IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2022] NZERA 332
3174727

	BETWEEN	JANE WRIGHT Applicant
	AND	SOUTHERN CROSS HEALTHCARE LIMITED First Respondent

Member of Authority:	Eleanor Robinson
Representatives:	Erin Davies and Beth Smith, counsel for the Applicant Stephen Langton, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions and/or further evidence	6 July and 13 July 2022 from the Applicant from the Respondent
Determination:	19 July 2022

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Ms Jane Wright, filed a claim with the Authority by means of a statement of problem filed on 20 April 2022. Ms Wright claimed that she was an employee working for the Respondent, Southern Cross Healthcare Limited (SCHL).

[2] On that basis of employment, Ms Wright claims that she has been constructively dismissed, and unjustifiably disadvantaged by SCHL. In addition she claims she is owed monies in respect of unpaid holiday pay, and that SCHL breached the duty of good faith it owed to her.

[3] SCHL denies that Ms Wright is an employee and claims that she is an independent contractor. On that basis, SCHL denies that Ms Wright was unjustifiably disadvantaged and/or unjustifiably disadvantaged, or that she is owed any remedies.

[4] An Investigation Meeting was scheduled to address Ms Wright's claims on 6 to 8 December 2022 and a Directions Minute was issued by the Authority on 27 May 2022 which identified the issues for determination as including whether Ms Wright was an employee or a contactor whilst working at SCHL.

[5] On 10 June 2022 Ms Wright filed a Statement of Claim in the Employment Court seeking that it issue a Declaration of her status pursuant to s 6(5) of the Employment Relations Act 2000 (the Act).

[6] The Applicant now seeks a removal to the Court of the Authority proceedings.

[7] The Respondent agrees that the status issue should be determined by the Court, but opposes the Removal Application. It does however seek a stay on the Authority proceedings pending the Court hearing and determination of Ms Wright's status with SCHL.

Issues

[8] The issues requiring investigation are whether or not:

- The Authority proceedings should be removed to the Court?
- The Authority should issue a stay on its proceedings pending the outcome of the status issue by the Court?

The Authority's Investigation

[9] The Authority has determined this matter on the papers, that is based upon the application received from the Applicant and response from the Respondent; on an initial submission from the Applicant and supplementary submission; and on submissions from the Respondent.

[10] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Relevant Background

[11] Ms Wright was engaged by SCHL in January 2010 on secondment. After approximately three years Ms Wright's secondment ceased on agreement between the parties. Ms Wright claims that she was offered a permanent in-house Legal Counsel role with SCHL. SCHL claims that Ms Wright was engaged as an independent contractor.

[12] In late November 2021 Ms Wright became aware that SCHL was looking to appoint a General Counsel. That role was offered to an external candidate in March 2022.

[13] This matter came before the Authority by means of a Statement of Problem lodged on 20 April 2022 by which Ms Wright was seeking an interim injunction and a determination that the real nature of the relationship between her and SCHL was one of employment.

[14] In a Directions Minute dated 6 May 2022 an investigation meeting to determine whether or not an interim injunction should be issued was set down for 2 June 2022.

[15] On 20 May 2022 the parties filed a joint memorandum advising the Authority that they advised that it had been agreed that (i) Ms Wright would withdraw her application for an interim injunction; (ii) the investigation meeting set down to be held on 2 June 2022 could be vacated; (iii) an amended Statement of Problem would be file; and (iv) the matter could be set down to determine the substantive matters.

[16] On 25 May 2022 Ms Wright filed an Amended Statement of Problem because she had resigned from SCHL so her claim for interim reinstatement was withdrawn.

[17] On 27 May 2022 the Authority held a case management conference with the parties and issued a Directions Minute confirming a timetable for progressing the matter to an investigation meeting to be held on 6 to 8 December 2022. The issues for determination included a preliminary issue of Ms Wright's employment status when working for SCHL. If determined to be an employee, the substantive issues of whether or not Ms Wright had been constructively dismissed or unjustifiably disadvantaged by SCHL, and whether or not SCHL had acted in good faith towards her, were to be determined.

[18] On 10 June 2022, a Statement of Claim was filed in the Court on behalf of Ms Wright seeking a declaration pursuant to s 6 of the Employment Relations Act 2000 (the Act) that she was an employee. That same date the Applicant advised the Authority that it was also seeking to have the substantive matters before the Authority to be removed to the Court.

