

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 185
5614216

BETWEEN BAY OF PLENTY DISTRICT
 HEALTH BOARD
 Applicant

AND DR TIMOTHY MATHEWS
 Respondent

Member of Authority: Vicki Campbell

Representatives: Peter Cranney for Applicant
 Mark Beech for Respondent

Investigation Meeting: On the papers

Submissions Received: 2 June 2016 from the Applicant
 22 June 2017 from the Respondent

Determination: 28 June 2017

**PRELIMINARY DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

- A. Dr Mathews' application under matter number 5614216 is removed to the Employment Court for hearing and determination without prior investigation by the Authority.**
- B. Costs are reserved.**

Removal Application

[1] Dr Mathews and the Bay of Plenty District Health Board (the DHB) are parties to proceedings before the Authority in respect of a dispute about the terms applying to a retiring gratuity. Dr Mathews claims he is entitled to a retirement gratuity equivalent to 98 day's pay. The DHB has paid Dr Mathews the sum of \$2,000 which it says is the total amount payable under its policy.

[2] The DHB has raised an issue about Dr Mathews' entitlement to a retirement gratuity payment because it says since leaving the DHB Dr Mathews has continued to practice as a specialist Otolaryngologist.

[3] This is an application to remove the proceedings to the Employment Court without prior investigation by the Authority. The application is made in reliance on the grounds that an important question of law is likely to arise in the matter other than incidentally.¹

[4] The important questions of law identified by the BOPDHB are:

- a) What is the meaning of the word "retirement" in the context of retirement gratuities payable to medical personal pursuant to a number of collective instruments and the BOPDHB policies; and
- b) Are "retirement gratuities" payable to employees who have resigned from employment with the DHB and continue to work in private practice, or are they only payable to those employees who have retired from all work.

[5] Dr Mathews does not oppose the application for removal.

[6] The parties have agreed that the Authority may consider and determine this matter based on the papers currently before it.

[7] There will be a significant impact on the DHB if Dr Mathews' claim is successful. There are also 15 other DHB employees with retirement clauses similar to Dr Mathews.

[8] I am satisfied the questions raised by the BOPDHB are important, central to the resolution of Dr Mathews' application and will arise other than incidentally. The Court's interpretation of the collective instruments and policies applicable to Dr Mathews could assist not only the parties but also guide other DHB's and their employees.

¹ Employment Relations Act 2000 section 178(2)(a).

[9] Further, it is my view that this is a case in which I should exercise my discretion under section 178(2)(d) of the Act and remove Dr Mathews' claims to the Employment Court.

Determination

[10] Dr Mathews' application is to be removed to the Court for hearing and determination without a prior investigation by the Authority.

Costs

[11] I reserve the issue of costs but note that it may be appropriate for each party to bear its own costs.

Vicki Campbell
Member of the Employment Relations Authority