

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN**

Gary Gibbs (First Applicant)  
**AND** Doug King (Second Applicant)  
**AND** Shirley Smith (Third Applicant)  
**AND** Anthony Doody (Fourth Applicant)  
**AND** Taita Whetu (Fifth Applicant)  
**AND** Daniel Patterson (Sixth Applicant)

**AND**

Crest Commercial Cleaning Limited (Respondent)

**REPRESENTATIVES**

Diccon Sim, Counsel for applicants  
Richard Farry, Counsel for respondent

**MEMBER OF AUTHORITY**

Helen Doyle

**TELEPHONE CONFERENCE  
AND CONSIDERAION OF  
PAPERS**

11 April 2005

**DATE OF DETERMINATION**

12 April 2005

DETERMINATION OF THE AUTHORITY

*Application for Removal to the Court*

[1] The respondent, Crest Commercial Cleaning Limited, (“Crest”) applied under section 178 of the Employment Relations Act 2000 to have the employment relationship problem removed to the Employment Court on the grounds that important questions of law are likely to arise other than incidentally.

[2] The applicants consented to a partial transfer to the Employment Court on the basis that if the significant legal issue is determined in the applicants favour then their individual claims be dealt with in the Employment Relations Authority with a direction to mediation.

[3] Following a telephone conference with counsel for the parties I expressed the view that if there was to be removal to the Employment Court it would be preferable to remove the whole of the proceedings rather than only that part which raised an important issue. It is undesirable in my view to have multiple proceedings. A removal of the whole proceeding will enable the Employment Court to consider both evidential matters and the question of mediation as required.

[4] Both counsel agreed to removal of the whole of the proceeding.

***Important Question of Law***

[5] The applicants were formerly employed by Southern Cleaning Services Limited which held a cleaning contract with the Dunedin Kindergarten Association. The contract expired by effluxion of time. Dunedin Kindergarten Association then contracted with Crest for the cleaning work. The applicants say that the situation is one of restructuring under subpart 1 of Part 6A of the Employment Relations Act 2000. The respondent does not accept that the situation is one of restructuring under subpart 1 of Part 6A of the Act.

[6] Part 6A of the Act deals with the continuity of employment if an employer's business is restructured. It is a new statutory provision.

[7] The important question of law that arises from the employment relationship problem is whether part 6A is applicable in a situation where one independent contract has ended and another independent contract has commenced.

[8] I am satisfied that the question of law arising in this statement of problem is important in terms of section 178(2)(a) of the Employment Relations Act 2000 and will be decisive or strongly influential in deciding the case.

[9] I am satisfied that the question of law affects large numbers of employers and employees and is of significance generally.

***Determination***

[10] There is no good reason that persuades me not to exercise my discretion and remove this matter to the Employment Court. There is no opposition to removal.

[11] I order that the employment relationship problem filed in the Authority under CEA 56/05 is to be removed to the Employment Court.

***Costs***

[12] Costs are reserved.

Helen Doyle  
Member of Employment Relations Authority