

**IN THE EMPLOYMENT COURT
WELLINGTON**

**[2010] NZEMPC 110
WRC 24/10**

UNDER the Employment Relations Act 2000

IN THE MATTER OF an application for an interim injunction
pursuant to s100

BETWEEN MANA COACH SERVICES LIMITED
Plaintiff

AND NEW ZEALAND TRAMWAYS &
PUBLIC PASSENGER TRANSPORT
AUTHORITIES EMPLOYEES UNION
First Defendant

AND

BEATRICE KATZ
TOBI EARTHWOOD
MICHAEL SECKER
TIMOTHY CHAMBERS
Second Defendants

Hearing: 19 August 2010

Appearances: Tim Cleary, counsel for the plaintiff

Judgment: 19 August 2010

JUDGMENT OF JUDGE A A COUCH

[1] The plaintiff has applied without notice for an interim injunction to restrain the defendants from striking or being party to a strike.

[2] The evidence provided in the affidavit of Angela Jean Walker establishes:

- a) The plaintiff and the first defendant are currently engaged in negotiations for a collective agreement.

b) The second defendants are members of the first defendant and would be covered by the proposed collective agreement under negotiation.

c) At 3.41 pm yesterday, the first defendant sent a fax to the plaintiff containing notice of strike action. The body of the notice read:

Notice is hereby given pursuant to section 93 of The Employment Relations Act 2000 of strike action in support of collective bargaining between The Tramways Union and Mana Coach Services Limited.

The notice given is not less than 24 hours.

The nature of the intended strike action is a discontinuation of all work between 4.00pm and 6.00pm at the Kapiti Depot of Mana Coach Services limited by Beatrice Katz on weekly shift 6, Tobi Earthwood on weekly shift 13, Mike Secker on weekly shift 19 and Tim Chambers on weekly shift 16.

The passenger services affected will be all Mana Coach Services Limited bus services operated on those weekly shifts during the times stated.

d) The notice was signed by Kevin O’Sullivan as secretary of the first defendant union.

e) This morning, representatives of the plaintiff have made repeated efforts to contact Mr O’Sullivan to say that the plaintiff considers the strike notice is defective and to ask the union to withdraw it. No response has been received from Mr O’Sullivan or anyone else on behalf of the first defendant.

[3] The requirements for a valid strike notice in the passenger transport services industry are set out in s93 of the Employment Relations Act 2000. These include “the date on which the strike will begin”. The notice given by the union is clearly defective as it does not specify the date on which the proposed strike is to begin. It may as soon as 4pm today but that is far from clear.

[4] At 2pm today, an application for an interim injunction to restrain the strike was filed in the Court in Wellington together with Ms Walker’s affidavit and an undertaking as to damages.

[5] At approximately 3.15 pm, I had a telephone conference with Mr Cleary. He undertook on behalf of the plaintiff to file a statement of claim seeking permanent relief of a nature which would found the application for interim relief. Mr Cleary also gave me the necessary certification that the application without notice was correct.

[6] I asked Mr Cleary what efforts had been made to inform the defendants of the application for an interim injunction. He told me that copies of the documents filed in the Court had been sent by fax and email to Mr O'Sullivan at about 2pm today but that no response had been received.

[7] Normally, the Court will be very reluctant to make orders affecting parties who have not had an opportunity to be heard. In this case, however, the need for urgency and the obvious deficiency in the notice require the Court to intervene without delay. A factor in my consideration is the potential inconvenience to numerous members of the travelling public who are likely to be unaware that regular bus services may be disrupted. It is also significant that the defendants appear to have been put on notice that an injunction would be sought but have failed to respond.

[8] There will be an order restraining the defendants from striking in reliance on the strike notice dated 18 August 2010 given by the first defendant to the plaintiff. That order will remain in effect until further order of the Court.

[9] The defendants or any of them may apply at any time on notice to rescind the order I have made.

[10] Costs are reserved.

A A Couch
Judge

Signed at 3.45pm on 19 August 2010