

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Henry Nee Nee (First Applicant)
AND Ray Allen (Second Applicant)
AND Clinton Moa (Third Applicant)
AND Jason Ripley (Fourth Applicant)
AND Sam Pene (Fifth Applicant)
AND Tuiaki Lekasa (Sixth Applicant)

AND TLNZ Auckland Limited (Respondent)

REPRESENTATIVES Simon Mitchell, counsel for applicants
Michael Sharp, counsel for respondent

MEMBER OF AUTHORITY Alastair Dumbleton

CONSIDERATION OF PAPERS 10 February 2006

13 February 2006

DATE OF DETERMINATION

DETERMINATION OF THE AUTHORITY

Application for removal of matter to Employment Court

[1] Before the Authority is an application to remove the personal grievance claims of six workers to the Court, for it to hear and determine them without the Authority investigating those particular employment relationship problems.

[2] The removal application is made on behalf of the grievants and is consented to by their former employer the respondent TLNZ Auckland Ltd (TLNZ).

[3] I find that grounds exist under s.178 of the Employment Relations Act 2000 to permit granting the application.

[4] Specifically, there are grounds under s.178(2)(c) of the Act; the Court already has before it proceedings which are between the same parties and which involve the same or similar issues.

[5] The proceedings before the Court are a challenge to a determination of the Authority. That determination was issued on 22 December 2005 under AA 494/05, to resolve an interpretational dispute between the applicants and the respondent.

[6] In its determination the Authority described the dispute as being about;

.....whether it is open to TLNZ to identify and declare redundancies of its permanent employees including its Guaranteed Work Employees.

[7] For the reasons given in its determination the Authority held that redundancies affecting the applicants and others then being proposed by TLNZ, were within the scope of the redundancy clause binding on the applicants as a term of their employment agreement.

[8] The day after receiving the determination TLNZ gave the applicants written notice of dismissal for redundancy. The dismissal letters referred to the Authority determination.

[9] The applicants, who had 28 days in which to do so, filed within that time a challenge in the Court against the Authority's determination. At about the same time they lodged claims in the Authority disputing the justification for their dismissals and seeking reinstatement as an interim remedy.

[10] Although at the time of the dismissals the employer may have acted in reliance on the Authority's determination and otherwise in good faith, if the challenge succeeds it will follow that the dismissals were unjustified, the Court's determination supplanting that given earlier by the Authority. To that extent the challenge may be determinative of the justification issue brought to the Authority, although there are some additional grounds put forward by the applicants in claiming that their dismissals were unjustified.

[11] The Court has advised the parties that it is able to hear the challenge together with their applications for interim reinstatement in only a few weeks time, on 6 March 2006. Removal should not therefore have the effect of consigning the parties to delay in obtaining resolution of the grievances, a factor which may carry some weight in considering a removal application.

[12] In these circumstances all claims outstanding between the parties will be most expeditiously and economically dealt with by the Court alone, rather than being spread between the Court and the Authority.

Determination

[13] Accordingly, the removal application is granted.