

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2012] NZERA Auckland 316  
5307032

BETWEEN SEAN RAMKISSOON  
Applicant

AND THE COMMISSIONER OF  
NEW ZEALAND POLICE  
Respondent

Member of Authority: R A Monaghan

Representatives: P Brosnahan, counsel for applicant  
E Child, counsel for respondent

Investigation meeting: Heard on the papers

Determination: 11 September 2012

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] This is an application by the Commissioner of Police (the Commissioner) for an order under s 178 of the Employment Relations Act 2000 for the removal to the Employment Court of the whole of an employment relationship problem. Mr Ramkissoon opposes the application.

[2] The application relies on s 178(2)(a)and(d), which read:

*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. ...*
- c. ...; or*
- d. the Authority is of the opinion that in all of the circumstances the Court should determine the matter.*

**Background**

[3] Mr Ramkissoon was employed by the Commissioner as a senior constable in Whakatane. He has raised personal grievances under s 103(1)(b) of the Act, being:

- (i) a review of Mr Ramkissoo's appointment to a sergeant's position in Opotiki, which was lodged in 2009 under s 65 of the State Sector Act and s 62 of the Policing Act 2008 and which led to the cancellation of that appointment, was wrongly and unfairly carried out in that,
- the review was initiated by the human resources department, and was without jurisdiction as the initiator was not an applicant for the position in question,
  - there were a number of failures to follow the rules of natural justice in the conduct of the review,
  - a number of incorrect statements were made about him,
  - the subsequently readvertised position included a new requirement regarding residence which excluded him although he was otherwise qualified for the readvertised position; and
- (ii) after these events Mr Ramkissoo became very unwell with a stress-related illness and in July 2009 was placed on special duties under a rehabilitation plan, but the area commander and other senior officers and employees,
- wrongly asserted he was not genuinely ill,
  - subjected him to unwarranted and unfair pressure to return to full time frontline duties,
  - wrongly and unjustifiably required him to attempt to return to full time frontline duties knowing he was not fit for such duties, and
  - as a result of these actions caused him to suffer further stress and emotional harm.

[4] These are referred to as the Opotiki grievance and the rehabilitation management grievance respectively.

[5] In June 2011, and as a result of the above actions, Mr Ramkissoo was medically disengaged from his employment. He has also raised a personal grievance on the ground of constructive and unjustified dismissal.

### **Important questions of law**

[6] The Commissioner says important questions law are likely to arise other than incidentally in respect of:

- The scope of the power to review an appointment under s 65 of the State Sector Act 1988; and
- The scope of a disadvantage grievance in the context of a promotion or a new appointment.

[7] These questions of law arise out of the Opotiki grievance, and I accept that they do so other than incidentally.

[8] The issues concerning the scope of the power to review an appointment centre on whether there was any jurisdiction to embark on the review, the role of the human resources department in initiating and pursuing it, and the use of the review procedure to correct what was said to be the erroneous decision to approve the appointment.

[9] The issues concerning the scope of the disadvantage grievance in the context of a promotion or new appointment were said to call for a consideration of sometimes conflicting case law including *Victoria University of Wellington v Haddon*<sup>1</sup> and *New Zealand Air Line Pilots Association IUOW v Air New Zealand Limited*.<sup>2</sup> The former addressed whether a defective appointment procedure could give rise to a disadvantage grievance under earlier legislation. The Court of Appeal addressed the meaning of ‘employee’s employment’ with reference to the predecessor to s 103(1)(b), and found the provision was limited to disadvantageous actions affecting existing employment. Actions affecting the prospect of securing new employment did not fall within the provision. The latter probably turns on the special nature of the industry in which it occurred.

[10] I observe that many of the cases cited on the point in general were decided either before the coming into force of the Employment Relations Act, or before the content of the mutual obligations of good faith was as developed as it is becoming.

[11] I observe further that there may now be a question about whether an order for Mr Ramkissoon’s reinstatement to the position of sergeant is available in law.

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<sup>1</sup> [1996] 2 NZLR 409 (CA)

<sup>2</sup> [1992] 3 ERNZ 73

[12] These matters give rise to questions of law which are important in that their resolution will be decisive of the Opotiki grievance, and may be applicable beyond the immediate interests of the parties to this application.

