

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2012] NZERA Auckland 290  
5392718

BETWEEN                      ANTARES RESTAURANT  
    GROUP LIMITED  
    Applicant

AND                                UNITE UNION  
    INCORPORATED  
    Respondent

Member of Authority:        R A Monaghan

Representatives:              N Dines, counsel for applicant  
    P Cranney, counsel for respondent

Investigation Meeting:        On the papers

Determination:                27 August 2012

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     This is an application for an order under s 178 of the Employment Relations Act 2000 for the removal to the Employment Court of the whole of an application for orders for interim injunctions.

[2]     The respondent has indicated it will abide the determination of the Authority.

**Background**

[3]     Antares Restaurant Group Limited (ARGL) operates 77 Burger King restaurants in New Zealand. It says Unite Union Incorporated (Unite) has breached its duty of good faith under s 4 of the Employment Relations Act 2000, and has breached terms of the 'Access Protocol' agreed between the parties, by:

- Raising employment relationship issues in a public forum without having previously raised them with ARGL;
- Encouraging employees to raise employment relationship problems in a public forum without having previously raised these issues with ARGL;
- Making allegations against ARGL which are untrue, misleading or without foundation;
- Publicly distributing a copy of the statement of problem Unite has lodged in the Authority without first raising some of the issues with it; and
- Publicly divulging details of confidential correspondence with it.

[4] Certain material has been provided to or reported in print and television media, and posted on the Unite website. The material variously contains what are said to be untrue allegations that Burger King: had resisted signing a collective agreement; was carrying out an anti-union campaign to cover up examples of exploitation of vulnerable young and migrant workers; hired staff from certain regions in India with a view to keeping them subservient and able to be discarded; and actively covered up an assault and perverted the course of justice by concealing evidence from the police.

[5] Unite also organised a ‘teach-in’ as a public forum for employees to give first hand accounts of their ‘abuse of rights’ by ARGL. It has said more will be held.

[6] The Access Protocol is a document intended to assist the parties with the day to day management of their employment relationship. ARGL says Unite has breached provisions in it, including one which requires union officials to encourage employees to discuss an employment issue with their manager, or bring the issue to the attention of the manager in a timely fashion.

### **Application for interim relief**

[7] An application for an interim injunction has been lodged in the Authority. Orders are sought requiring Unite to comply with the duty of good faith in s 4 by:

- Requiring Unite to comply with the Access Protocol and,
  - act in good faith and endeavour constructively to resolve any issues between it and ARGL,

- encourage its members to raise any employment issues with their manager or bring the issue to the attention of the relevant manager in a timely fashion, and
- ensure that all communications by Unite to its members are fair and/or factual and do not refer to Burger King in a derogatory fashion; and
- Requiring Unite to remove from its website all material relating to Burger King which is not fair and/or factual or which refers to Burger King in a derogatory fashion;
- Requiring Unite to return all confidential information belonging to ARGL;
- Prohibiting ARGL from undertaking any public communications on employment issues relating to ARGL which are not fair and/or factual and which refer to ARGL and/or Burger King in a derogatory way and/or which are intended to harm ARGL's business;
- Prohibiting Unite from holding any teach-ins or other public meetings for purposes and/or in a manner which is in breach of Unite's obligations under the Access Protocol.

[8] The relief sought in the substantive matter is: a declaration that Unite has breached s 4; a declaration that Unite has breached the Access Protocol; an order requiring Unite to comply with its duty of good faith under s 4; a finding that Unite has aided and abetted breaches by ARGL's employees of their obligations to it; and such other relief as may be just including penalties.

[9] Mediation has been arranged for Wednesday 29 August. A hearing in the Authority was scheduled for the preliminary matter for the afternoon of 29 August in the event that was necessary.

[10] During the teleconference with the parties I doubted the Authority's jurisdiction to make the orders sought, and said I would expect submissions on that matter. ARGL has since lodged the present application for an order for removal.

### **Determination of application for order for removal**

[11] The application for an order for removal is made on the ground that an important threshold question of law is likely to arise other than incidentally, in terms

of s 178(2)(a) of the Act. The question is whether the Employment Relations Authority has the jurisdiction and power to grant an interim injunction to restrain conduct arguably in breach of s 4, when the substantive proceeding is for a compliance order pursuant to s 137(1)(f) in respect of obligations under s 4.

[12] Counsel pointed out that the Employment Court has held the Authority has the power to grant interim and permanent injunctions pursuant to s 162, in cases within its jurisdiction under s 161.<sup>1</sup> However the court did not determine whether the Authority may grant injunctive relief in compliance order proceedings involving a breach of a statutory provision such as s 4. Further the Authority has ordered the removal of a matter to the Employment Court in similar circumstances to the present, in that injunctive relief was sought in respect of an alleged breach of s 20 of the Act,<sup>2</sup> but the matter was not heard and determined.

[13] With reference to the components of s 178(2)(a) I find:

- A question of law is likely to arise in this matter;
- The question is important; and
- It arises other than incidentally.

[14] I accept that the matter of the Authority's jurisdiction to determine the application for an interim injunction, as well as the application for an interim injunction, should be heard together.

[15] I therefore order that the whole of the matter comprising an application for interim injunctions be removed to the Employment Court to hear and determine.

R A Monaghan

Member of the Employment Relations Authority

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<sup>1</sup> *Credit Consultants Debt Services NZ Limited v Wilson (No 2)* [2007] ERNZ 205

<sup>2</sup> *NZEPMU v Zeal 320 Limited* (AA116/09, 8/4/09)