



# Employment Court of New Zealand

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## Abernethy v Dynea New Zealand Limited CC13/07 [2007] NZEmpC 83 (10 July 2007)

Last Updated: 21 July 2007

**IN THE EMPLOYMENT COURT**

**CHRISTCHURCHCC 13/07CRC 19/07**

IN THE MATTER OF a challenge to a determination of the Employment Relations Authority

BETWEEN STEPHEN ABERNETHY  
Plaintiff

AND DYNEA NEW ZEALAND LIMITED  
Defendant

Hearing: 18 June 2007

(Heard at Nelson)

Court: Chief Judge G L Colgan Judge B S Travis Judge C M Shaw

Appearances: Nicole Ironside, Counsel for the Plaintiff  
Shan Wilson, Counsel for the Defendant

Judgment: 10 July 2007

### INTERLOCUTORY JUDGMENT OF THE FULL COURT

[1] This judgment deals with the question of what is before the Employment Court on a challenge to a determination of the Employment Relations Authority which has disposed of the litigation on a preliminary point<sup>[1]</sup>. A full Court was convened urgently to decide this preliminary issue of statutory interpretation under the [Employment Relations Act 2000](#) (the Act).

### Background

[2] Mr Abernethy's employment with Dynea New Zealand Ltd (Dynea) became problematic in early 2007. He was demoted in February and, following an accident, was on sick leave for several weeks. During his leave there were settlement negotiations in relation to his personal grievance over the demotion. When he returned to work in March 2007 his employment was terminated. Mr Abernethy raised a personal grievance with his employer alleging

unjustified dismissal and sought interim reinstatement.

[3] On 28 March 2007 Mr Abernethy lodged an employment relationship problem with the Employment Relations Authority. This alleged unjustified disadvantage and unjustified dismissal and sought interim reinstatement to his former role of senior technician with the defendant. Dynea's defence to that grievance pleaded only accord and satisfaction based on the outcome of the earlier settlement negotiations. This was effectively a protest to the jurisdiction of the Authority. There was no plea to the substance of the grievance.

[4] The Authority convened an urgent investigation meeting to deal with the accord and satisfaction point as a preliminary issue. It determined that Mr Abernethy was barred from pursuing his alleged personal grievance against Dynea because under verbally agreed terms he had received accord and satisfaction.

[5] Mr Abernethy is dissatisfied with that determination. He has elected a full hearing of the entire matter under [s179\(3\)\(b\)](#) of the [Employment Relations Act 2000](#).

## **The proceedings**

[6] The statement of claim filed in the Court states that the election relates to the whole of the determination. The plaintiff claims that he was disadvantaged unjustifiably in his employment and dismissed unjustifiably by the defendant on about 27 March 2007. He alleges that he did not reach an accord and satisfaction with the defendant on 22 February 2007 which ended his employment. Remedies sought include an interim order reinstating him to his former position plus reimbursement of lost remuneration, compensation, and interest.

[7] The statement of defence alleges that the Employment Court (as with the Employment Relations Authority) has no jurisdiction to hear and consider the plaintiff's personal grievance, including the claim for interim reinstatement, because of the accord and satisfaction reached by the parties.

[8] Mr Abernethy's challenge to the narrow question of whether he was barred from his personal grievance because of accord and satisfaction has now been heard by Judge Travis. Whether the plaintiff's interim reinstatement and his substantive application for personal grievance are considered by the Court or the Authority will depend on the outcome of that hearing that is yet to be decided.

## **The preliminary issue**

[9] The issue for the full Court is whether, on his challenge to the determination of the Employment Relations Authority that his personal grievances had been settled, the plaintiff is also entitled to have the Court determine his application for interim reinstatement and the substantive questions of justification or disadvantage and/or dismissal and remedies for these.

[10] [Section 179](#) of the Act concerns challenges to determinations. It has been considered judicially a number of times since the Act came into force including by a full Court in *Sibly v Christchurch City Council*<sup>[2]</sup>. The present case provides an opportunity to review those decisions in the light of the 2004 amendments to the Act and to deal with associated issues that are not yet settled.

