

respondent was obliged to accept her choice to transfer to it as the successor company. Ms Olsen says that in failing to accept her choice to transfer the respondent has unjustifiably dismissed her. She also says that representations made to her prior to her alleged dismissal amount to breaches of the duty of good faith, unfair bargaining and breaches of the Fair Trading Act.

[4] The respondent denies an employment relationship existed with Ms Olsen. It denies that she has any basis for the asserted breaches.

The application for removal

[5] The relevant statutory provisions state:

178 Removal to Court

(1) Where a matter comes before the Authority, any party may apply to the Authority to have the matter, or part of it, removed to the Court for the Court to hear and determine it without the Authority investigating the matter.

(2) The Authority may order the removal of the matter, or any part of it, to the Court if –

(a) an important question of law is likely to arise in the matter other than incidentally

...

[4] It is submitted on behalf of Ms Olsen that her employment relationship problem raises important questions of law which flow from the interpretation and application of s69OK:

- (i) the obligations, if any, of a new employer under s69OK, including whether clause 8.1 of the sale and purchase agreement is an arrangement to transfer under s69OK of the Employment Relations Act 2000;
- (ii) Whether a new employer under s69OK has, in circumstances where it has entered into an arrangement in the nature of clause 8.1, any obligation to offer employment to an affected employee;
- (iii) Whether, once a party is defined as a new employer under s69OK it assumes all of the obligations of an employer pursuant to the Employment Relations Act 2000.

[5] Applicant's counsel submits that s69OK is yet to be tested by the Court and, as such, a new question of law will arise, particularly as it relates to the purchaser's obligations, and that the interpretation of s69OK will be directly relevant.

[6] I am referred to *Gibbs v Crest Commercial Cleaning Limited* (CA49/05) where the Authority had no hesitation in granting a removal application concerning the applicability of Part 6A of the Act and specifically s69B.

Determination

[7] The statute provides that the Authority is to determine matters at first instance and should generally do so unless it is satisfied that one of the removal criteria is met and that it is appropriate given the Authority's residual discretion for it to remove the matter.

[8] The resolution of the posed questions of law is central to this employment relationship problem. The question of law is important to the parties and concerns an untested statutory provision with the potential to affect large number of employees and employers.

[9] It is appropriate that I should exercise my discretion and remove this matter to the Employment Court. Accordingly I order the removal of this matter to be heard and determined by the Court.

[10] Costs are reserved.

Marija Urlich

Member of the Employment Relations Authority