

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2011] NZERA Auckland 136
5317640**

BETWEEN KATE BIERRE
 Applicant

AND AUCKLAND DISTRICT
 HEALTH BOARD
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Helen Cull Q.C., Counsel for Applicant
 Michael O'Brien, Counsel for Respondent

Determination: 6 April 2011

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The substantive problem that the Applicant wishes to resolve is a claim for breaches of the employment agreement, including a breach of the Health and Safety in Employment Act 1992, by the Respondent.

Issues

[2] The parties have made an application for the matter to be removed to the Employment Court in its entirety pursuant to s 178 (2) (c) and s 178 (2) (d) of the Employment Relations Act 2000 ("the Act"):

S 178 (2)

c. The court already has before it proceedings which are between the same parties and which involve the same or similar or related issues;

d. ...in all the circumstances the court should determine the matter.

[3] In relation to the ground under s 178 (2) (c), the Respondent's non de novo challenge and the Applicant's de novo cross-challenge on the Authority's interim determination concerning admissibility of evidence (number AA 523/10/5317640 dated 20 December 2010) are already before the court.

[4] In relation to the ground under s 178 (2) (d), the parties highlight that there is an increased cost issue should there be hearings in both the Authority and the Court, especially in light of the interim issues over admissibility of evidence and the preliminary issue of whether Ms Bierre should be given leave to bring the application out of time.

Determination

[5] I find that the issues which arise in the proceedings before the Authority are closely related to, and will to a large extent be influenced by, the admissibility issue presently before the court.

[6] I consider that consolidation of both sets of proceedings would make it cost effective to have the matters heard in one forum, as result in a saving of time and costs for the parties.

[7] I further consider that removing the proceedings before the Authority to the Court will result in a more efficient allocation of judicial resources.

[8] I am familiar with the issues involved in the case and I am satisfied that the test in s 178(2) (c) has been made out.

[9] I am additionally satisfied that it is appropriate for the Authority to exercise its discretion to remove in accordance with s. 178(2)(d) of the Act. In all the circumstances the Employment Court should determine these matters.

[10] **I order that the whole employment relationship problems between the Applicants and the Respondents be removed to the Employment Court.**

Costs

[11] Costs are reserved. If either party seeks an order for costs, the party seeking the order shall have 28 days from the date of this determination in which to file and serve a memorandum in this matter. The other party shall have a further 14 days in which to file and serve a reply.

Eleanor Robinson
Member of the Employment Relations Authority