[19] On 21 June 2022 The Respondent filed a memorandum advising the Authority that it agreed the status issue (whether or not Ms Wright had been an employee or an independent contractor whilst working for SCHL) should be determined by the Court, but that the 'substantive' claims before the Authority should not be removed, however they should be stayed until the Court's judgment on status was issued.

[20] Both parties have since filed submissions on the issue of whether or not removal of all the matters before the Authority for investigation should be removed to the Court.

Submissions by the Applicant

Stay

[21] In regard to the issue of whether or not a stay of proceedings should be made, the Applicant submits that the Removal Application should be determined before the Stay Application is considered (in the event the Stay Application needs to be determined at all). It submits this is consistent with recent case law, where the Authority considered it appropriate to determine an application for removal of a matter to the Court, *before* considering an application to stay the Authority proceeding.[1]

Jurisdiction

[22] It is submitted by the Applicant that no issue as to jurisdiction arises as a result of the amendments made to the Statement of Problem or by reason of the Court Proceeding.

[23] This is on the basis that the Authority has exclusive jurisdiction (pursuant to section 161 of the Act) to make determinations about personal grievances and the recovery of wages, amongst other things. The ERA Proceeding involves claims for unjustified disadvantage, unjustified constructive dismissal, wage arrears and breach of good faith, all of which fall within the exclusive jurisdiction of the Authority.

[24] It is submitted in support that in *A Labour Inspector v Gill Pizza Limited*[2] the Court found that:

a. where an action has been brought by a Labour Inspector and the employment status of the worker is in dispute, the status issue must be determined by the Court, by way of an application for a declaration pursuant to section 6(5) of the Act;

b. where employment status is to be determined by the Court, the Authority could:

    i. stay the Authority proceeding pending resolution by the Court of the employment status (under s 6(5) of the Act); or alternatively

    ii. it may remove the "entire matter" to the Court for determination.

[25] The Applicant submits that while ultimately, the Court's finding in relation to the requirement for the Court to determine employment status was overturned, the obiter comments by the Court in relation to the options for addressing the remainder of the claims before the

[1] *Bowen v Bank of New Zealand* and *New Zealand Meat Workers and Related Trades Union Incorporate v Affco New Zealand Ltd*
[2] *Labour Inspector (Ministry of Business, Innovation and Employment) v Gill Pizza Ltd* [2019] NZEmpC 110

Authority, in circumstances where employment status is to be determined by the Court, provides useful guidance for this proceeding.

[26] The Court's obiter comments confirm the position thatnwhere a party has sought a declaration as to employment status from the Court pursuant to section 6(5) of the Act, or where an Authority determination on employment status (dealt with as a preliminary issue) has been challenged to the Court, the remainder of an applicant's claims before the Authority (being the "entire matter" before the Authority) can either be removed to the Court, progressed in the Authority or stayed pending the outcome of the Court proceeding. In other words, there is no jurisdictional barrier to the Authority removing the remaining issues to the Court.

Removal

[27] In support of its application to have this matter removed to the Employment Court, counsel for the Applicant relies on the following grounds pursuant to s 178(2)(c) and (d) of the Act as follows:

> **178 Removal to court** :
>
> (2) The Authority may order the removal of the matter, or any part of it, to the court if—
>
> (a) …
>
> (b)…
>
> (c) the court already has before it proceedings which are 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.

s178(2)(c): Proceedings involve the same, similar or related issues

[28] The Applicant submits that in light of the application for a Declaration on Ms Wright's employment status, the Court has proceedings before it that involve the same, similar or related matters to those before the Authority. Specifically:

(a) The Authority or Court must "… avoid the unnecessary duplication of proceedings, not only those raising the same causes of action but also those raising substantially the same questions".[3]

(b) The Authority may order the removal of the matter to the Court if any of the criteria in sections 178(2)(a) to 178(2)(d) of the Act are met. There is no

[3] *Dark v Williams & Kettle Ltd* AC 19/04, 26 March 2004 (EC) at [35].

requirement for the parties to consent to an application to remove a matter to the Court, in order for the Authority to grant removal.[4]

(c) It may be more efficient to have an entire matter heard by the Court where otherwise witnesses will be required to give evidence before both the Authority and the Court[5].

(d) It may not be a sensible use of the Authority's time to only hear a portion of the matter[6].

