

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Bruce David Ramsay (Applicant)
AND The Commissioner of Police (Respondent)
REPRESENTATIVES Scott Fairclough, Counsel for the Applicant
Raewyn Gibson, Advocate for the Respondent
MEMBER OF AUTHORITY Helen Doyle
SUBMISSIONS RECEIVED 23 March 2007
30 March 2007
DATE OF DETERMINATION 19 April 2007

DETERMINATION OF THE AUTHORITY

[1] The applicant applies to the Authority to have his personal grievance removed to the Court for the Court to hear and determine it without the Authority investigating the matter. There are specific grounds on which the Authority may order the removal of the matter under s.178 (2) (a), (b) and (c) of the Employment Relations Act 2000. The applicant does not rely on these specific grounds but on s.178(2)(d) of Act which is a discretionary provision and provides:

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

[2] The circumstances relied on by the applicant are as follows:

- The historical events that gave rise to the grievance when Mr Ramsay worked at the material time as a Constable at a rural station;
- Issues arising about the interpretation and application of Police general instructions;
- The number of witnesses required to give evidence and the need for cross-examination in the more formal context of the Court's adversarial procedure to test evidential conflict and credibility issues;
- Disclosure issues needing the more prescriptive powers of a Court; and
- The limited resources of the applicant who cannot afford two full hearings if there is a challenge to the Court.

[3] Another personal grievance was lodged at the same time as Mr Ramsay's by Christine Coy who was also a Constable at the same rural Police station as Mr Ramsay. There has been no

application for joinder of the proceedings at this stage. Ms Coy has also applied to have her personal grievance removed to the Court and that application will be the subject of a separate determination.

[4] The respondent opposes the application to remove Mr Ramsay's personal grievance to the Court and submits that none of the circumstances relied on by Mr Ramsay constitute valid grounds for the Authority to reach an opinion that in all the circumstances the Court should determine the matter.

The nature of the personal grievance

[5] Mr Ramsay says that his employment as a member of the New Zealand Police was affected to his disadvantage by unjustifiable actions on the part of the respondent that resulted in him disengaging from the Police and terminating his employment with them in circumstances in the nature of a constructive dismissal.

[6] The respondent does not accept that Mr Ramsay has a personal grievance.

[7] The applicant was sworn into the New Zealand Police as a constable on 9 May 1978. In 1987 he took up a position at the Temuka Police Station and remained there until his disengagement from the New Zealand Police on 12 August 2003. There were issues in the relationship between Mr Ramsay and his supervisor, the officer in charge of the Temuka Police Station. Allegations were made by Mr Ramsay to the Area Controller of the South Canterbury Police about his supervisor. A significant part of Mr Ramsay's grievance is concerned with how that matter was dealt with. A sexual harassment complaint was made against Mr Ramsay to the Police Complaints Authority in 2002. Part of Mr Ramsay's grievance is concerned with the handling of that matter.

[8] Mr Ramsay disengaged from the Police in August 2003 and set out the specific incidents that led to his application.

[9] Mr Ramsay raised a personal grievance with the Commissioner of the New Zealand Police on 8 September 2003 but no proceedings were lodged with the Authority until 17 March 2006. The parties attended mediation but the matter was not resolved.

[10] The application for removal to the Court was then lodged by the applicant and opposed by the respondent. A timetable for provision of submissions was agreed to by Mr Fairclough and Ms Gibson. The determination has been made on the basis of documentation lodged and submissions provided.

Removal application

[11] The discretion under s.178(2)(d) is wide but there must be circumstances that would lead the Authority to be of the opinion the Court should determine the matter.

[12] Mr Fairclough could only refer me to one Authority determination where a case has been removed under s.178(2)(d) – *Griffiths v. Sunbeam Corporation Ltd* (WEA32/05, 23 September 2004). Both Mr Fairclough and Ms Gibson agreed that the determination was not particularly helpful in terms of the current application.

[13] Ms Gibson relied on a determination of the Employment Relations Authority *Dr Y v. Bay of Plenty District Health Board* (AA132/06, Member Robin Arthur) and I have had regard to that

determination but recognise that each application turns on its own circumstances. An application was made in that case to remove a matter to the Court under s.178(2)(d) of the Act but was not successful.