### **Other reasons why the court should determine the matter**

[13] The Commissioner says that, in considering the application under s 178(2)(d), factors for the Authority to take into account include:

- Serious allegations have been made against senior officers of the New Zealand Police, and it is in the public interest that these be determined by the court;
- The case may involve difficult and complex questions about evidence management, which may be better suited to the more formal information management regime of the court.

[14] Mr Ramkissoon has made serious allegations against senior officers of the New Zealand Police, and has indicated during the course of this matter that he intends to maintain them. They comprise allegations of conspiracy, corruption, dishonesty, collusion, oppression and harassment. There was no apparent foundation for some of them, but many have been made because Mr Ramkissoon believes the aftermath of another earlier matter in which he had an involvement influenced the actions he now complains of. Mr Child cited a number of police cases where employment relationship problems involving such allegations have been removed to the court, referring in particular to *Andrew v Commissioner of Police*,<sup>3</sup> While I would not accept that the seniority alone of the individuals against whom the allegations have been made is determinative of the present application, I accept the appropriate method of dealing with allegations of the kind made here is a relevant consideration.

[15] The concern about these allegations arises in the context of the wider concern about a likely need for the more formal information management regime of the court. There are already difficulties - which I accept the Authority resolves on a not-infrequent basis - with the extent of the otherwise arguably irrelevant or inadmissible evidence Mr Ramkissoon wishes to provide. I am also concerned by Mr Child's

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<sup>3</sup> CRC 21A/03, 31 July 2003

references to the possibility of Mr Ramkissoon producing further information at a very late stage should the currently-scheduled investigation meeting go ahead, and being information of which I am currently unaware. Mr Brosnahan did not shed any light on those references in his reply to this application. Accordingly this matter, too, is a relevant consideration.

[16] Mr Brosnahan expressed concern about the lateness of the application for removal, the further delay if this employment relationship problem is removed to the court, and because Mr Ramkissoon resides overseas and has already made arrangements to attend the investigation meeting which has been scheduled in the Authority for the full week beginning 1 October 2012

[17] I have some sympathy with the concern about the lateness of the application for removal, particularly because: the prospect was raised between the parties in September 2011 but not pursued: even given the difficulties with the way in which the employment relationship problem was framed counsel for the Commissioner could have been instructed sooner than was the case; and the parties knew Mr Ramkissoon resides overseas and could be expected to have made travel and other arrangements in advance of the scheduled meeting.

[18] Overall there has already been considerable delay in this matter and I am reluctant to add to it. However Mr Ramkissoon's changes in representation and delays in responding to the Authority's attempts to obtain a better indication of the nature of the disadvantage grievances with reference to the components of s 103(1)(b) of the Employment Relations Act contributed to earlier delays. More recently, in May 2012, a scheduled investigation meeting was adjourned. For the avoidance of doubt, that was because at the time the dismissal grievance was not before the Authority at all. It was not included in the statement of problem, no arrangements had been made in respect of it, and I did not accept that the relevant evidence was before the Authority notwithstanding. The unsatisfactory alternative was to continue to hear the disadvantage grievances which were before the Authority, and adjourn the meeting part heard to allow the dismissal grievance to be lodged and then addressed.

[19] In the context of the need to avoid delay Mr Brosnahan also referred to the fact that reinstatement is now sought. I give that matter little weight since the application

for reinstatement was not made until June 2012, a year after Mr Ramkissoo's disengagement. Moreover, it appears that medical information not currently available to the Authority or the Commissioner will be necessary.

[20] For these reasons I do not accept that Mr Ramkissoo will be prejudiced by any further delay that may result if this matter is removed to the Employment Court.

### **Order for removal**

[21] I have found that s 178(2)(a) is satisfied in respect of the Opotiki grievance. While that is not directly the case in respect of the rehabilitation management grievance and the dismissal grievance, all of these matters are connected and it would not be appropriate to sever the Opotiki grievance.

[22] For that reason, and because I have given some weight as indicated to the matters discussed in the preceding section of this determination, I am of the opinion that in all of the circumstances the court should determine the matter.

[23] I order the removal of the entire employment relationship problem to the Employment Court for hearing and determination.

### **Costs**

[24] Costs are reserved.

[25] The parties are invited to reach agreement on the matter. If they are unable to do so any party seeking costs shall have 28 days from the date of this determination in which to file and serve memoranda on the matter. The other party shall have a further 14 days in which to file and serve a reply.

R A Monaghan

Member of the Employment Relations Authority