

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**AA 259/07  
5078066**

BETWEEN      BRADFORD TRUST LIMITED  
Applicant  
  
AND             PAUL EDWARD ROEBECK  
First Respondent  
  
AND             DAVID JOHN PAKIETO  
Second Respondent

Member of Authority:      Leon Robinson

Representatives:          Philip Skelton for Applicant  
Frank Godinet for Respondents

Submissions Received:    17 August 2007  
24 August 2007

Determination:            27 August 2007

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**DETERMINATION OF THE AUTHORITY ON PRELIMINARY MATTER**

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[1]    The respondents apply to the Authority to stay its investigation.

[2]    The applicant Trust (“the Trust”) claims damages and penalties against its former employee respondents. It lodged its statement of problem in the Authority on 8 February 2007 alleging:-

- (i)    Breaches by the respondents of their contractual duty of fidelity owed to the applicant as their employer; and
- (ii)   Breaches by the respondents of their statutory duty of good faith arising under section 4 of the *Employment Relations Act 2000* (“the Act”).

[3]    The Trust has also filed proceedings in the High Court at Auckland pleading breaches of fiduciary duty, unlawful means conspiracy and breach of confidence against the respondents.

[4] The respondents deny the Trust's claims against them and since the time of lodgement in the Authority, the parties have attempted to resolve their differences by mediation but despite considerable effort, they have been unable to do so. The respondents have now lodged an amended statement in reply. They raise counter-claims against the Trust claiming arrears of wages and allege a breach of confidentiality, contrary to section 148 of the Act.

[5] The respondents say that issues of credibility arise which will be determinative of the matter in the High Court. It is said that it is a possibility that the findings of the Authority and the High Court will be different. They point to a statement by the Trust's counsel, said to be a contemplation that there is a connection between the High Court proceeding and the Authority's investigation, that mediation was to focus not solely on the employment issues between the parties but aimed at overall settlement of all matters in dispute arising in both forums. Next they say that the applicant's breach of confidentiality at mediation will have consequences for the parties in the High Court proceedings. Finally, they say the interests of justice require a stay be granted.

[6] The Trust resists the application. It points out to the Authority the respondents now raise their own substantive problems. It says the actions in the High Court are different causes of action from those in the Authority's investigation and also, that there are additional parties in those proceedings. It is submitted that in the absence of an established abuse of process, an overlap of certain factual issues is no grounds to stay the Authority's investigation of matters properly within its exclusive jurisdiction. The High Court proceedings are to be called in the week beginning 4 February 2008. The Trust requests the Authority continue to investigate the problems between the parties and further, that it dismiss the application for stay with costs to the Trust.

[7] The respondents make their application under Regulation 65 of the *Employment Court Regulations 2000*. The Authority's power to grant such an order is given under Regulation 64. Those two provisions are as follows:-

64. *Power to order stay of proceedings*

(1) *If an election is made under section 179 of the Act, the Authority and the Court each have power to order a stay of proceedings under the determination to which the election relates.*

(2) *If an application for a rehearing is made under clause 5 of Schedule 3 of the Act, the Court has power to order a stay of proceedings under the decision or order to which the application relates.*

(3) *An order under subclause (1) or subclause (2)—*

(a) *may relate to the whole or part of a determination or decision or order, or to a particular form of execution; and*

(b) *may be made subject to such conditions, including conditions as to the giving of security, as the Authority or the Court thinks fit to impose.*

65. *Application for stay of proceedings*

- (1) *Every application for an order under regulation 64(1) or regulation 64(2) must,—*
- (a) *if made to the Authority, be lodged with an officer of the Authority; and*
  - (b) *if made to the Court, be filed with the Registrar of the Court.*
- (2) *The application—*
- (a) *must be in form 14; and*
  - (b) *must state the grounds on which the application is made; and*
  - (c) *must be filed in duplicate.*

[8] I note immediately that I am not given sufficient detail from the respondents as to the issues of credibility which are said might arise. I am also not advised the details of the consequences for the parties in the High Court proceedings arising out of the alleged breach of confidentiality. I cannot give proper consideration to the matter without those details.

[9] But in any event I cannot grant a stay pursuant to the power to do so under Regulations 64 & 65. Those regulations relate only to the grant of stay where there is either a determination which is challenged or an application for rehearing. In this case there is neither. The respondents do not ask that the execution of any orders made by the Authority be stayed. The regulations are premised on that situation. Instead, they ask that the proceeding or more correctly, the investigation, be stayed. So I give consideration to that question in terms of the Authority's power to follow its own procedure, and the issues that then arise rather than a consideration of the stated Regulations.

[10] The Authority has an exclusive jurisdiction in relation to employment relationship problems generally. I consider that the actions in the High Court proceedings are separate and distinct from the claims raised by the Trust in this application. I accept that there may well be some overlap in terms of the factual findings given that the various claims arise out of an employment relationship. But that factor alone is not sufficient in my view to require me to suspend or stay this investigation. The prospect that two different institutions might hear or investigate the same factual matters and the additional possibility of divergent factual findings is only a neutral factor in my assessment, because it is no more than the empowering legislation of both institutions at work.

[11] This institution however, has objects which promote resolution between the parties themselves and an emphasis on prompt resolution (s143). So too is there an expectation of speedy, informal and practical justice (s174). Significantly, its jurisdiction in relation to employment relationship problems is exclusive. I intend to hold an investigation meeting in October, well before the High Court fixture in February 2008.

[12] So there is nothing which persuades me that the objects of the Act should not prevail or that a problem which is in my words "naturally where it belongs" should have its investigation suspended principally by reason of separate causes of action prosecuted elsewhere. I conclude that there is no case to suspend the investigation, and all the more so given the respondents have themselves now lodged their own substantive claims. **The application for a stay of proceeding under Regulation 65 is refused and so too is any application that I suspend the investigation.**

[13] I will hold a telephone conference with the parties shortly. The costs on this application are reserved.

Leon Robinson  
**Member of Employment Relations Authority**