[29] It is submitted that in this case the Court proceeding and the Authority proceeding are between the same parties and involve the same, similar or related issues. There is considerable overlap in terms of evidence to be considered. It is submitted that the Court in determining whether or not Ms Wright was an employee will need to consider the scope of Ms Wright's role with SCHL, the responsibilities associated with her role, whether the scope of her role changed over time and how the relationship operated in practice.

[30] These same matters will be relevant to determining whether or not Ms Wright was already performing the General Counsel role, and whether therefore she was disadvantaged by SCHL's decision to create and appoint an external candidate to the General Counsel role.

[31] As such, witnesses for both parties will give evidence which is relevant to both the Court and the Authority proceedings.

[32] It is also submitted by the Applicant that in addition, Ms Wright's wage arrears claim and the holiday pay claim, are contingent upon and interrelated to the Court proceeding because these claims arise if the Court finds that she was an employee.

[33] As is set out above, in this case there is significant overlap in the evidence to be considered in determining whether:

a. the Applicant was an employee of the Respondent;

b. the General Counsel role was the Applicant's role;

c. the Applicant was unjustifiably disadvantaged and/or constructively dismissed as a result of the Respondent's actions; and

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[4] *Soapi v Pick Hawke's Bay Incorporated* [2022] NZEmpC 106.
[5] *New Zealand Airline Pilots Association Industrial Union of Workers Incorporated v Virgin Australia (NZ) Employment in Crewing Ltd* [2019] NZERA 376 at [24].
[6] *James & Wells Patent and Trade Mark Attorneys v Snoep* CA 167/09, 5 October 2009 (NZERA) at [16].This case involved a situation where the Authority first moved the status issue to the Court under s178(2)(a) of the Act, and then moved the balance of the proceeding to the Court.

d. the Applicant is owed wage arrears arising from unpaid holiday pay.

[34] In those circumstances, the ground for removal under section 178(2)(c) of the Act is met.

s 178(2)(d): In all the circumstances, the court should determine the matter

[35] The Applicant submits that the Authority should determine that in all the circumstances the Court should determine the matter because the grounds for removal under s 178(2) (c) of the Act have been made out.

[36] It is submitted that there is a prospect that an unsuccessful party will file a challenge to the Authority's determination in the Court. Consequently it will be more economic to have one hearing of the matter before the Court rather than an investigation meeting in the Authority followed by a *de novo* challenge.

Submissions by the Respondent

Stay

[37] Counsel for the Respondent submits that the legal effect of Ms Wright's application to the Court is to oust the Authority's jurisdiction to investigate and determine her substantive claims. That is because the Authority's jurisdiction depends on Ms Wright being successful in her s 6(5) application, and that also means that the Authority has no jurisdiction to remove Ms Wright's substantive claims to the Court pursuant to s 178 of the Act.

[38] However if the Authority does determine that it has jurisdiction to determine the Removal Application, then it should exercise its discretion under s 178(2) of the Act *not* to remove the applicant's claims. That is because to do so would be contrary to principle, it would deny SCHL its statutory rights, it would undermine the purpose of a s 6(5) application, and would set the bar for removal under s 178(2), too low.

[39] With regards to the stay application, the Respondent submits that if the Authority lacks jurisdiction to determine the claims, and remove them, then as a minimum, the Stay Application must be granted now, but strictly speaking, the claims must be dismissed. If the Authority finds it has jurisdiction, SCHL says the claims must be stayed until the Employment Court has determined the Status Issue, because that judgment will determine the "jurisdictional" fact in all of the claims, and the Authority cannot investigate and determine them until that fact has been established.

Jurisdiction

[40] It is submitted that each of Ms Wright's claims against SCHL require her to prove that she was an "employee" of SCHL. The Supreme Court in *Gill Pizza Ltd* has referred to the employment status ingredient in such claims as being a "*jurisdictional fact*" (the emphasis being on "jurisdictional", so if the fact is not proved, there is no jurisdiction.[7]

[41] It follows from *Gill Pizza*, that the Authority has jurisdiction to determine if the "*jurisdictional fact*" is proved, and where it is not proved, the Authority must dismiss the claims because it lacks jurisdiction to determine them.

