

**IN THE EMPLOYMENT COURT
WELLINGTON**

**[2010] NZEMPC 14
WRC 6/10**

IN THE MATTER OF an application for an interim injunction

BETWEEN MARS PETCARE NZ LTD
Plaintiff

AND MANUFACTURING AND
CONSTRUCTION WORKERS UNION
INC
First Defendant

AND SIMON BOOTH AND OTHERS
Second Defendants

Hearing: 1 March 2010
(Heard at Wellington)

Appearances: Bernard Banks, Counsel for Plaintiff
Graeme Clarke, Advocate for Defendants

Judgment: 1 March 2010

ORAL JUDGMENT OF CHIEF JUDGE GL COLGAN

[1] This judgment records the manner in which the parties have agreed to an interim resolution of their difficulties in collective bargaining and about potential strike action. Before recording the detail of that interim solution I should express my gratitude to the parties for their sensible and pragmatic preparedness to reach that agreement and to their representatives both in court and, because of the urgent nature of the hearing, those who have not been able to attend but have nevertheless been consulted by telephone. This includes management of the company, Mr Lou Yukich, the union advocate, and the employees themselves because, of course, the interim arrangement binds them as parties.

[2] This matter has arisen quickly and has been dealt with accordingly. I should reiterate for the benefit of the parties that the Court has not reached any conclusions about the substance of their dispute. This has only ever been an application for an interlocutory injunction to deal with the position until the Court can hear and determine the substantive merits of the parties' dispute if they are not able to do so themselves and/or with the assistance of mediation. I am particularly conscious that the urgency with which these proceedings have been dealt has precluded any evidence being submitted on behalf of the defendants.

[3] About noon last Friday, shortly after the plaintiff's papers were filed, there was a telephone conference call with their representatives. The understanding reached then was that there would be discussions or negotiations between the parties with a view to trying to achieve an interim settlement until the Court could hear the application for interlocutory injunction when time was available on Monday 29 March 2010. The plaintiff did not seek any orders from the Court on that occasion and no directions were given.

[4] Unfortunately, very shortly after midday today, a request was received from the plaintiff's solicitors for a hearing at 3 pm this afternoon. Mr Clarke was able to file a statement of defence on behalf of the defendants although, as I have already said, they have not been able to supply evidence and in a sense the hearing was what lawyers call Pickwickian, not without notice but with bare notice and only representation for the defendants.

[5] Because it would be inappropriate for me to venture into the merits of the parties' cases to which they still hold, I should now simply record the mutual undertakings that have been given by them to the Court which are accepted. These should both preserve the position until later this month and, at least as, if not more importantly, allow collective bargaining to get under way.

[6] The plaintiff, for its part, undertakes to the Court that it will attend and participate in a mediation that has been arranged in respect of the dispute that is currently before the Employment Relations Authority, which mediation is scheduled to take place this Thursday afternoon, 4 March 2010.

[7] Further, the company undertakes to meet the union either before or after that mediation to negotiate about the contents of the parties' bargaining process arrangement and, in particular, to respond to the draft bargaining process arrangement put up by the union.

[8] The plaintiff undertakes to meet the union on Tuesday 9 March 2010 to further discuss the contents of a bargaining process arrangement if those are still unresolved after the meeting on 4 March.

[9] Because of the absence of the company's principal advocate overseas until 22 March, the plaintiff undertakes to participate in bargaining for a collective agreement as from 22 March.

[10] Further, the company undertakes to the Court and the defendants that between 9 and 22 March it will meet with the union for discussions on the bargaining process arrangement and if the union's log of claims is given to it, will meet to clarify issues around that log of claims so that the parties are in the best position to begin bargaining on 22 March if that is possible.

[11] For their part, the defendants undertake to the Court that they will attend and participate in the scheduled mediation on 4 March, that they will not undertake strike action in connection with the issue that is the subject of the dispute before the Employment Relations Authority, and that they will not undertake strike action in relation to the bargaining before 23 March 2010 at the earliest.

[12] For its part, the Court is prepared to keep available hearing time on Monday 29 March in the Employment Court at Wellington if the parties need that time. I express the hope that if it comes to that, arrangements may be able to be continued between the parties for the period from 23 to 29 March if at all possible.

[13] I reserve leave for any party to apply on short notice if necessary for any further orders or directions from the Court. I reserve all questions of costs.

GL Colgan
Chief Judge

Judgment delivered orally at 5.02 pm on Monday 1 March 2010