

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2015] NZERA Wellington 64
5552604

BETWEEN DALE BURNS
 Applicant

A N D RANDWICK MEATS
 COMPANY LIMITED
 Respondent

Member of Authority: M B Loftus

Representatives: Barbara Buckett, Counsel for Applicant
 Sheryl Waring, Counsel for Respondent

Submissions Received: 16 April 2015 from Applicant
 30 April 2015 from Respondent

Date of Determination: 1 July 2015

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Dale Burns, claims he was unjustifiably dismissed by the Respondent, Randwick Meats Company Limited (Randwick Meats) on 19 December 2014. In particular he says his conduct was not serious enough to warrant dismissal and the disciplinary process was conducted in an unfair and unreasonable manner.

[2] Mr Burns also asks that his claim be removed to the Employment Court (s.178 of the Employment Relations Act 2000 (the Act)). It is that request which is addressed in this determination.

Background

[3] Mr Burns was employed by Randwick Meats for some 23 years. There was no written employment agreement and the parties now disagree over the terms of their

arrangement. Of note is the fact the dispute extends to a disagreement over just what Mr Burns is required to do and how.

[4] The disagreement led to various incidents Mr Burns describes as *separate but linked*. He took issue with his treatment and filed two unjustified action claims. Primarily these concerned a final warning for failing to perform required duties and a suspension.

[5] The claims were investigated by the Authority in September and December 2014. Two determinations resulted (30 October 2014¹ and 9 February 2015²). Mr Burns was largely unsuccessful and challenged both in the Employment Court.

[6] Notwithstanding the two claims the disciplinary process which had led to the warning and first investigation essentially continued and resulted in Mr Burns' dismissal on 19 December 2014. That led to the current grievance and the application it be removed to the Court and heard therein.

Determination

[7] Section s.178(2), provides:

The Authority may order the removal of the matter, or any part of it, to the court if—

(a) an important question of law is likely to arise in the matter other than incidentally; or

(b) the case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the court; or

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

(d) the Authority is of the opinion that in all the circumstances the court should determine the matter.

[8] The application is made on the grounds the proceedings already before the Employment Court are directly related to the new matter and the issues to be determined by the Court (in particular the duties Mr Burns could reasonably have

¹ [2014] NZERA Wellington 111

² [2015] NZERA Wellington 11

been expected to perform) are an intrinsic part of the factual matrix pertinent to the dismissal claim (s.178(2)(c) of the Act applies).

[9] Mr Burns cites the Authorities decision in *Cronin-Lampe v Board of Trustees of Melville High School*³ and *Roberts v Bank of New Zealand*⁴ as supporting the proposition one body should be seized of an entire matter in such circumstances.

[10] In opposing the application Randwick Meats submits:

- a. there are no important questions of law;
- b. there are a number of disputed factual issues that only relate to the dismissal and should therefore be dealt with by the Authority in the first instance;
- c. there is neither urgency or public interest;
- d. the applications currently before the Court relate to the final warning and the suspension. The suspension is said to be discreet while *the only relevance of the final warning proceeding to the current application is the outcome of it*. The Authority would therefore only need to know the outcome of the challenge and no dual litigation would occur if the dismissal claim were not removed (*Department of Courts v Croft*⁵ is noted in support of the submission); and
- e. it is not cost effective to have the matters brought together as knowledge of the Courts decision in respect to the warning would inform a meaningful mediation which would be precluded if the matter were removed and costs before the Court are inevitably greater than those incurred when a matter is heard in the Authority.

[11] In summary it is submitted the dismissal is the most significant of the issues arising from the employment relationship. As such the Applicant should not be entitled to bypass the normal process and *expect it can preclude the Respondent from the benefit of having the matter heard with full process*.

³ [2014] NZERA Auckland 146

⁴ [2013] NZERA Auckland 293

⁵ 14 August 2001, AA113/01

[12] The Respondent also notes the cases to which Mr Burns refers ([9] above) are distinguishable in that removal was not opposed.

[13] This is a dismissal claim. It is a type of claim frequently considered by the Authority and having considered the parties statements, along with the attached documents, I conclude there is no important question of law, no real urgency, and no genuine public interest (in the sense of public welfare, as opposed to public curiosity).

[14] The issue here is the fact there are proceedings between the same parties already before the Court. Having considered the submissions, the previous decisions, the current Statement of Problem and Statement in Reply along with the attached documents I conclude they are proceedings which involve the *same, similar or related issues*.

[15] In particular I note Randwick Meats' letter of 17 December in which it advises Mr Burns of its *Tentative findings* and the fact it was considering dismissal. The letter confirms some of the matters concerning Randwick Meats were the same, or at least very similar, to those which led to the warning now being considered by the Court. The letter also advises the existence of the warning was a factor in reaching a tentative decision to dismiss and that notwithstanding other factors this could, *in isolation*, justify summary dismissal.

[16] As already said the dismissal was, in essence, the continuation of a process which is, at least in part, already before the Court. Central to both is the question of what duties could reasonably be required of Mr Burns. There is no sense in litigating the same facts in multiple forums. It does nothing more than increase costs.

[17] For the above reasons I conclude the dismissal claim should be removed to the Court pursuant to s.178(2)(c).

M B Loftus
Member of the Employment Relations Authority