

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2012] NZERA Auckland 329  
5395516

BETWEEN

ANDREW ANGUS  
Applicant

A N D

PORTS OF AUCKLAND  
LIMITED  
Respondent

Member of Authority: Rachel Larmer

Representatives: Simon Mitchell, Counsel for Applicant  
Kylie Dunn, Counsel for Respondent

Investigation meeting: On the papers

Date of Determination: 21 September 2012

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**DETERMINATION OF THE AUTHORITY**

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- A. Mr Angus' unjustified dismissal claim under AEA5395516 is removed to the Employment Court pursuant to s.178(2)(c) and (d) of the Employment Relations Act 2000.**

**Employment relationship problem**

[1] Mr Angus seeks to remove to the Employment Court his claim that he was unjustifiably dismissed by Ports of Auckland Limited (POAL) on 26 January 2012. POAL also consents to removal.

[2] The history to this matter is that Mr Angus was first dismissed by POAL on 8 September 2011. He filed a personal grievance claim with the Authority and applied for interim reinstatement in respect of this dismissal.

[3] The Authority removed Mr Angus' claim under AEA 5356149<sup>1</sup> to the Employment Court because it raised issues relating to the s.103A justification test in the Employment Relations Act 2000 (the Act) which came into effect on 01 April 2011.

[4] The Employment Court in its decision dated 05 October 2011<sup>2</sup> ordered that Mr Angus be interim reinstated pending the outcome of his substantive dismissal grievance. When Mr Angus was summarily dismissed on 26 January 2012 he was still working pursuant to the Court's interim reinstatement order.

[5] POAL dismissed Mr Angus again on 26 January 2012 as a result of alleged safety concerns arising out of an incident involving Mr Angus which occurred whilst he was at work.

[6] Mr Angus claims POAL was unable to dismiss him on 26 January 2012 because his employment was still subject to the Employment Court's interim reinstatement order. Mr Angus says POAL should have applied to discharge the interim reinstatement order rather than summarily dismissing him. POAL disagree with his view about that.

[7] Mr Angus filed a Compliance Application in the Employment Court seeking compliance with the interim reinstatement decision of Chief Judge Colgan dated 05 October 2011.

[8] The parties attended a directions conference relating to the Employment Court proceedings with Judge Travis on 07 September 2012 during which it was agreed Mr Angus would file his unjustified dismissal grievance relating to his dismissal on 26 January 2012 with the Employment Relations Authority and then immediately apply for it to be removed to the Employment Court.

[9] In a Minute dated 07 September 2012 Judge Travis recorded that the arrangement agreed to by the parties would allow for all matters involving these parties to be dealt with in one Employment Court hearing which was set down for a five day fixture commencing on 10 December 2012.

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<sup>1</sup> *Angus v Ports of Auckland Limited* [2011] NZERA Auckland 401.

<sup>2</sup> *Angus v. Ports of Auckland Limited* [2011] NZEmpC 125.

## **POAL's position**

[10] POAL has not filed a Statement in Reply (SiR) as indicated it did not wish to do so. In order to save the parties time and expense the Authority has determined the removal application based on the information filed by Mr Angus.

[11] POAL confirmed to the Authority, as per the Court's Minute of 07 September 2012, that it consents to the 26 January 2012 dismissal grievance being removed to the Court so it can be heard during the December 2012 fixture.

## **Grounds for removal**

[12] The Authority may only order removal if it is satisfied that one of the grounds in s.178(2) of the Act have been met.

[13] Section 178(2)(c) of the Act provides that the Authority may order removal if *the Court already has before it proceedings which are between the same parties and which involve the same or similar or related issues.*

[14] This ground is clearly met because the Employment Court currently has before it Mr Angus' unjustified dismissal grievance relating to his dismissal on 8 September 2011 together with his compliance application relating to the Court's interim reinstatement order dated 05 October 2011.

[15] Although removal only requires one of the four s.178(2) grounds to be made out, I also find that removal is appropriate under s.178(2)(d) of the Act on the grounds *the Authority is of the opinion that in all the circumstances the court should determine the matter.*

[16] Removal of the current dismissal grievance to the Court is appropriate to ensure that Mr Angus' claim can be dealt with in the most timely and cost effective manner. The Court is able to hear this matter earlier than the Authority would be able to.

[17] Removal under s.178(2)(d) of the Act will also prevent duplication of resources and avoid the parties incurring additional costs which would be likely to be incurred if the 26 January 2012 unjustified dismissal claim is not removed.

**Order**

[18] The Authority orders the removal of Mr Angus' unjustified dismissal claim under AEA5395516 which relates to his dismissal on 26 January 2012 to the Employment Court to determine.

**Costs**

[19] Costs are reserved.

**Rachel Larmer**  
**Member of the Employment Relations Authority**