

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

CA147/08
5127549

BETWEEN

JOHN JENKINS
First Applicant

NZ AMALGAMATED
ENGINEERING PRINTING
AND MANUFACTURING
UNION
Second Applicant

AND

TYCO ELECTRONICS
LIMITED
Respondent

Member of Authority: Paul Montgomery

Representatives: Tony Wilton, Counsel for Applicants
Neil McPhail, Advocate for Respondent

Investigation Meeting: On the papers

Determination: 1 October 2008

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] An application lodged on behalf of Mr Jenkins and the Union was received by the Authority on 11 August 2008. A statement in reply was received on 26 August 2008.

[2] The Authority duly scheduled a teleconference to set the matter down on 19 September 2008.

[3] On 18 September 2008 the respondent lodged and served an application for Removal of the matter to the Employment Court. In the course of the teleconference on 19 September the Removal application was discussed with the representatives and on behalf of the first and second applicants, Mr Wilton declined the opportunity to

make submissions on the application for Removal. Rather Mr Wilton advised the Authority that his instructions were not to oppose the application.

The grounds

[4] The initial application received by the Authority relates to a claim for compliance and arrears of wages arising from an alleged breach of Mr Jenkins' terms and conditions of employment.

[5] The application also includes a claim for a penalty arising from a breach of good faith under the terms of s.4(6) and s.4A of the Act. The respondent in its statement in reply denies it has been in breach on any count.

[6] On behalf of the respondent, Mr McPhail says:

- (a) *This is the first challenge to a clause of this nature. An important question of law is likely to arise in the matter other than incidentally.*
- (b) *In view of the test case nature of the application there is a high probability of an appeal by the unsuccessful party.*

Discussion

[7] There is no requirement that the matter be transferred to the Employment Court simply because the parties agree to that course of action. What is required is that the issues in question are matters of public interest or matters in which an important question of law is likely to arise other than incidentally.

[8] Having reviewed the initial application which seeks to establish a nexus between a breach of terms and conditions of employment and breaches of the good faith provisions under s.4(6) and s.4A of the Act, the Authority accepts that significant legal issues are likely to arise.

[9] Another issue between the parties relates to the application of the term *not inconsistent* with the terms of the collective agreement. The Authority is of the view that in the particular circumstances of this case a decision from the Court would assist the parties materially.

Determination

[10] Having considered the issues and arriving at the view that there are elements which constitute a *test case*, I refer the matter to the Employment Court for its decision.

Costs

[11] The issue of costs is reserved.

Paul Montgomery
Member of the Employment Relations Authority