[11] The plaintiff contends that once a challenge is brought to an Authority determination, even on a preliminary point, the Court is seized of the entire matter and can resolve all of the issues put before the Authority. The implication of this approach for the present proceedings is that, if the Court finds that there was no accord and satisfaction, it will then hear all aspects of Mr Abernethy's personal grievance.

[12] The defendant's case is that the Court does not have jurisdiction to determine the plaintiff's application for interim reinstatement or the remaining substantive issues. The Authority has determined only a preliminary issue between the parties so, in hearing the challenge, the Court's jurisdiction should be limited to examining the matter which was the subject of its determination. If the defendant's position is correct and the Court were to find that there had been no accord and satisfaction, the rest of Mr Abernethy's personal grievance, including his application for interim reinstatement, must be dealt with by the Authority.

## **[Section 179](#) of the Act**

[13] The answer to the question before the full Court depends principally on the interpretation of [s179](#) of the Act. This has been a particularly problematic section. Seven years after its enactment those who need to have recourse to the employment institutions are still uncertain about its precise meaning and application at the critical jurisdictional intersection between the Authority and the Court. It was for this reason a full Court was convened.

[14] The [Interpretation Act 1999](#) requires that the meaning of an enactment must be ascertained from its text and in the light of its purpose and its context. We have considered the meaning of s179 in light of the general principles of interpretation and against relevant case law.

## ***The meaning of the text***

[15] The relevant words of s179 are underlined:

## ***179 Challenges to determinations of Authority***

*(1) A party to a matter before the Authority who is dissatisfied with the determination of the Authority or any part of that determination may elect to have the matter heard by the Court.*

*(2) Every election under this section must be made in the prescribed manner within 28 days after the date of the determination of the Authority.*

*(3) The election must—*

*(a) specify the determination, or the part of the determination, to which the election relates; and*

*(b) state whether or not the party making the election is seeking a full hearing of the entire matter (in this Part referred to as a **hearing de novo**).*

*(4) If the party making the election is not seeking a hearing de novo, the election must specify, in addition to the matters specified in subsection (3),—*

*(a) any error of law or fact alleged by that party; and*

*(b) any question of law or fact to be resolved; and*

*(c) the grounds on which the election is made, which grounds are to be specified with such reasonable particularity as to give full advice to both the Court and the other parties of the issues involved; and*

*(d) the relief sought.*

*(5) Subsection (1) does not apply—*

*(a) to a determination, or part of a determination, about the procedure that the Authority has followed, is following, or is intending to follow; and*

*(b) without limiting paragraph (a), to a determination, or part of a determination, about whether the Authority may follow or adopt a particular procedure.*

[16] The relevant words in s179(1) are capable of at least two interpretations. The ambiguity arises from the words “matter” and “determination”. What is it that a party may elect to have heard – a challenge to the determination of the Authority with which there is dissatisfaction, or a challenge to the matter before the Authority? Is the matter before the Authority the entire proceedings as initiated by the grievant in the first place, or is it the matter which the Authority considered in the investigation and which is the subject of its determination?

[17] It is not possible to resolve these questions solely by reading the words of s179. It is necessary to examine the purpose for which the section was enacted and its context.

### ***The purpose of s179***

[18] One aid to interpretation of this section is reference to its antecedents. As part of the sea change in employment law at the end of the 1990s, the extent to which a dissatisfied party could challenge a first instance decision was widened significantly.

[19] Section 95 of the [Employment Contracts Act 1991](#) formerly gave a right of appeal to any dissatisfied party to proceedings in the Employment Tribunal. The grounds of the appeal had to be specified with particularity and in hearing the appeal the Court was to consider only those issues, explanations, and facts that were placed before the Tribunal unless there was good reason that those matters had not been before the Tribunal, or there were other exceptional circumstances which warranted the Court hearing them.