[42] It is submitted that the jurisdictional question that arises in this case is different to the one that arose in *Gill Pizza*, and to Counsel's knowledge it has never been considered or determined previously. That question is whether Ms Wright has legal standing to make her substantive claims, and the Authority has jurisdiction to determine them, where (a) she has decided (by making a s 6(5) application) that the Court, not the Authority, will determine the "*jurisdictional fact*", and (b) the s 6(5) application has not been determined by the Court.

[43] In most cases where an applicant makes a s 6(5) application to the Court, they do so before commencing their substantive proceeding in the Authority (see for example *Leota v Parcel Express Limited* [2020] NZEmpC 61). That way, the Authority's jurisdiction is established (or not, as the case may be) first.

[44] But in the present case, the applicant has commenced her substantive claims in the Authority, and then, by lodging her s 6(5) application in the Court, she has changed her mind about the Authority determining her status and applied for the Court to do that. This now means the Court will determine if there is jurisdiction to proceed with her substantive claims.

[45] It is submitted by the Respondent that the jurisdictional question requires an examination of the Authority's express jurisdiction in s 161 of the Employment Relations Act 2000.

[46] Section 161(1)(c) provides that the Authority has the "*exclusive jurisdiction to make determinations about employment relationship problems generally including … matters about*

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[7] *Gill Pizza Ltd v Labour Inspector (Ministry of Business, Innovation and Employment)* [2021] NZSC 184 at [42]

whether a person is an employee ***(not being matters arising on an application under section 6(5))***" (emphasis added).

[47] Therefore it is submitted that when Ms Wright lodged her claims in the Authority, s 161(1)(c) of the Act granted the Authority the exclusive jurisdiction to determine them, including the "*jurisdictional fact*" of her employment status (i.e., that is the legal effect of the Supreme Court's judgment in *Gill Pizza*).

[48] However when Ms Wright subsequently made her s 6(5) application, and sought a declaration of her employment status from the Employment Court, s 161(1)(c) operated to oust the Authority's jurisdiction to determine her employment status. That is because status becomes (under s 161(1)(c)) a "*matter arising on an application under section 6(5)*", and the subsection explicitly ousts the Authority's jurisdiction that it would otherwise have had.[8]

[49] Further, because employment status is a "*jurisdictional fact*" in all of the applicant's substantive claims, and the Authority is now unable to determine that "*jurisdictional fact*", it is submitted that it follows that the Authority lacks jurisdiction to determine those claims until the s 6(5) application is determined in the applicant's favour.

[50] The remaining enquiry into the source of Authority's jurisdiction to determine the Removal Application is whether another provision in s 161(1) grants the Authority that jurisdiction.

[51] In that regard, s 161(1) does not expressly grant the Authority jurisdiction to determine Removal Applications at all. It does not even refer to s 178. That is because in most cases, the Authority's jurisdiction to remove a "*matter, or part of it*" to the Court is derived from the Authority having jurisdiction to determine "*the matter*" in the first place - under, for example, s 161(1)(e) in the case of a personal grievance. If the Authority has that original jurisdiction, the matter can be removed (or not) to the Court. And if not, then it must follow that it lacks jurisdiction to remove it.

[52] For completeness, s 161(1)(r) grants the Authority jurisdiction to determine "*any other* ***action*** *(being an action that is not directly within the jurisdiction of the court) arising from or related to the employment relationship or related to the interpretation of this Act (other than an action founded on tort)*", and an argument could be made that a Removal Application is such an "action".

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[8] Above n 7 at [49]

[53] It is submitted that it would be inconsistent with this one-or-the-other approach, if an applicant was permitted to lodge a personal grievance in the Authority and, at the same time, lodge a s 6(5) application in the Court, and then seek to bypass the Authority's original jurisdiction to determine the personal grievance claim, by applying to remove the Authority proceeding under s 178 of the Act.

[54] Further it is submitted that it would be inconsistent with the purpose of s 6(5) of the Act, which appears to be to grant an applicant and the Court jurisdiction to ask and answer one question only – was the applicant an employee? – not to grant it jurisdiction to determine status *and* any other claim that would otherwise be in the Authority's jurisdiction that depends on this "*jurisdictional fact*" being proved.

[55] Therefore, it is submitted that when ss 161(1)(c) and 6(5) are read together with the object of and provisions in Part 10 of the Act that grant the Authority first instance jurisdiction to determine personal grievances, arrears and penalty claims, the logical and strong inference is that where a s 6(5) application is made, Parliament intended the Court would determine the status question first, in order that the Authority's first-instance jurisdiction to determine claims could then (but not before then) be established.

