

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 75/10
5303477

BETWEEN RAVI SHANKAR MANGAR
Applicant

AND SOUTH WAIRARAPA
DISTRICT COUNCIL
Respondent

Member of Authority: G J Wood

Representatives: Michael O'Brien for the Applicant
Michael Quigg for the Respondent

Investigation Meeting: By way of submissions received by 23 April 2010

Determination: 23 April 2010

DETERMINATION OF THE AUTHORITY

[1] The applicant, Mr Mangar, has applied to have the employment relationship problem filed as number 5303477, between him and the respondent, the South Wairarapa District Council, removed to the Employment Court for it to hear and determine the matter, pursuant to ss.178(2)(c) and (d). The District Council does not oppose the application.

[2] The issues for determination are whether the grounds for removal, namely that the Court already has before it proceedings which are between the same parties and involve similar or related issues and/or a positive use of the Authority's discretion *in all the circumstances* are made out and if so, whether in its residual discretion the Authority should still remove the matter to the Court.

[3] The Employment Relations Authority has already determined proceedings relating to the restructuring process initiated by the District Council affecting Mr Mangar which, at the time of its determinations, had not been fully implemented.

[4] Mr Mangar has challenged at least two parts of the Employment Relations Authority's determinations, i.e. that his position was substantially different from a new position the District Council has established and that Mr Mangar had no grounds for a personal grievance claim for unjustified disadvantage, nor a claim for breach of good faith.

[5] Subsequent to the Authority's determinations Mr Mangar was made redundant and therefore dismissed. He has subsequently brought a personal grievance for unjustified dismissal, which will involve an investigation into whether or not his position was substantially different from the new position created by the District Council and whether during the redundancy process he has been treated unjustifiably and/or in breach of the District Council's duties of good faith.

[6] In a Minute dated 21 April 2010 concerning Mr Mangar's challenge, Travis J noted that the District Council did not object to Mr Mangar's application to file a second amended statement of claim which pleads, for the first time, that he was unjustifiably dismissed. The Judge noted:

This was not a matter before the Employment Relations Authority and cannot be addressed for the first time in a de novo challenge. The Authority has the originating jurisdiction.

If the parties wish to have this matter before the Court on 19 May a statement of problem and consent application for removal, plus an application for urgency will need to be filed in the Authority.

[7] Hence this application, although technically the application was not consented to by the District Council. I accept that this matter clearly meets the criterion that the Court already has before it proceedings which are between the same parties and which involve similar or related issues, in that the dismissal followed naturally as a matter of consequence from the process the District Council undertook and to which Mr Mangar had objected in the Authority.

[8] There are no reasons, particularly as the District Council has not opposed removal, for the matter not to be removed to the Court. Indeed removal will aid the parties to have all issues between them fully heard by the Court and will therefore avoid additional costs to the parties, the Authority and the Court.

[9] Because of my findings on this first ground for removal, I do not need to address the second ground for removal.

[10] I therefore order the removal of the whole of the whole of the relationship problem (recorded as file number 5303477) between Ravi Shankar Mangar and the South Wairarapa District Council to the Employment Court for it to hear and determine, without the Authority investigating the matter.

[11] Finally, I note that because of the urgency of the matter, I have determined this application without directing mediation, but leave that for the Court to consider.

G J Wood
Member of the Employment Relations Authority