[20] An appeal under s95 was heard on the transcript or record of proceedings required to be kept by the Tribunal<sup>[3]</sup>. In practice, viva voce evidence (except new evidence allowed by leave) was seldom if ever given on such appeals. The Court had the express power to direct the Tribunal to reconsider the matter or to determine the appeal in a number of specified ways<sup>[4]</sup>.

[21] The [Employment Relations Act 2000](#) introduced a new methodology for resolving employment litigation. Beginning with mediation, cases move to an investigative lay authority whose task is to deliver speedy, informal, and practical justice to the parties<sup>[5]</sup>. The Authority is not required to keep a record of its investigation and is to make determinations without regard to technicalities in order to resolve employment relationship problems. The scheme then provides parties with a right to traditional adversarial litigation before the Employment Court if they are dissatisfied with a determination of the Authority. The right of appeal is now known as a challenge. This is not merely a change of name but was intended to reflect the very different process by which first instance decisions may be reviewed.

[22] There are now no express statutory limitations on what may be considered by the Court on a challenge. In practice, a de novo hearing means that the parties

present their cases again before the Court including any evidence they wish to lead in support. Evidence and even issues that were not investigated by the Authority may be called or raised by a party. As a previous full Court said in *Sibly*<sup>[6]</sup>:

*We are satisfied that the thrust of the [Employment Relations Act](#) is to avoid such technicalities, provided that it is the same basic employment relationship problem that the Court is being asked to resolve on the challenge as that which was placed before the Authority.*

[23] Therefore, in contrast to the former [s95](#), [s179](#) is to provide a party who is dissatisfied with the outcome of a case, as formalised in a determination of the Authority, with a more comprehensive right of appeal than existed under the [Employment Contracts Act](#). Parties now have the right to elect to have their cases reheard in the sense contemplated by the Court of Appeal in *Shotover Gorge Jetboats v Jamieson*<sup>[7]</sup> that on a rehearing the appellate Court has to approach the case afresh. This right is confirmed in [s183\(1\)](#) of the Act which provides that the Court must make its own decision on the matter before it and any relevant issues.

[24] In the majority of de novo challenges to the Court, particularly in personal grievances, the hearing is conducted in just this way with the parties taking the opportunity to have the case reheard. However, when a party challenges a determination of a preliminary issue, problems may arise, including disputes about the nature of the appeal to be heard. In this regard, the Act may be said to have two purposes which would be at odds if the approach urged on us by the defendant is to be followed. The first purpose is that personal grievances are generally to be disposed of by the Authority in the first instance: [Part 10](#) Objects section. Section 143(fa) requires the employment institutions to:

*(fa) ensure that investigations by the specialist decision-making body are, generally, concluded before any higher court exercises its jurisdiction in relation to the investigations;*

[25] This may be compared with the objectives inherent in [ss101\(ab\)](#) and [143\(b\)](#) and (c) that employment relationship problems, including personal grievances, should be resolved “*quickly and successfully*” and “*promptly*”. To have employment relationship problems resolved in the Authority on preliminary issues, re-litigated in the Court on appeal, re-determined by the Authority after another investigation, with rights of appeal by hearing de novo again, is inimical to these statutory objectives of success through promptness. Can [s179](#) be interpreted to ensure both that cases are generally concluded in the Authority before they are dealt with by the Court, and that employment relationship problems are settled quickly or promptly? The Court should strive to find synthesis in relevant statutory provisions rather than conflict between them. To determine this question, it is necessary to examine the statutory context of [s179](#).

### **Section 179 in context**

[26] The Court’s jurisdiction to hear challenges to determinations of the Authority is conferred by [s187\(1\)\(a\)](#):

*(a) to hear and determine elections under section 179 for a hearing of a matter previously determined by the Authority, whether under this Act or any other Act conferring jurisdiction on the Authority;*

[27] The word “*determine*” has been the subject of judicial interpretation in both the Arbitration Court and the Employment Court in cases which pre-date the Act.