Removal

[56] The Respondent submits that if the Authority found it did have jurisdiction to remove, none of the grounds under s 178 (c) and (d) of the Act are made out and the Authority should exercise its discretion not to remove them.

[57] If removal was ordered, it is submitted it would be inconsistent with the object of Part 10 of the Act and Parliament's intention that substantive claims be investigated and determined by the Authority in the first instance, and that the parties have a right to challenge those determinations to the Court. It would be inconsistent with the purpose of s 6(5). And it would set the threshold for the Authority's residual discretion too low.

[58] It is submitted that the object of Part 10 of the Act (which is the part of the Act which deals with the Employment institutions and contains s 178) is set out in s 143 of the Act. It is to:

> …establish procedures and institutions that:
> …
> (e) recognise that there will always be some cases that require judicial intervention; and
> (f) recognise that judicial intervention at the lowest level needs to that of a specialist decision making body that is not inhibited by strict procedural requirements; and

> (fa) ensure that investigations by the specialist decision-making body are, generally, concluded before any higher court exercises its jurisdiction in relation to the investigations; and
> (g) recognise that difficult issues of law will need to be determined by higher courts.

[59] It is submitted that it is clear from the above that Parliament intended that the Authority, not the Court would be the first instance institution (after mediation) tasked with investigating employment relationship problems (ss 143(f) and (fa)); that the Court's jurisdiction would generally only be engaged after the Authority had concluded its investigations; and difficult questions of law would need to be determined by the Court (and higher courts).

[60] It is submitted that just because a Removal Application satisfies the grounds in s 178(2), it does not follow that it will be removed.[9]

[61] It is accepted by the Respondent that the issues in the s 6(5) application involve the "*same, similar, or related issues*" as arise in the claims lodged in the Authority; those issues being, the scope of the applicant's role, the responsibilities associated with her role, the extent to which they changed over time, and how the relationship between the parties operated in practice.

[62] It is submitted that if the Authority is satisfied that such issues do now arise in the Authority proceedings, it is accepted they will probably arise in the s 6(5) application also and, on a strict reading of s 178(2)(c) (where all that an applicant is required to establish is that the two proceedings "*involve [some of] the same or similar or related issues*"), the requirements of the section are made out.

[63] However, it does not follow that the matter will then be removed to the Court. The case law makes it clear that the level of sameness or similarity of the issues in the two proceedings is taken into account in the Authority's exercise of its discretion under s 178(2). There is a threshold of *sameness* or *similarity* of issues in both proceedings that must be met for a matter to be removed to the Court. That threshold is a high one.[10]

[64] It is submitted that a narrow or constrained interpretation and application of s 178(2)(c) is also consistent with the statutory scheme of the Act (as set out above), and there is not sufficient *similarity* or *sameness* in the issues that may arise in the two proceedings for the Authority to exercise its discretion to remove the Authority matter to the Court.

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[9] *Visagie v WorkSafe New Zealand* [2020] NZEmpC 8 at [3] and *Johnston v Fletcher Construction Co Ltd* [2017] NZEmpC 157 at [33].

[10] *Department for Courts v Crofts* (AA113/01, 14 August 2001, Auckland ERA

[65] In relation to considering the issue of costs and duplication of time, witnesses and evidence when it is submitted that:

a. First, it is a s 178(2)(c) case.

b. Secondly, the Court will determine the status issue first, and where its findings and judgments determine issues that also arise in the Authority proceedings, the Authority will apply them.

c. Thirdly, as submitted above, there are more issues that only arise in the Authority proceedings, and not in the s 6(5) proceedings, than there are overlapping issues. The cost of the Court hearing and determining all of the issues/claims at first instance (which the applicant wants) will be greater than if the Authority determines the issues within its jurisdiction.

d. Fourthly, if the matter is removed to the Court, the Court will almost certainly determine the s 6(5) application first, before hearing and determining the removed matter(s). The outcome for the removed matters will therefore be no different than if they were not removed; they will still have to be determined separately from the status issue. They should therefore be determined as the statute intended and by the Authority.

[66] The Respondent submits that it has a statutory right that the Authority will investigate and determine the applicant's claims, and if either party is dissatisfied with its determination, it can challenge them to the Court. It would be incongruous with those rights if s 178(2)(c) was interpreted and applied here to grant the Court a first instance jurisdiction to hear and determine the applicant's substantive claims. The bar for removal would end up being set too low.

