

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2018] NZERA Wellington 77
3029351

BETWEEN PAUL MORGAN
 Applicant

AND TRANZIT COACHLINES
 WAIRARAPA LIMITED
 Respondent

Member of Authority: M B Loftus

Representatives: Graeme Clarke, Advocate for Applicant
 Michael Gould, Counsel for Respondent

Investigation Meeting: By telephone conference on 3 September 2018

Determination: 3 September 2018

DETERMINATION OF THE AUTHORITY

[1] The applicant, Paul Morgan, claims the respondent, Tranzit Coachlines Wairarapa Limited (Tranzit), has incorrectly paid his holiday entitlements and has been doing so for some years. Indeed the issues, or at least parts there-of, have already been the subject of litigation.¹

[2] In considering the papers prior to today's telephone conference which was scheduled to discuss plans for hearing the matter I became concerned that as a result of the previous litigation I might not have jurisdiction to hear the claims, or at least parts there-of, with such jurisdiction already lying with the Employment Court. I also wondered whether, if correct, this meant the matter should be removed in its entirety.

[3] I raised my concerns, and the reasoning, with the parties. Mr Clarke, on behalf of Mr Morgan, is ambivalent as to where the matter proceeds as long as it does.

¹ *Tranzit Coachlines Wairarapa Ltd v Morgan and Ors* [2012] NZERA Wellington 111, *Tranzit Coachlines Wairarapa Ltd v Morgan and Ors* [2013] NZEmpC 175 and *Morgan & Ors v Tranzit Coachlines Wairarapa Ltd* [2015] NZEmpC 121

Mr Gould had no instructions with regard to the possibility of removal but did concede there appeared little wrong with my reasoning.

[4] Section 178(2) of the Employment Relations Act 2000 provides:

The Authority may order the removal of the matter, or any part of it, to the court if—

(a) an important question of law is likely to arise in the matter other than incidentally; or

(b) the case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the court; or

(c) the court already has before it proceedings which are between the same parties and which involve the same or similar or related issues; or

(d) the Authority is of the opinion that in all the circumstances the court should determine the matter.

[5] Removal may occur on the Authority's own volition.²

[6] Mr Morgan asks his claims be remedied by having seven propositions determined in his favour.

[7] In the third he seeks:

A determination the Respondent must pay untaken annual holiday entitlement for the period 2008 to December 2014 as provided by the Holidays Act in circumstances where employment comes to an end (Holidays Act s 24)

[8] The question of how cessation affected an employees' entitlement to annual leave for someone in a work situation identical to Mr Morgan's was one of the issues raised in the Court's second hearing though at the time the question applied to his co-applicant.³ In its conclusion the Court stated:

As the second plaintiff is no longer employed by the defendant it is not appropriate to make the compliance order sought in the statement of claim. Given my conclusions, I suspect that counsel will be able to resolve any outstanding issues in relation to this aspect of the case but, if necessary, leave is reserved to seek further directions from the Court.

² Section 178(1) of the Employment Relations Act 2000

³ *Morgan & Ors v Transit Coachlines Wairarapa Ltd* [2015] NZEmpC 121

[9] The issue now affects Mr Morgan and I note his fifth claim mirrors it but relates to a subsequent period of employment.

[10] It appears to me the Court is already seized of the issue having gained it as a result of an earlier removal determination from the Authority.⁴ In the event the parties were unable to conclude an agreement in respect to the issue despite the Court's guidance leave was reserved for the matter to return to the Court – not the Authority. I therefore conclude I am no longer capable of hearing this part of the claim with the jurisdiction having passed to the Court.

[11] Furthermore I note Mr Morgan's first remedy. He seeks:

A determination that the annual holiday entitlement paid in March 2016 was an underpayment as the Respondent was not entitled to unilaterally decide to offset the sum owed by the 8% of earnings previously paid.

[12] The payment in question was a direct response to the Court's 2015 decision and the party's inability to agree how the decision should be implemented. Common sense dictates determination of that dispute also falls to the Court with it effectively being the continuation of a matter removed to, and accepted by, the Court.

[13] That then raises the questions of what to do with the other matters. Section 178(2)(c) provides for removal where *the court already has before it proceedings which are between the same parties and which involve the same or similar or related issues*.

[14] Mr Clarke is adamant the issues are interrelated and Mr Gould concedes that is so – he used the words of the Act, similar and related. My reading of the pleadings and the earlier decisions would lead me to agree.

[15] Finally I note the pleadings suggest there may also be a need to revisit the Court's decision in its first judgement between these parties and consider its effect and application in the circumstances. The pleadings also appear to raise questions of law that may affect the payment of public and annual holidays for a wider constituency of seasonal workers.

[16] For the above reasons I conclude there a multiplicity of reasons why Mr Morgan's claims should be removed to the Employment Court. First I do not have

⁴ *Morgan & Ors v Transit Coachlines Wairarapa Ltd* [2014] NZERA Wellington 102

jurisdiction in respect to at least one, probably two, of the claims with the Court already being ceased of them. Second the parties agreement, with which I concur, that the residue of the claim involve related issues means they should also be removed pursuant to s 178(2)(c).

[17] Given it may be revisited at a parties request I advise a view there should be no issues as to costs.

M B Loftus
Member of the Employment Relations Authority