Employment Court of New Zealand

Glenfield College Board of Trustees v Anderson [2024] NZEmpC 80 (16 May 2024)

Last Updated: 22 May 2024

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKAURAU

[2024] NZEmpC 80
EMPC 442/2023

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	applications to join parties
BETWEEN	GLENFIELD COLLEGE BOARD OF TRUSTEES Plaintiff
AND	FIONA ANDERSON Defendant

Hearing:	On the papers
Appearances:	P Pa'u, advocate for plaintiff G Pollak, counsel for defendant P Cranney, counsel for NZEI Te Riu Roa C R Cartwright, counsel for Secretary for Education
Judgment:	16 May 2024

INTERLOCUTORY JUDGMENT (NO 2) OF CHIEF JUDGE CHRISTINA INGLIS

(Applications to join parties)

[1] These proceedings are set down for hearing in Auckland commencing on 15 July 2024. NZEI Te Riu Roa and the Secretary for Education applied for leave to intervene and be heard. The application subsequently developed into one of joinder, as I will come to.

[2] The defendant is a party to an individual employment agreement. The agreement draws in substantially the same terms as a collective agreement (the

Support Staff in Schools' collective agreement). The challenge raises issues as to the interpretation and application of a clause in that collective agreement relating to variation of agreed hours of work.

[3] NZEI Te Riu Roa and the Secretary for Education are parties to the collective agreement and say that they have an interest in the matters at issue on the challenge. It is on this basis that they applied to intervene.

[4] I subsequently invited submissions as to whether, given that the applicants are parties to the collective agreement, it may be appropriate for them to be joined as parties. There was broad agreement to such an approach in the particular circumstances.

[5] Section 221 of the Employment Relations Act 2000 (the Act) gives the Court broad powers to direct parties to be joined to a proceeding. No procedure has been specified for the making of such orders. Regulation 6 of the Employment Court Regulations 2000 provides that where no form of procedure has been provided for by the Act or Regulations, the Court must dispose of a case as nearly as may be practicable in accordance with the provisions of the High Court Rules 2016 affecting any similar case.1 Rule 4.56 of the High Court Rules relates to the striking out and adding in of parties.

[6] As rule 4.56 makes clear, joinder may occur where the Court is satisfied a person's presence before it may be necessary to adjudicate on and settle all questions involved in the proceedings.2 In light of this Court's special jurisdiction, this will usually involve considering whether joinder will enable the Court to more effectually dispose of the matter before it according to the substantial merits and equities of the case.

1 Other disposal methods provided for in reg 6(2) do not apply in this case.

2 Rule 4.56(1)(b).

[7] It is well established that the threshold for joinder is low,3 and that the criteria should be construed liberally.4

[8] As I have said, NZEI Te Riu Roa and the Secretary for Education are parties to the collective agreement which contains the provision in dispute and which has been incorporated into the defendant's individual employment agreement. Both clearly have a legitimate interest in the correct interpretation of the provision, and a determination of the matters at issue on the challenge will likely have much broader impact. In addition, the Secretary for Education wishes to put before the Court evidence relating to the history and negotiation of the collective agreement and the clause at issue.

[9] I accept that the presence of NZEI Te Riu Roa and the Secretary for Education before the Court may be necessary to adjudicate on and settle the questions involved in the proceeding, and to effectively dispose of it. It is appropriate to direct that NZEI Te Riu Roa and the Secretary for Education be joined as plaintiffs; both have consented to such an order being made.5

[10] Accordingly, NZEI Te Riu Roa and the Secretary for Education are joined to the proceedings as second and third plaintiffs respectively. Counsel are to confer and advise the Court as to any consequential directions or orders sought to ensure that the challenge is ready for hearing on the date scheduled. Given the impending fixture, this should be attended to promptly.

[11] For completeness I invited counsel to consider the potential effect of an order in terms of estoppel or res judicata.6 Counsel considered that any such issues could appropriately be dealt with if and when they arise in any subsequent proceeding.

3. *Newhaven Waldorf Management Ltd v Allen* [2015] NZCA 204 at [46]; *Zara's Turkish Ltd v Kocaturk* [2019] NZEmpC 139 at [42]; *Lanigan v Fonterra Brands (New Zealand) Ltd (No 2)* [2024] NZEmpC 60 at [3].

4 *GF v Comptroller of the New Zealand Customs Service (No 5)* [2022] NZEmpC 71 at [11].

5 See Rule 4.56(3).

6. See *New Zealand Nurses Organisation Inc v Te Whatu Ora – Health New Zealand* [2023] NZEmpC 35, [2023] ERNZ 110 at [45].

[12] I do not understand any issue of costs to arise, but if I am wrong about that I will receive memoranda.

Christina Inglis Chief Judge

Judgment signed at 9.30 am on 16 May 2024