

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2015] NZERA Auckland 143  
5519366

BETWEEN                      JOSEPH YU  
Applicant

AND                              ZESPRI INTERNATIONAL  
LIMITED  
Respondent

Member of Authority:      Vicki Campbell

Representatives:           Philip Skelton for Applicant  
Megan Richards and Cameron Loughlin for Respondent

Investigation Meeting:     On the papers

Determination:              20 May 2015

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**DETERMINATION OF THE AUTHORITY ON APPLICATION FOR  
REMOVAL**

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**A.      The application for removal is granted.**

**B.      Costs are reserved.**

**Removal Application**

[1]      This is an application by the Respondent to remove this matter to the Employment Court without prior investigation by the Authority. The application is made pursuant to the Employment Relations Act (the Act) section 178(2). The application is not opposed by the Applicant.

[2]      The grounds for removal set out in section 178(2) are:

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

- b) the case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the court; or
- c) the court already has before it proceedings which are between the same parties and which involve the same or similar or related issues; or
- d) the Authority is of the opinion that in all the circumstances the court should determine the matter.

**Employment relationship problem**

[3] The Applicant claims the Respondent has breached duties owed by it to the Applicant and that the Applicant was unjustifiably dismissed or has suffered disadvantage by unjustified actions of the Respondent.

[4] The Respondent denies all claims and has raised an issue with respect to whether the Applicant raised his personal grievance within the statutory 90 day period.

**Issues**

[5] The issue for the Authority is whether one or more of the grounds in s.178(2)(a) to (d) of the Employment Relations Act 2000 (the Act) are made out.

**An important and decisive question of law is likely to arise in the matter other than incidentally**

[6] An important question of law is one that will arise other than incidentally. Its importance has to be measured in relation to the case in which it arises and is decisive of the case or some important aspect of it or strongly influential in bringing about a decision of it or a material part of it.<sup>1</sup>

[7] The Respondent submits that the following questions will arise other than incidentally and are important questions of law:

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<sup>1</sup> Hanlon v International Educational Foundation (NZ) Inc [1995] 1 ERNZ 1.

- a) Whether a claim that would otherwise be an unjustified disadvantage claim can be plead as a breach of contract so as to circumvent the statutory time limit for bringing a personal grievance.
- b) In the event that such a claim is allowed to proceed, complex issues of causation, being questions of law, will arise if a breach of contract is established.

[8] I am cognisant that this matter may require findings in relation to decisions and acts of the sovereign state of the People's Republic of China. Whether the New Zealand judiciary has the power to make such enquiry is an important question of law.

[9] On the basis of the material lodged by the parties to date and their respective submissions made on the removal application, I am satisfied one or more important questions of law are likely to arise other than incidentally.

[10] There has also been significant public interest in this matter to date which justifies the exercise of the Authority's discretion to remove the matter.

**The Court already has before it proceedings which are between the same parties and which involve the same or similar or related issues**

[11] The Respondent submits that the Court already has before it an application between these parties. Section 178(2)(c) requires that the matter involve the same or similar or related issues. That test is not met. The proceeding currently before the Court is a challenge to directions of the Authority on the discrete issue of the return of the Applicant's work laptop.

**Should the Authority otherwise remove the matter**

[12] The Employment Court has stated that the scheme of the Act is clear that personal grievances are to be dealt with by the Authority in the first instance in all but the very few cases in which one or more of the grounds in s.178(2) are established.<sup>2</sup>

[13] The parties' opportunity to have the matter dealt with at what is likely to be a lower cost in the Authority and to preserve its statutory right of challenge should not be lightly put aside.

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<sup>2</sup> Vice-Chancellor of Lincoln University v Stewart (No 2) [2008] ERNZ 249 at [43].

[14] The test for removal has been met. It is appropriate for the Authority to exercise its discretion to remove these matters pursuant to sections 178(2) (a) and (d) of the Act and for the Employment Court to hear and determine without the Authority investigating.

**Costs**

[15] Costs are reserved.

Vicki Campbell  
Member of the Employment Relations Authority