

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2011] NZERA Wellington 96

File Number: 5074356

BETWEEN                      LYNNE SNOWDON  
   Applicant

AND                              RADIO NEW ZEALAND  
   LIMITED  
   Respondent

Member of Authority:      Denis Asher

Representatives:            Richard Laurenson and Rob Moodie for Ms Snowdon  
   Michael Quigg for Radio New Zealand

Investigation Meeting      By way of submissions

Submissions Received      By 30 May 2011

Determination:              3 June 2011

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**DETERMINATION OF THE AUTHORITY: Removal to the Employment  
Court**

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**The Problem**

[1]    The originating employment relationship problem was set out in Ms Snowdon's statement of problem filed on 13 December 2006. In it the applicant alleges she was unjustifiably disadvantaged by the respondent (RNZ).

[2]    During a telephone conference on 1 March 2007 the parties agreed to a two-day investigation commencing on 17 July 2007.

[3] Ms Snowdon's medical condition subsequently deteriorated to the point where her representative, Dr Moody, by way of an application dated 16 May 2007, successfully sought to adjourn matters *sine die*.

[4] Successive updates from Dr Moody confirmed Ms Snowdon had not recovered such that the matter could be resumed.

[5] Mediation efforts by the parties during this period did not resolve the employment relationship problem.

[6] A suggestion from the applicant dated 30 January 2009 that the problem be removed to the Employment Court without the Authority investigating it was opposed by RNZ until proceedings then before the Employment Court were resolved.

[7] Both parties subsequently confirmed their preference was for this problem to be put on hold pending the outcome of other matters currently before the Employment Court.

[8] Following the amendments to the Employment Relations Act 2000 (the Act), in particular the amendments to s 178, and by letter dated 15 April 2011 and at my request, Authority support staff sought the views of the parties of the Authority initiating a removal of this matter to the Employment Court. So as to assist their deliberations, I provided a copy of this determination in draft form.

#### **Applicant's Response Summarised**

[9] Ms Snowdon has no objection to the matter being removed to the Court and regards RNZ's response (see below) as immaterial at this point as to whether this matter remains in the Authority or is removed to the Court.

#### **RNZ's Response Summarised**

[10] Because of the matter's history and the state of current proceedings before the Employment Court, RNZ opposes the Authority removing the matter under its own

motion. The prime reason is that, by a Chambers Minute dated 5 November 2010 (copy provided), the Employment Court has set the matter down for a 4-week hearing, on a consolidated basis.

[11] And, it has taken over 8 years for the proceedings to reach the state where matters “*are now firmly locked in for a four week hearing commencing on Monday 1 August. Radio New Zealand will not agree to anything that could possibly or conceivably prejudice that hearing. There is nothing in the history of this matter that justifies the removal ... at this stage, particularly bearing in mind that Radio New Zealand has maintained throughout that the subject matter of these proceedings relates to Holiday Act issues that are stand alone issues.*” (letter of 2 May 2011 from Michael Quigg on behalf of the respondent).

[12] Given the imminent hearing before the Employment Court, RNZ submits that the appropriate course for this matter – consistent with the course of action adopted by both the High Court (in respect of defamation proceedings) and the Court of Appeal (an appeal in relation to costs) – is for it to remain on hold before the Authority pending the outcome of the Employment Court hearing.

[13] If the Authority did wish to pursue the removal matter further at this stage RNZ would wish to be formally heard on the matter.

### **Discussion and Findings**

[14] By way of the 1 April 2011 amendments to the Act, the Authority is now empowered to order the removal of a matter, or any part of it, to the Employment Court, without the Authority investigating it: s. 170 (1) of the Act.

[15] The grounds are set out under ss. 178 (2). The Authority may order removal if:

- a. An important question of law is likely to arise other than incidentally; or
- b. The case is of such a nature and of such urgency that it is in the public interest it be removed immediately; or

- c. The Court already has before it proceedings between the same parties and which involve the same or similar or related issues; or
- d. The Authority is of the opinion that in all the circumstances the court should determine the matter.

[16] No important question of law arises in this matter other than incidentally.

[17] There is no evidence or argument to suggest that this case is of such a nature **and** of such urgency that it is in the public interest it be removed to the Court.

[18] The Court does have before it proceedings between the same parties and which involve the same or similar or related issues.

[19] I am of the opinion that, in all the circumstances, the Court should determine this matter. I reach my conclusion for the following reasons:

- a. As is made clear above, the Court already has before it proceedings between the same parties and which involve the same or similar or related issues. These proceedings are already protracted and difficult;
- b. Judge Travis' Minute of 5 November 2010 makes clear that, "*At the conclusion of all of that evidence, the Court will be invited to deliver a judgment dealing first with the fraud proceedings and the allegations of fraudulent manipulation of the disclosure procedures. If the judgment on that issue results in an order that the defendant be required to disclose documents that it has not previously disclosed then both parties will have the opportunity to lead evidence in relation to that documentation in support of, or in opposition to, the personal grievance proceedings*" (par 5). And, "*There will be no determination of the two personal grievance claims until determination of the fraud discovery claim and after any subsequent hearing that may be required if the plaintiff's fraud proceedings are successful*" (par 7). In other words, the parties and the Court contemplate further hearings in respect of the matters currently in the Court, past the scheduled 4-week hearing commencing 1 August 2011;
- c. I note also par 13 of the Minute in which the Judge notes a telephone conference call may be convened at any mutually convenient time if required;

- d. I am therefore satisfied this matter can be ‘added-on’ to existing Court (and, as noted above, protracted and difficult) proceedings without, as concerns RNZ, “*prejudice(ing) that hearing*” (above).

[20] Having had the benefit of comprehensive submissions from the respondent, I am declining RNZ’s request that it enjoy a viva voce hearing.

**Determination**

[21] I direct that this problem be removed to the Employment Court: ss. 178 (1) & (2) (d) applied.

[22] Costs are reserved.

**Denis Asher**

**Member of the Employment Relations Authority**