[28] In *JS Whyte Ltd v Wellington District Hotel, Hospital, Restaurant & Related Trades Employees IUOW*<sup>[8]</sup> the Arbitration Court considered whether, in the absence of a specific provision, it had the jurisdiction to rehear or set aside its own judgment. It found its jurisdiction in [s48\(1\)\(b\)](#) of the [Industrial Relations Act 1973](#) which gave the Court “*jurisdiction for the settlement and determination of any dispute of rights referred to it under this Act*”. Williamson J construed the word “*determination*” as embodying the notions of completeness and resolving to finality. In doing so he relied on the same equity and good conscience provisions that have survived, with some expansion, into the present Act as [s189](#).

[29] Williamson J found that [s48\(1\)\(b\)](#) could not extend the Court’s jurisdiction beyond the limits of the [Industrial Relations Act 1973](#) or override mandatory legislation. But where, as in that case, a setting aside jurisdiction was not expressly forbidden, the Court could rehear a case in order to determine the original dispute in the sense of bringing it to a resolution.

[30] This decision was referred to and applied in *New Zealand Police Association Inc v Commissioner of Police*<sup>[9]</sup>. Judge Palmer considered whether the withdrawal of a personal grievance by a grievant’s union had determined the grievance, holding that the withdrawal did not mean there had been a determination of the grievance in any real sense as it did not comprise a completion of the proceedings by the Labour Court. He held that “*determine*” in [s182](#) of the [Employment Contracts Act 1991](#) (the transitional provisions) referred to the whole process being brought to finality.

[31] In *Sibly* the full Court made the first authoritative decision under the [Employment Relations Act 2000](#) on the interpretation of a “*matter*”. It held that the matter referred to in [s187\(1\)](#) could only refer to an employment relationship problem. It rejected a narrow interpretation of [s179\(1\)](#) and said at p487:

... the context of both [ss 179\(1\)](#) and [187\(1\)](#) is the Court's role in resolving employment relationship problems which are, we conclude, the matters which initially came before the Authority. ... [or] any other matter in respect of which the Authority has jurisdiction.

[32] Applying this wider interpretation, the Court held that the plaintiff could bring for decision by the Court an additional cause of action of unjustified disadvantage which had not been canvassed by the Authority. This was on the basis that the issue raised in the challenge related to the employment relationship problem or any other matter within the Authority's jurisdiction.

[33] We confirm the *Sibly* analysis with one reservation. As was said in *Paul v Capital and Coast District Health Board*<sup>[10]</sup>, the scope of a challenge to the Court is as broad as the challenger elects to make it subject to the important provision that the challenge is limited to a "matter before the Authority". The reference in *Sibly* to "any other matter" in respect of which the Authority has jurisdiction is so broad that it could be taken to mean that, in a challenge to the Court, a party could raise any matter within the Authority's jurisdiction whether or not it was in fact a matter in the Authority's investigation into the employment relationship problem. That goes too far on a proper interpretation of the section and is not the law.

[34] This wide definition of "determination" has implications for the interpretation of both [s179](#) and [s187\(1\)\(a\)](#). Applying it to [s187\(1\)\(a\)](#) we find the words "a matter previously determined by the Authority" refer to the whole employment relationship problem which has been determined by the Authority. In the present case, the Authority's finding that an accord and satisfaction bars the grievant from proceeding with his personal grievance, has effectively determined the proceedings in that forum. No part of the employment relationship problem remains before the Authority.

[35] Similarly, a wide interpretation of the words "to hear and determine elections under [section 179](#)" means that all matters which were before the Authority and which are the subject of an election, are to be heard and determined by the Court in the sense that the Court should deal with the whole grievance. As Judge Couch concluded in *Rawlings v Employment Relations Authority*<sup>[11]</sup> the words "any matter before the Authority" refer plainly to matters currently before the Authority.

[36] The alternative interpretation advanced by counsel for the defendant is that, where the only matter determined by the Authority was a preliminary issue and the Authority has not embarked on a full investigation of the employment relationship problem, the only matter which can be heard by the Court is the preliminary issue that was the subject-matter of the determination.

