

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 31/09  
File Number 5138592

BETWEEN                      Bernard Robinson  
   Applicant

AND                              Capital and Coast District  
   Health Board  
   Respondent

Member of Authority:        Denis Asher

Representatives:             Peter Cranney for Mr Robinson  
   Hamish Kynaston for the Board

Application Received        17 March 2009

Determination:                19 March 2009

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**DETERMINATION OF THE AUTHORITY: Joint Application for Removal to the  
Employment Court**

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**Employment Relationship Problem**

[1]     The problem between the parties is: what leave is Mr Robinson and other orderlies entitled to after 7 years continuous service?

- [2] By agreement this problem was initially put on hold pending the Full Employment Court's decision in *New Zealand Tramways and Public Transport Employees Union Incorporated and National Distribution Union Incorporated v Transportation Auckland Corporation Limited and Cityline (New Zealand) Limited* (unreported), AC 48/08, 12 December 2008.
- [3] Following telephone conferences on 20 February and 4 March 2009 and in light of perceived differences between the full Employment Court's *Tramways* decision (above) and the provisions in the collective agreement that are in dispute in this instance, and by way of a joint application received on 17 March the parties now ask that this matter be removed to the Employment Court.

### **Background**

- [4] Mr Robinson is an orderly at Wellington Hospital. The case is brought on his behalf and that of other orderlies employed in the hospital.
- [5] The applicant and the respondent are parties to a collective employment agreement that commenced on 1 July 2007 and expires on 30 June 2009.
- [6] The parties' employment relationship problem concerns the interpretation of the agreement and in particular clauses 11.2 and 11.3 of appendix 1 of the agreement.
- [7] The applicant says that, consistent with the provisions of the agreement and with effect from 1 April 2007 and having completed 7-years continuous service, the Board was required to provide him with an additional week of annual holiday additional to and not part of the 4-weeks' annual holidays conferred by the Holidays Act 2003.
- [8] The Board's view is that Mr Robinson's entitlement and that of other employees remains at four weeks from 1 April 2007 regardless of service.

### **Joint Application**

- [9] The application is made under s. 178 of the Employment Relations Act 2000 on the grounds that:

- a. There is an important question of law concerning the application and interpretation of a collective agreement in light of changes to the Holidays Act 2003 that increased the minimum annual holiday entitlement from three weeks to four; and
  - b. The Employment Court already has before it similar proceedings, i.e. WRC 38/08, *National Distribution Union v Capital and Coast District Health Board*; and
  - c. The Employment Court has also decided recently a case involving a similar issue, i.e. the *Tramways* decision referred to above.
- [10] The parties argue that it is appropriate in all the circumstances the matter be removed, particularly as regardless of the outcome in the Authority the prospects of a challenge being brought to the Court are high and both parties support the removal application.

## Discussion

- [11] This matter involves a question of law that affects Mr Robinson and an unknown number of other orderlies employed by the respondent and – here I speculate – other area health boards. I am satisfied on this ground there is an important question of law: *Hanlon v International Education Foundation (NZ) Ltd Inc* [1995] 1 ERNZ 1.
- [12] I also accept the submission that a similar proceeding is presently before the Employment Court: s. 178 (2) (c) applied.
- [13] This is also an instance where removal has been agreed by the parties represented as they are by experienced counsel: *Cocks v Foote Cone & Belding Ltd* [1994] 1 ERNZ 180.
- [14] While it may be more costly for the parties to attend the Employment Court in the first instance, and they will be denied any benefit from an investigation by the Authority and its determination, I am satisfied that in all the circumstances the grounds for removal are clearly and strongly made out.

**Determination**

[15] Pursuant to s. 178 (2) of the Act I order the removal of this problem in its entirety to the Employment Court.

[16] Costs are reserved.

**Denis Asher**

**Member of the Employment Relations Authority**