

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 237
5634219

BETWEEN

STEPHEN McPHERSON
Applicant

AND

CARTER HOLT HARVEY
LIMITED
Respondent

Member of Authority: Nicola Craig

Representatives: Lou Yukich, Advocate for the Applicant
Rob Towner, Counsel for the Respondents

Investigation Meeting: On the papers

Determination: 12 July 2016

DETERMINATION OF THE AUTHORITY

- A. This matter is removed in its entirety under s 178 of the Employment Relations Act 2000 for the Employment Court to hear and determine without first being investigated by the Authority.**

Employment relationship problem

[1] By statement of problem and application for removal filed on 8 July 2016, Stephen McPherson (Mr McPherson) sought removal of Authority proceedings

5634219 against Carter Holt Harvey Limited (Carter Holt Harvey) to the Employment Court (Court).

[2] The application for removal was made on the basis of existing proceedings in the Court between the same parties and which involve the same issues.

[3] A response was sought by the Authority from Carter Holt Harvey's representative, on Mr McPherson's application for urgency and removal to the Court.

[4] A statement in reply was received by the Authority on 11 July 2016. Carter Holt Harvey consented to removal of this proceeding to the Court.

[5] Upon review of Mr McPherson's application, urgency was granted.

Removal to the Court

[6] For the following reasons, I have reached the view that this matter should be removed to the Employment Court for hearing and determination. I have done so under the provisions of ss 178(1) and 178(2)(c) of the Employment Relations Act (the Act).

[7] The application for removal identifies that the Court has before it a de novo challenge to parts of a previous Authority determination¹ and that Carter Holt Harvey applied to the Court to strike out aspects of the challenge.

[8] A copy of a consent memorandum from the Court proceedings was filed in the Authority in support of the application for removal. This set out an agreement between the parties for Mr McPherson to file a statement of problem in the Authority regarding provisions in the Holidays Act 2003 and the Fair Trading Act 1986 and to seek removal to the Court.

[9] The Authority was provided with a Minute of Judge Inglis following a hearing on 7 July 2016. The Minute states that by consent the strike out hearing was adjourned sine die by the Court, on agreed conditions. These conditions reflect the agreement outlined in the consent memorandum.

¹ [2016] NZERA Auckland 86

[10] I am satisfied that the issues in Mr McPherson's claim to the Authority concern the same or similar or related facts to those in the Court challenge, namely leave paid out in cash on Mr McPherson's termination of employment.

[11] I have considered the urgency with which the Authority can investigate the matter. However, I place more weight on the fact that the Court already has proceedings before it.

[12] There is also the likelihood of a challenge to the Authority's determination in the event that removal is not granted. Carter Holt Harvey described that likelihood as "virtually inevitable" in its support of the removal application. Given the overlap between the issues before the Authority and the Court, leaving the present case with the Authority may lead to a situation where a challenge to an Authority determination deals with same, similar or related issues as those currently before the Court.

[13] I consider that one forum should hear all matters before it so that the issues can be addressed in a rational, cost effective manner. In this case, that forum is the Court.

Nicola Craig
Member of the Employment Relations Authority