlane was bound by the collective while it was in force, she must have standing to bring a dispute in relation to that collective.

[4] Counsel for the applicant states that the PSA is aware of the dispute and submits that the criteria set out in s.129(2) of the Act is fulfilled and that hence notice of this dispute to the Union has been effected. On the matter of the applicant providing insufficient evidence, Ms Shakespeare attached to her submission three documents which she submits are material to the applicant's claim.

[5] On behalf of the respondent, Ms Shaw submits the applicant is not and cannot be bound by an agreement that has expired and is thus unable to pursue a dispute in respect of that agreement. Further, she submits that there must be a dispute in relation to a **current** employment agreement.

[6] Ms Shaw also submits that a dispute cannot proceed where notice has not been given to a party to the agreement, in this case the PSA. Ms Shaw submits that an email exchange two years ago is not notice as contemplated by s.129(2) and asks whether the PSA does have notice of the proceedings currently before the Authority.

[7] In respect of the alleged lack of supporting evidence for the applicant's claims, Ms Shaw submits that the applicant, having claimed for unjustified disadvantage, has not set out the grounds of that claim, the terms of her employment that have been affected nor details of the disadvantage or loss which she has allegedly suffered. Further, Ms Shaw submits that the applicant has failed to provide evidence to support a claim either that she accrued entitlements, what these entitlements were, and to what extent these entitlements were used by her during her various periods of employment or that, upon ceasing and recommencing employment, any entitlements carried over. The applicant, submits Ms Shaw, does not address the issues of whether those entitlements transferred and what those entitlements were.

[8] Finally, the advocate for the respondent submits that the principles of natural justice require the respondent to be put on notice of the basis of the claim, has available to it the applicant's evidence in support of those claims and that such evidence will be sufficiently detailed to enable the respondent to identify the events

relating to the applicant's claim in order to respond effectively. Specifically, the respondent seeks an order that the applicant provide detailed evidence in relation to the terms of employment and other evidence on which she will rely to claim a transfer of entitlement from as early as 1991 and also the representations which she claims were made to her on behalf of the respondent in relation to the transfer of accrued entitlements.

Determination

[9] In relation to the issue of standing, I accept the submission of Ms Shakespeare in respect of Mrs Macfarlane remaining *a person bound by the agreement* and it would be a nonsense for the Authority to exclude her from seeking resolution of a dispute under the terms of the collective when the PSA and CDHB continue to have such standing.

[10] In respect of notice to the PSA under s.129(2), while it appears the PSA which remains a party having standing in this dispute, is aware of the applicant's claim, counsel for the applicant is directed to formally notify the PSA forthwith of the matter proceeding in the Authority.

[11] With regard to the applicant's evidence in support of her claim being *oblique*, it is sufficiently clear to the Authority that Mrs Macfarlane's claims hinge, at least in part, on the assurances she says she was given by Mr Chris Taylor prior to accepting the position. That issue is able to be rebutted by the respondent presenting evidence from Mr Taylor or having him available to be questioned by the Authority either in person or by teleconference.

[12] The Authority and the respondent will be assisted by having counsel advise promptly the quantum sought by the applicant in respect of her personal grievance claim.

Costs

[13] Costs in respect of this application are reserved.