

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN	Robert Hawkins (applicant)
AND	the Commissioner of Police (respondent)
REPRESENTATIVES	Peter Brosnahan for the applicant Peter Gunn for the respondent
MEMBER OF THE AUTHORITY	Denis Asher
SUBMISSION RECEIVED	27 May 2005
DATE OF DETERMINATION	27 May 2005

DETERMINATION OF AUTHORITY: Application for Removal to the Court

Employment Relationship Problem

1. By way of a joint application received on 27 May 2005 the parties ask that Robert Hawkins' original personal grievance application to the Employment Relations Authority be removed to the Employment Court for hearing and determination on the ground that it raises important questions of law.
2. In his grievance application originally filed on 2 September 2004 Mr Hawkins said he had been constructively dismissed by the New Zealand Police. He sought

reinstatement, loss of salary from disengagement to re-engagement, interest on that money, reinstatement of his superannuation entitlement, compensation for humiliation, etc, his annual leave entitlement and costs.

3. Mr Hawkins alleges that the Police's continuing course of unsatisfactory conduct, in particular but not exclusively in or around October 1999, put him under undue pressure to resign or perf, in June 2001.
4. Mr Hawkins said that, while the parties had been in extensive discussions, they had not undertaken mediation, which he was willing to attend. The application had been lodged "*due to delays in the respondent's communications (and so as to) preserve ...*" Mr Hawkins' status (statement of problem).
5. By application received on 21 September the Police sought and was granted an extension of time to file its statement in reply, which was received on 1 October. The Police denied it had constructively dismissed Mr Hawkins. It also said that he had failed to raise his grievance in time and that it did not consent to him doing so out of time.
6. The parties underwent mediation on 8 November but the employment relationship problem remained unresolved. Shortly afterward the parties indicated an intention to file a joint application for removal. As the above makes clear, their application was not filed until 27 May 2005.

Application for Referral: the parties' joint position

7. The application is made on the ground that the applicant's statement of problem raises important questions of law. They include:
 - a. Can a former Police member commence a constructive dismissal claim notwithstanding disengaging from the Police on medical grounds in 2001, in circumstances where there is a dispute as to whether he previously raised a grievance and where the Police did not consent to him raising it out of time, and

- b. Seek reinstatement to the position of a sworn Police member having previously disengaged on medical grounds, and
 - c. Seek loss of salary for the period between his disengagement on medical grounds to the date of any re-engagement, and
 - d. Allege misconduct against the Police as employer in respect of actions that were taken in respect of a criminal prosecution of the applicant?
8. The questions of law are important because they bear directly on the statutory process of medical disengagement in the Police and the way in which disengagements are conducted and undertaken.
9. The questions potentially impact on all sworn Police and have the potential to open up cases the Police consider settled.
10. The final question raises important issues of law as to the nature of the role of the Police in criminal prosecutions against one its employees and the extent to which it is acting as employer when undertaking that role.
11. The questions of law identified above are likely to require detailed consideration and analysis of case law, including the Court of Appeal's decision in *Commissioner of Police v Cartwright* [2000] 2 ERNZ 106; [2001] 1 NZLR 265, the Employment Court decision in *Waugh v Commissioner of Police*, WC 18/04, 13 October 2004, Goddard CJ and the Police Act 1958.

Discussion and Findings

12. This application is made in terms of s. 178 (2) (a) of the Act. It provides that the Authority may order the removal of a matter before it to the Court if an important question of law is likely to arise in the matter other than incidentally.
13. I am satisfied that while the questions of law identified by the parties are important, they are well settled, having already been addressed and determined by the Courts in the case law already referred to by the parties (see par 11 above). I am therefore

satisfied that it is an appropriate use of the Authority's general discretion to decline to remove this application to the Court.

Determination

14. For the reason set out above, that the important questions of law identified in this application have already been addressed and determined by the Courts, the application is declined.

15. Costs are reserved.

Denis Asher
Member of Employment Relations Authority