[14] In exercising my discretion I have also had regard to the object section in Part 10 of the Act which is concerned with Institutions.

[15] Nearly all personal grievances are determined by the Authority at first instance. Parliament must, however, have intended that a very limited number of cases could be removed, not because they meet the specific criteria set out under s.178(2)(a), (b) and (c) of the Act, but because the Authority is of the opinion, in all the circumstances, that the Court should determine the matter under s.178(2)(d). Ms Gibson quite correctly submits that it is not enough that one party or even both parties simply want the matter to go to the Court. I have, in exercising my discretion, had regard to the circumstances in Mr Ramsay's case.

[16] Cross-examination or witness numbers are not factors that I find in the exercise of my discretion are sufficient on their own to favour removal. Whether this matter is dealt with in the Authority or the Court, it will occupy considerable investigation/hearing time and there will be a need for the Authority or Court to be involved in all likelihood in matters of an interlocutory nature before hearing or investigation. They are not factors sufficient on their own to favour removal. I do not find that the likelihood of a challenge is a factor that would favour removal to the Court.

[17] Ms Gibson submits that if the matter is removed, it will take away the respondent's right to have the personal grievance claim dealt with by the Authority which would in all likelihood result in a significantly reduced hearing time and less associated costs. She submits that the facts relied on by the applicant are applicable to many cases that are determined by the Authority on a day-to-day basis.

[18] I do not accept that the facts relied on by the applicant in this case are applicable to the cases that the Authority determines on a day-to-day basis. Most cases do not have such historical issues to be determined or the issues that I shall shortly come to in relation to disclosure. It may well be, as submitted by Ms Gibson, that the scope of a substantive hearing could be reduced if it is found in relation to any historical matters that Mr Ramsay has not raised a personal grievance claim within the requisite time. There is no certainty though about that matter.

[19] Mr Fairclough submits that Mr Ramsay has spent a number of years trying to obtain disclosure of documents relevant to his case and that disclosure is still incomplete and piecemeal. Mr Ramsay maintains that there has been a cover up and deception in relation to matters that form part of the factual matrix that gave rise, he says, to his disengagement from the Police. Mr Fairclough submits that the Court has more prescriptive powers in relation to discovery of documents than the Authority, and that is a factor favouring removal in this case. Ms Gibson submits that discovery is not a valid reason for the Authority to exercise its discretion and remove the matter to the Court and that the respondent would cooperate in the provision of documents.

[20] The benefit of discovery at an early stage of proceedings is that it gives the parties an opportunity to assess strengths and weaknesses of both their own case and that of the other party. Discovery of documents in Mr Ramsay's case has to be considered both in light of the historical nature of the claim, Mr Ramsay's view that there has been a cover up and deception and the fact that some personnel involved in the matter have since departed from the Police.

[21] Whilst Mr Fairclough has quite properly in his application for removal said that no complex issues of law are likely to arise, there is a possibility that documents/information disclosed as a result of the discovery process may have bearing on interpretation and application of Police General

Instructions. In the circumstances of this case, I am of the view that the more prescriptive procedures and powers with respect to discovery in the Court is a factor favouring removal to the Court.

[22] Mr Ramsay made serious allegations about his supervisor to his Area Controller. There is, in my view, public interest in how such allegations were dealt with in the context of a small rural Police station and the Police general instructions. I consider that the public interest in this matter is a factor favouring removal in this case.

[23] The circumstances in relation to this case relied on by the applicant would not on their own be sufficient for the Authority to exercise its discretion to remove the matter to the Court. Considered together though I am satisfied that the Authority should exercise its discretion in favour of removing the matter to the Court.

Determination

[24] This matter is to be removed in its entirety to the Employment Court under s.178(2)(d) of the Employment Relations Act 2000.

Costs

[25] Costs are reserved and will no doubt be dealt with by the Court when it considers it appropriate to do so.

Helen Doyle
Member of Employment Relations Authority