

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Thomas Paul O'Flynn (Applicant)
AND The Southland District Health Board (Respondent)
REPRESENTATIVES Penelope Ryder-Lewis, counsel for applicant
Adam Ross, counsel for respondent
MEMBER OF AUTHORITY James Crichton
CONSIDERATION OF PAPERS 1 August 2006
DATE OF DETERMINATION 1 August 2006

DETERMINATION OF THE AUTHORITY

The employment relationship problem

[1] The applicant (Mr O'Flynn) and the respondent, the Southland District Health Board (the Board) by a joint memorandum of counsel seek a transfer of proceedings currently filed in the Employment Relations Authority to the Employment Court.

[2] In that memorandum of counsel, the parties' representatives traverse, consider and comment upon the relevant grounds provided for in section 178 (2) of the Employment Relations Act 2000 which empowers the Authority to remove all or part of a matter to the Court.

[3] In all the circumstances, I propose to deal with the matter on the papers.

Removal

[4] There are four grounds under s178 (2) which would enable the Authority to remove all or part of a matter to the Court.

[5] In the instant case, the joint memorandum indicates that (a) important questions of law are involved (s178 (2)(a)); (b) the matter is urgent and it is in the public interest that it be removed immediately to the Court (s178 (2)(b)); and (c) by implication, it is available to the Authority to reach the conclusion that *in all the circumstances* the matter should be determined by the Court (s178 (2)(d)).

[6] As to the important question of law involved, the joint memorandum indicates that the hearing will involve issues to do with the law applicable to future loss and the assessment of the contingencies of that loss. That is a question of law and through the parties' counsel, the joint memorandum indicates that those issues form part of the Board's defence. The joint memorandum indicates that important questions of law are involved and I accept that view.

[7] As to the question of urgency, the joint memorandum of counsel indicates that Dr O'Flynn's health *requires an early final determination of the claims as part of his own treatment*. The joint memorandum also advises that some witnesses in the proceeding have *health effects from previous hearings of other aspects of this matter* and so it could be said that they also would benefit from the matter being dealt with urgently and, ideally, in one forum. I accept that submission that the case is indeed of such a nature and of such urgency that the public interest requires that it be removed to the Court.

[8] Further and finally, I consider that the effect of the joint memorandum of counsel, looked at in the round, encourages me to the view that in all the circumstances, the interests of justice would best be served by the matter being referred in its entirety to the Court having regard to the fact that important questions of law are involved and that the justice of the case requires the immediate removal of the matter to the Court in the interests of urgency.

[9] The Authority, of course, is not obliged to remove a matter even if grounds are made out, but there is no reason to decline the order in the circumstances of the present case especially where the Authority has the benefit of a joint application.

Orders

[10] I order the whole of the matter removed to the Court for the Court to hear and determine without the Authority investigating the matter.

[11] I make no order for costs at this point.

James Crichton
Member of Employment Relations Authority