



# Employment Court of New Zealand

You are here: [NZLII](#) >> [Databases](#) >> [Employment Court of New Zealand](#) >> [2018](#) >> [\[2018\] NZEmpC 65](#)

[Database Search](#) | [Name Search](#) | [Recent Decisions](#) | [Noteup](#) | [LawCite](#) | [Download](#) | [Help](#)

---

## Wendco (NZ) Limited v Unite Inc. [2018] NZEmpC 65 (8 June 2018)

Last Updated: 8 June 2018

IN THE EMPLOYMENT COURT  
AUCKLAND

[\[2018\] NZEmpC 65](#)  
EMPC 160/2018

IN THE MATTER OF	of an application for an injunction and an interim injunction
AND IN THE MATTER	of an application for urgency
BETWEEN	WENDCO (NZ) LIMITED Plaintiff
AND	UNITE INC. Defendant

Hearing: 8 June 2018  
(heard at Auckland)

Appearances: T Oldfield, counsel for the plaintiff  
P Cranney and S Meikle, counsel for the  
defendant

Judgment: 8 June 2018

### ORAL JUDGMENT OF JUDGE B A CORKILL

#### Introduction

[1] This judgment deals with an urgent interim application relating to picketing by members of Unite Inc. (the Union) on property of Wendco (NZ) Ltd (Wendco).

[2] I have a clear view as to how it should be dealt with. I will deliver a full judgment as soon as possible early next week and outline now only my conclusions in brief form.

[3] I do so on the basis of standard interim injunction principles, which means that the Court's conclusions are interim, the matter having been heard in urgent circumstances, and on the basis that the evidence is untested; thus Wendco is entitled to the benefit of a presumption that evidence which has not been demonstrated to be

WENDCO (NZ) LIMITED v UNITE INC NZEmpC AUCKLAND [\[2018\] NZEmpC 65](#) [8 June 2018]

fundamentally flawed at this stage will be able to be established at a substantive hearing.

#### Jurisdiction

[4] There is a question as to whether the tortious claims made in this proceeding as to picketing and allegations relating to a strike, are caught by [s 99\(3\)](#) of the [Employment Relations Act 2000](#) (the Act). For interim purposes, and for three reasons, I do not consider the claim is statute-barred.

[5] First, Parliament has intentionally distinguished in each of [ss 99\(1\)](#), [99\(2\)](#) and [ss 101](#) and [102](#) of the Act, between strikes and lockouts on the one hand, and picketing, and in the case of [ss 100\(1\)](#) and (2) threatened picketing, on the other. In [s 99\(3\)](#), the bar on proceedings is restricted to one only of these categories, that is, proceedings resulting from or related to “participation in a strike”.

[6] Secondly, this proceeding does not fall within the description given as to strikes and lockouts in [s 99\(3\)](#) of the Act.

[7] Thirdly, the interpretation advanced for the Union would give rise to an outcome which in my view it is inherently unlikely that Parliament could have intended – that is, that there would be no possibility of tortious proceedings relating to picketing being brought where there is a legal strike.

### **Arguable case**

[8] I turn now to arguable case; I am satisfied that Wendco has established this threshold.

[9] First, I am satisfied there is a threat of picketing, having regard to the dicta of Judge Finnigan in *Leonard and Dingley Ltd v New Zealand Waterfront Workers Union Inc*, and after considering all the evidence on this point as summarised by Mr Oldfield.<sup>1</sup>

1. *Leonard and Dingley Ltd v New Zealand Waterfront Workers Union Inc* [\[1989\] NZLabC 176](#); [\[1989\] 1 NZILR 919 \(LC\)](#) at 921.

[10] Secondly, the tort of trespass is made out in respect of Wendco’s property. A legitimate request was made in the letter of 25 May 2018 to the Union and in the notices that were sent out to staff and arguably those directions have not been complied with in two instances.

[11] Thirdly, Wendco’s property, on the evidence, includes all 23 restaurants; picketing on private property cannot be ruled out for any of them in the difficult bargaining circumstances that have arisen.

[12] Given these conclusions it is not necessary for the Court to consider the other alleged torts in any detail.

### **Balance of convenience**

[13] There are significant health and safety issues, especially with regard to the drive-throughs and carpark areas.

[14] There is perhaps a risk of altercation, although this is not a dispositive factor.

[15] Likewise, there could be appreciable impacts for third parties, that is, customers attending any of the 23 restaurants and workers who are not members of the Union.

[16] Although the Union quite rightly emphasises the importance of the right to picket, members of the Union are able to carry out this activity in a lawful way other than on Wendco’s property.

### **Overall justice**

[17] For the reasons contained in Mr Oldfield’s submissions, I am satisfied that overall justice favours Wendco.

### **Disposition**

[18] The Court’s orders are as follows:

- a. Until further order of the Court, Unite Inc (including its officers, employees and agents) are to refrain from being party to or directing, encouraging or inducing its members employed by Wendco to participate in picketing on Wendco’s private property, including but not limited to, its drive-throughs.
  - b. This order is to take effect immediately but it is subject to a condition that Wendco is to provide to the Union by 5.00 pm today a description of its private property in respect of each of its 23 restaurants; a copy of this document is to be filed with the Court.

[19] Costs will be reserved.