[37] That interpretation may be possible on the wording of [s179](#) alone, but when the section is read in the context of [s187\(1\)](#), we find that it relies on an unduly restrictive interpretation of the words "matter previously determined by the Authority". Further, it would require the Court to put aside the previous judicial interpretations which we find to be correct and authoritative.

[38] Other matters of context support this conclusion. [Section 179\(3\)](#) and (4) give the electing party choices about what may be challenged. They contemplate that there may be a challenge to the determination or to part of it. Such a challenge can be a hearing de novo, a full hearing of the entire matter.

[39] Again, the use of the words "determination" and "matter" in [s179\(3\)](#) needs clarification. If the broad interpretation of "matter" is applied, then we take [s179\(3\)\(a\)](#) to mean that the words "to which the election relates" refers back to the words in [s179\(1\)](#) "a party to a matter ... may elect to have the matter heard by the Court."

[40] The reference in [s179\(3\)\(a\)](#) to "determination" means that the challenger must specify which determination is challenged in order to identify the matter which is to be heard. The party may also elect to challenge only part of the determination.

[41] Subsections (3)(b) and (4) concern the type of hearing sought by the electing party. It may be de novo or the party may specify more narrowly what is to be challenged, what has become known as a "non-de novo hearing". This is, as Judge Colgan found in *Jerram v Franklin Veterinary Services (1977) Ltd*<sup>[12]</sup>, a hearing in the nature of a conventional appeal. This is because of the requirement that the challenger identify any errors of fact or law contained in the Authority's determination<sup>[13]</sup> and because it is for the challenger to show that the Authority's decision was wrong.

[42] Ms Wilson for Dynea also relied on regulation 7 of the [Employment Court Regulations 2000](#) to support the defendant's argument that the reference to "determination" is limited to the determination of the Authority. This regulation sets the procedure for making an election under s179. Regulation 7(2) says that the statement of claim must be accompanied by a copy of the determination to which the election relates. Ms Wilson submitted that as there had been no determination of the interim reinstatement issue in this case, it could not be challenged.

[43] We find that this regulation does no more than echo the s179(3) requirement that the election must specify the determination to which the election relates. We agree with Ms Ironside that it is only on a non-de novo challenge, where the Act requires the issues to be defined, that the Court is limited to hearing a challenge to the issues that were actually decided by the Authority.

[44] The plaintiff's argument is supported by the approach adopted in the judgment in *Asure New Zealand Ltd v New Zealand Public Service Association (No 1)*<sup>[14]</sup>. Where the Authority had dismissed the plaintiff's claims after deciding a preliminary point, Chief Judge Colgan held that the hearing de novo in the Court was a challenge by the

plaintiff to the Authority's determination dismissing its claims. The Court had the jurisdiction to decide not only the preliminary issue determined by the Authority but also the substantive employment relationship problem which had been lodged in the Authority.

[45] The ability of parties to choose between a limited non-de novo challenge with identified issues, and a full de novo hearing, is another contextual indicator that the scope of a de novo challenge may not be limited to the subject-matter of the determination. The Act expressly limits the way in which a non-de novo challenge is dealt with. There are no such limits on a de novo challenge.

### **Case Law**

[46] The line of cases from *Whyte* has interpreted the meaning of "determination" widely. When enacting s179 in 2000 Parliament must be taken to have been aware of these interpretations of the word "determine" in the context of settlements of personal grievances. *Sibly* and those cases which followed under the Act established that where a party elects to challenge a determination, the matters which can be heard de novo by the Court on the challenge include those which the Authority had not necessarily considered.

[47] Another, apparently contradictory, position was taken by the Employment Court in *Skinner v Stayinfront Inc*<sup>[15]</sup>. Ms Wilson relied particularly on this judgment to support the defendant's case. It also dealt with the question of what amounted to the matter before the Authority that was subject to challenge in circumstances where the Authority had struck out the plaintiff's claims on the basis of a defence of accord and satisfaction. In that case the challengers had sought an order reversing the Authority's determination to strike out the claims so that the matters could continue.

