IN THE EMPLOYMENT COURT OF NEW ZEALAND
WELLINGTON

I TE KŌTI TAKE MAHI O AOTEAROA
TE WHANGANUI-A-TARA

[2020] NZEmpC 68
EMPC 126/2020

IN THE MATTER OF	an application for special leave to remove a matter to the Employment Court
BETWEEN	NEW ZEALAND PROFESSIONAL FIREFIGHTERS UNION Applicant
AND	FIRE AND EMERGENCY NEW ZEALAND Respondent

Hearing: On the papers

Appearances: P Cranney, counsel for applicant
G Davenport, counsel for respondent

Judgment: 19 May 2020

JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS

Introduction

[1] The New Zealand Professional Firefighters Union (the Union) filed a claim in the Employment Relations Authority. The claim raised a dispute as to the correct interpretation of provisions in the parties' collective agreement. The Union applied for the claim to be removed to the Court for hearing. That application was supported by Fire and Emergency New Zealand. The Authority declined the application.[1] The Union, again supported by Fire and Emergency New Zealand, now applies for special leave to remove the matter to the Court.

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[1] *New Zealand Professional Fire Fighters Union v Fire and Emergency New Zealand* [2020] NZERA 123 (Member O'Sullivan).

[2] The parties asked that the application be dealt with as soon as reasonably practicable and agreed that it could be dealt with on the papers.

Analysis

[3] The Employment Relations Act 2000 (the Act) requires disputes such as the one in the present case to be filed in the Authority. The usual process is for the matter to be dealt with in that forum with rights of challenge to the Court. Parties may, however, apply for removal to the Court and, where such an application is declined, may apply for special leave from the Court. While the tests that the Authority (on a removal application) and the Court (on a special leave application) must apply are slightly different, both provide that leave may be granted where the matter raises an important issue of law other than incidentally.[2]

[4] The Authority did not accept the parties' submission that the proceeding did raise an important issue of law, and dismissed the application on that basis. Both parties submit that the Authority erred in reaching this conclusion and seek special leave accordingly.

[5] The approach to applications of this sort can be summarised as follows. There is no presumption in favour of, or against, removal. In exercising its discretion, the Court must have regard to s 178(2) of the Act and (to the extent relevant) the factors contained within it. The Court has a discretion to refuse leave, even where one or more of the factors listed in s 178(2) are made out.

[6] As has previously been observed, a question of law does not need to be complex, tricky or novel to justify the adjective 'important'. A question of law may be important because the outcome will be decisive of the case or the answer to it is likely to have a broad effect or assume significance in employment law generally. It need not, however, be important beyond the parties.[3]

[7] Boiled down to its essentials, the parties' dispute revolves around the nature and scope of appointment and review processes in a redundancy setting. In this regard, the applicable collective agreement requires the appointment of persons best suited to

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2 Employment Relations Act 2000, s 178(2)–(3).
3 *Johnston v Fletcher Construction Co ltd* [2017] NZEmpC 157, [2017] ERNZ 894 at [22].

vacancies. It also provides a review mechanism for appointments. The issue is how these provisions are to be read with relatively recently enacted provisions of the Fire and Emergency New Zealand Act 2017, in particular s 30 which provides that ss 26 and 29 (imposing a statutory requirement to give preference to the best person suited for the position and to have in place a review process for appointments subject to complaint by employees) do *not* apply where an employee has received notice of redundancy (s 30).

[8] I accept that it is not unusual for the Authority to be called on to deal with issues relating to the interpretation of employment agreements, including where statutory provisions are also engaged. I accept, too, that not all issues of interpretation warrant the descriptor 'important'. Conversely, it does not follow that a claim raising issues of interpretation will not give rise to an important question of law for the purposes of s 178. A closer examination of the particular issue in its particular context is required in order to determine whether the statutory threshold for removal has been met and, if so, whether leave should nevertheless be declined.

[9] I am satisfied that the dispute in this case raises an important question of law and that the question lies at the heart of the matter. It will involve interpreting provisions of the parties' collective agreement in the context of statutory provisions which have not yet been examined by the Court, within an overlay of a workplace which sits within the State sector and delivers emergency services. This will, in turn, require consideration of the principles relating to redeployment and redundancy emerging in cases such as *Jinkinson v Oceana Gold (NZ) Ltd*,[4] *Wang v Hamilton Multicultural Services Trust*[5] and *Rittson-Thomas (T/A Totara Hills Farm) v Davidson* and how they relate to the State services.[6] It follows that resolution of the interpretation issue in this case may have broader implications. It is also clear that it is of real importance to both parties – they have both confirmed that this is so – in terms of understanding the extent of their legal obligations and entitlements and the potential impact that determination of the dispute will likely have.

[10] I have considered whether to exercise my discretion to decline leave despite having accepted the parties' submission that their dispute involves an important issue of

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4 *Jinkinson v Oceana Gold (NZ) Ltd* [2010] NZEmpC 102, (2011) 9 NZELC 93,655.

5 *Wang v Hamilton Multicultural Services Trust* [2010] NZEmpC 142, [2010] ERNZ 468.

6 *Rittson-Thomas (T/A Totara Hills Farm) v Davidson* [2013] NZEmpC 39, [2013] ERNZ 55.

law. I can deal with this aspect of the matter briefly. Both parties are represented by experienced counsel. Both parties want to have the matter removed to the Court. There is no issue in this case that one or other of the parties may be prejudiced by losing, for example, a right of challenge. And both parties agree that whatever the outcome in the Authority, a challenge to the Court would be highly likely. I infer that they see removal to the Court as an efficient and cost-effective way of dealing with their dispute. I agree.

Conclusion

[11] The application for special leave to remove is granted.

[12] The applicant is to file and serve a statement of claim within 14 days of the date of this judgment. The respondent is to file and serve a statement of defence within a further 14 days. The file is then to be referred to a Judge.

[13] Leave is reserved for either party to apply, on reasonable notice, for any further directions or orders.

[14] No issue of costs arises.

Christina Inglis
Chief Judge

Judgment signed at 3 pm on 19 May 2020