

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2012] NZEmpC 52
ARC 13/12
ARC 17/12**

IN THE MATTER OF an application for declaration, proceedings
removed from Employment Relations
Authority

AND IN THE MATTER OF an application for interim injunctions

BETWEEN MARITIME UNION OF NEW ZEALAND
INC
Plaintiff

AND PORTS OF AUCKLAND LIMITED
Defendant

Hearing: 27 March 2012
(Heard at Auckland)

Counsel: Mr Carruthers QC, Mr Cranney and Mr Mitchell, counsel for plaintiff
Mr Haigh QC, Mr McIlraith and Ms Dunn, counsel for defendant

Judgment: 27 March 2012

ORAL INTERLOCUTORY JUDGMENT OF JUDGE B S TRAVIS

[1] The plaintiff today has sought three separate injunctions. The first relates to proposals that were made by the defendant which appeared on their face to lead to the possibility of redundancies. These I describe as the “contracting out” injunctions.

[2] The defendant has consented to the injunctions sought under this head for a limited period and I will set out shortly the terms of those injunctions. For reasons which I will need to give in writing, I will indicate why I am satisfied that the Court does have jurisdiction and should exercise its discretion to grant those injunctions sought.

[3] The second injunction application relates to events that have occurred since 22 March 2012. It relates to allegations of threatened lockouts which the defendant is defending on the grounds that there is insufficient work and, alternatively, if work becomes available, on the grounds that there are health and safety issues. It also relates to a lockout notice which will take effect, if permitted to do so, from 6 April 2012. It is agreed by the parties that this issue will be dealt with this Friday 30 March 2012, commencing at 11am, on agreed terms relating to payments for the employees in the interim.

[4] The third issue relates to a communication sent by the defendant on 23 March 2012 which makes reference to voluntary redundancies. The parties have also agreed that this matter will be dealt with this coming Friday.

[5] A timetable for dealing with these matters has been agreed as follows. The defendant will file affidavits in response to the plaintiff's schedule that refers to the bundle of documents and to the plaintiff's affidavit relating to the voluntary redundancy issue and in relation to the affidavit from Mr Ross Wilson in relation to health and safety, by midday on Thursday 29 March 2012.

[6] As to the terms of the injunction which is granted this afternoon and which has been the subject of discussion between counsel and the Court, the following is the agreed wording:

[7] Upon hearing counsel and reading the affidavits filed herein, and accepting the undertaking as to damages filed by the plaintiff, an interlocutory injunction will issue until the commencement of the hearing of the substantive case on 16 May 2012, on the following terms:

- (i) The defendant will take no further steps to advance or implement the proposal to make the plaintiff's members redundant.
- (ii) The defendant will not dismiss the plaintiff's members.

- (iii) The defendant will not employ or engage Drake New Zealand Ltd or Allied Workforce Ltd or any other person to perform the work of striking or locked-out employees in breach of s 97 of the Employment Relations Act 2000.
- (iv) The defendant will instruct Drake New Zealand Ltd and Allied Workforce Ltd and any other contractor employed or engaged by the defendant to cease any form of advertising, training or recruitment or any form of preparation for those activities on behalf of the defendant or otherwise.
- (v) The defendant will not make any statement to, or which could, encourage any union member to seek or accept employment with the contractors identified in (iv) above.
- (vi) In the event that the defendant intends to employ or engage any other person to perform work covered by the collective agreement in dispute, it will give the plaintiff 48 hour's notice to enable the plaintiff to apply for relief.

[8] The defendant will not take any further steps in relation to applications for voluntary redundancy until 5pm on Friday 30 March 2012 or further order of the Court.

[9] All other matters are reserved for discussion and argument and decision at 11am on Friday 30 March 2012.

B S Travis
Judge

Oral Judgment delivered at 3.24pm on 27 March 2012