[48] One of the challengers in *Skinner* specifically sought that the order be set aside so that the investigation could continue before a new Authority member. Judge Shaw held that the plaintiff's challenges were limited to the Authority's determination on a preliminary matter and distinguished *Sibly* on the basis that it was about the scope of a de novo hearing on the substantive issues that were already before the Court.

[49] The Court of Appeal<sup>[16]</sup> declined leave to appeal against the Employment Court's judgment in *Skinner* because there was no question of law. It said that it did not read the judgment of the Employment Court as laying down any inflexible rule as to how the Court should determine matters coming to it from the Authority and was no more than a decision about how the litigation was to be managed. The Court of Appeal did not address either the scope of challenges under s179 or the particular question at issue in this case.

[50] In the light of the Court of Appeal's judgment, we do not accept the submission of counsel for the defendant that *Skinner* has clearly established that, even on a de novo challenge, the Court does not have the jurisdiction to consider issues which have not been considered and determined by the Authority. *Skinner* must be read in the light of its circumstances and in particular the extent of the challenge brought by the plaintiff. It differs from the present case where the plaintiff has specifically sought a full de novo hearing of the entire determination and has asked for the remedies which relate to the original employment relationship problem.

[51] We do not accept, as suggested by Ms Wilson, that the cases such as *Sibly* can be distinguished when considering the general question of jurisdiction. Certainly there will be factual differences and in particular differences based on the way in which the challenger elects to bring the challenge, but this does not affect the underlying principles that should apply.

### **Decision**

[52] We find there is no necessary conflict between the legislative purposes of generally having investigations completed by the Authority before the Employment Court exercises its jurisdiction, and the prompt settlement of cases to ensure successful employment relationships in circumstances where the Authority has only decided a preliminary issue.

[53] The first point is that the requirement to exhaust Authority processes before going to court is tagged in s143(fa) with the important qualifier "generally". Cases determined, in the sense of decided dispositively, by the Authority ruling on a preliminary point, are rare. In most cases (ie "generally") the Authority will conclude its investigations into employment relationship problems on their merits and in these circumstances there is no argument about what can be considered on a challenge.

[54] There are also other statutory mechanisms such as those in ss177 (referral of a question of law) and 178 (removal to the Court) by which the matter may be brought to the Court for hearing without a full and concluded investigation and determination by the Authority.

[55] We find that s179 may also provide, in circumstances such as those in this case, another way in which a matter may be decided by the Court without all the issues relating to the employment relationship problem having first been resolved by the Authority. It provides the means by which a party may elect to challenge the whole or part of a matter to the Court, thereby bringing it from the jurisdiction of the Authority into that of the Court.

[56] In addition, the application of the wide interpretation of the word "determination" means that where the Authority has brought a matter to an end by making a dispositive preliminary ruling, such as a strike out on the basis of accord and satisfaction, the matter before the Authority has been determined in the sense that it is at an end.

[57] In this case the determination resolved the employment relationship problem and, except for costs, the Authority had concluded its involvement. It had completed its statutory functions and, in legal terminology, was *functus officio*. To similar effect, in *Rawlings* the Authority's ruling had barred the grievant from continuing to pursue his grievance. Where incidental matters such as costs are still outstanding in the Authority, the Court, on a challenge, has now resolved to complete all outstanding matters including settling the costs before the Authority<sup>[17]</sup>. That is an approach to forum allocation that is consistent with our decision in this case.

[58] It is also notable that there is no mechanism in s179 of the Act for the remission of a matter to the Authority where an election to challenge has been made and the Court has found the Authority to have been in error. That is in contrast to s177 and even, arguably, s178, where Parliament has provided expressly for the remission of cases, or parts of them, from the Court to the Authority.

[59] We therefore conclude that where a party elects to challenge a preliminary determination of the Authority which has had the effect of resolving the employment relationship problem before it, the entire employment relationship problem is then before the Court for resolution.

