

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKAURAU ROHE**

**[2019] NZERA 659  
3078332**

BETWEEN

OLIVER SAVAGE  
Applicant

AND

WAI SHING LIMITED  
Respondent

Member of Authority: Eleanor Robinson

Representatives: Catherine Stewart and William Fussey, Counsel for  
Applicant  
Mark Hammond, Counsel for Respondent

Investigation Meeting On the papers

Determination: 14 November 2019

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**DETERMINATION OF THE AUTHORITY**

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**Application for compliance order**

[1] The Applicant, Mr Oliver Savage, has applied to the Authority for removal of this matter to the Employment Court pursuant to s 178(2)(c) of the Employment Relations Act 2000 (the Act).

[2] The Applicant further submits that this matter should be removed in accordance with the Authority's discretion to remove pursuant to s 178(2)(d) of the Act.

[3] The Respondent does not oppose the removal application.

## **Removal**

[4] The Court has issued judgments in the two proceedings which were before it.<sup>1</sup>

[5] I am not aware that there are any proceedings extant before the Court and decline therefore to remove this matter to the Court pursuant to s 178(2)(c) of the Act.

[6] The Authority has not yet heard the substantive application of Mr Savage, namely that he was unjustifiably dismissed by reason of redundancy.

[7] There is no uncertainty about the Authority's jurisdiction to determine the substantive matter of unjustifiable dismissal by reason of redundancy. The case law in this area is well established and the Authority is experienced in determining the factual and legal considerations in such matters and is, as Parliament intended, well placed to do so in this case.

[8] I note that the Respondent: "for reasons of practicality consents to the removal application" and has done so on the basis that either party is likely to challenge the substantive determination.

[9] I have taken that into consideration in determining whether or not I should exercise my discretion to remove a matter pursuant to s 178(2)(d) of the Act.

[10] I accept that either party may challenge the substantive determination, it is not unusual for a party, dissatisfied with the finding in a determination of the Authority, to express that dissatisfaction by exercising its right to challenge it to the Court. That right includes the right to appeal on a *de novo* basis which traverses both challenges based on the facts and the law. I find that it is in the interests of justice that that right is preserved for factual as well as legal questions.

[11] Various aspects of this case have already been before the Court, but these were on issues that have been addressed and disposed of by the Court leaving the substantive issue remaining. It is always possible that the Court may issue a further

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<sup>1</sup> *Savage v Wai Shing Limited* [2019] NZEmpC 153; *Savage v Wai Shing Limited* [2019] NZEmpC 141

order, but I do not find that that possibility alone is a reason to justify my exercising my discretion to remove on that basis.

[12] I do not find that there are grounds pursuant to s 178(2)(c ) or (d) of the Act to remove this matter to the Court and decline removal of the matter to the Court on that basis.

### **Costs**

[13] Costs are reserved pending final determination of this matter.

### **Next Steps**

[14] As previously advised, the Authority will shortly convene a case management conference to set timetable directions for the investigation of Mr Savage's substantive claims.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**