[67] Citing *Johnston v Fletcher Construction Co Ltd* (above) in which Chief Judge Inglis said this at [39] about Removal Applications under s 178(2)(d):

> Section 178(2)(d) leaves open the possibility that there will be some cases, not clearly falling within (a)-(c), which might otherwise appropriately be removed to the Court where the Authority considers it appropriate to do so. Section 178(2)(d) is to be interpreted in light of its text and its purpose (Interpretation Act 1999, s 5). The overarching point will be whether a particular case is best suited for resolution by the Authority's investigative processes or by the more formal adversarial processes of the Court. This may engage issues of cost and proportionality. A case which, for example, is likely to consume weeks of hearing time in the Authority, requiring a more formal, procedure laden approach, and where the unsuccessful party is likely to wish to pursue their statutory right of de novo challenge, may well be better suited for hearing in the Court. Much will depend on the circumstances of each case".

SCHL submits that if the employment status is resolved in the applicant's favour by the Court, then her personal grievances, arrears of wages claim and penalty claim are better suited to the investigation process undertaken by the Authority, than the adversarial process undertaken by the Court for two principal reasons:

a. First, the cost of conducting a hearing in the Court (especially a multi-day one) will be greater than conducting it in the Authority.

b. Secondly, the claims here are nothing special or exceptional that the statutory scheme of personal grievance, arrears and penalty claims being investigated by the Authority at first instance should be displaced.

Should the Removal Application be granted?

[68] The substantive issues of Ms Wright's claim rely on her status as an employee with SCHL being established. That was a preliminary matter to be determined by the Authority, and if established, the substantive matters were to be determined. The Status Issue is an issue which comes before the Authority for determination on a regular basis, and the Authority is experienced in so doing.

[69] Since the Authority made its directions in respect of an investigation meeting to address Ms Wright's claims, she has elected by making her s 6(5) application to have the Court determine the Status Issue. It is accepted that the jurisdiction to determine the Status Issue now lies with the Court.

[70] However if the Court determines that matter in her favour, her substantive issues which arise from an employment relationship will still require determination.

[71] I do not find that there is any jurisdictional bar to the Authority determining Ms Wright's substantive claims if she is successful in the Court and her status determined to be that of an employee, given the Authority's exclusive jurisdiction pursuant to s 161 of the Act to make determinations about employment relationship problems.

[72] I consider that in relation to s 178(2)(c) of the Act, although there is a level of same or similar or related issues, the Status Issue will not necessarily involve as much in depth examination of the issues as will arise in the substantive matters. Given the investigative nature of the Authority's role it will be well equipped to address these.

[73] I consider that although the same witnesses may be called in both proceedings, the investigation into Ms Wright's substantive issues which will detailed evidence on those matters will be cost effectively addressed by the Authority.

[74] In relation to s 178 (2)(d) and the possibility of a challenge, it is not unusual for a party, dissatisfied with the finding in a determination of the Authority, to exercise its right to challenge that determination.

[75] That important right is unavailable should this matter be removed to the Court for a first hearing of the substantive claims by Ms Wright. Moreover it is possible that neither party disagrees with the outcome of the Authority's investigation. Further it is not inevitable that Ms Wright would choose to exercise her right to appeal should the findings of a determination be adverse to her.

[76] In summary it is my view that the Authority is a cost-effective and experienced forum properly equipped to resolve employment relationship problems including constructive dismissal, unjustifiable disadvantage and breach of the duty of good faith. Indeed it has extensive experience in determining claims of that nature.

[77] Having carefully considered the application for removal, and the parties submissions, I do not find that the grounds for removing a matter to the Employment Court pursuant to s 178(2)(c) and (d) of the Act have been satisfied. Accordingly I decline to order the removal of this matter to the Employment Court.

Should the Stay Application be granted?

[78] Ms Wright's substantive claims are dependent upon the Status Issue being determined in her favour. The Authority cannot determine the substantive matters until such time as the court issues its judgment in the matter.

[79] On that basis I consider it appropriate to stay the Authority's investigation into these matters until after the Court has issued its judgement on the Status Issue.

Costs

[80] Costs are reserved.

Eleanor Robinson
Member of the Employment Relations Authority