[60] If the employment relationship problem survives a challenge to a preliminary point, then it is for the Court to resolve it. That is because there is no power to remit the matter to the Authority and because the Authority no longer has the matter before it. We emphasise that this judgment concerns the situation where the Authority has, by a preliminary decision, disposed of the employment relationship problem which it had before it.

[61] The challenger therefore defines the issues that will be the subject of the challenge. The Court's jurisdiction is determined by the legislation which gives the challenger the right to elect the type of challenge.

[62] The situation is different where, for example, the Authority has determined a preliminary point in favour of a grievant and states that it will continue to investigate the substance of the employment relationship problem. Where an employer unsuccessfully challenges such a determination, the problem will still be before the Authority for resolution and there is no matter to be remitted by the Court, even if it had such a power of remission.

[63] Although we have reached this decision by interpreting the statute as a matter of law, we also observe that there are compelling pragmatic reasons for this decision.

[64] As already noted as an indicator of statutory interpretation, the parties are entitled to expect a prompt resolution of their case<sup>[18]</sup>. The raising of a preliminary issue inevitably takes up time and resources and if a challenge to such a preliminary issue brings the parties to the Court, it is sensible for the matter to remain here for resolution rather than having to return to the Authority for the matter to be reopened.

[65] The decision should also give some certainty about the forum in which the matter will be heard. Once the challenger files an election, it will be apparent on the face of the challenge where the matter will continue to be heard if the challenge is successful.

[66] In the present case, the Authority determined the employment relationship problem by finding that there had been accord and satisfaction and it followed that it was no longer seized of the case. The plaintiff has made its decision to challenge the entire matter. The defendant is bound by that election. If Judge Travis decides there was no accord and satisfaction, the plaintiff's application for interim reinstatement and any other matters arising out of the employment relationship problem are to be heard in this Court as part of the challenge.

[67] Noting that the issues in the judgment are in the nature of a test case, we reserve costs. These may be dealt with at the conclusion of the proceedings in this Court, at the same time as other costs questions are addressed.

GL Colgan

Chief Judge

for the full Court

Judgment signed at 10 am on Tuesday 10 July 2007

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<sup>[1]</sup> While this case concerns an accord and satisfaction, there are a number of other ways that the Authority may dispose of a matter by a preliminary finding. These include, but are not limited to, a determination that a person is not an employee, a finding of a wrong defendant as employer, a failure to meet time limitations, or a strike out for some procedural reason.

<sup>[2]</sup> [2002] NZEmpC 76; [2002] 1 ERNZ 476

<sup>[3]</sup> Section 88(7) [Employment Contracts Act 1991](#)

<sup>[4]</sup> Section 95(5)

<sup>[5]</sup> Section 157

<sup>[6]</sup> At p488

<sup>[7]</sup> [1987] 1 NZLR 437, 440

<sup>[8]</sup> [1984] ACJ 995, 1000

<sup>[9]</sup> [\[1995\] NZEmpC 6](#); [\[1995\] 1 ERNZ 344](#)

<sup>[10]</sup> [\[2005\] NZEmpC 32](#); [\[2005\] ERNZ 197](#)

<sup>[11]</sup> [\[2006\] NZEmpC 83](#); [\(2006\) 7 NZELC 98.396](#)

<sup>[12]</sup> [\[2001\] NZEmpC 79](#); [\[2001\] ERNZ 157](#)

<sup>[13]</sup> At para [16]

<sup>[14]</sup> [\[2005\] NZEmpC 116](#); [\[2005\] ERNZ 747](#)

<sup>[15]</sup> Unreported, Judge CM Shaw, 8 December [2006, AC 70/06](#)

<sup>[16]</sup> [\(2007\) NZCA 154](#)

<sup>[17]</sup> *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [\[2005\] NZEmpC 144](#); [\[2005\] ERNZ 808](#)

<sup>[18]</sup> Section 143

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