

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2012] NZEmpC 55
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 applications for interim injunctions

BETWEEN MARITIME UNION OF NEW ZEALAND
INC
Plaintiff

AND PORTS OF AUCKLAND LIMITED
Defendant

Hearing: 30 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: 30 March 2012

ORAL INTERLOCUTORY JUDGMENT NO 2 OF JUDGE B S TRAVIS

[1] On the basis of the following terms read out in open Court by Mr Haigh QC and accepted by Mr Carruthers QC (with the alteration to sub-paragraph (iii) so that it is clear that the notice of lockout was given by the Ports of Auckland Limited and not by the Union) the hearing today in relation to the redundancies is adjourned sine die and the two applications for interlocutory injunctions concerning the lockouts are withdrawn.

[2] The orders already given in relation to the contracting out injunctions remain in force and those proceedings are now adjourned until the substantive hearing commencing on 16 May 2012.

[3] The following are the terms read out in Court:

- (i) The two applications for interlocutory injunctions concerning lockouts be withdrawn, excluding the application relating to redundancies, which is to be adjourned sine die.
- (ii) The “health and safety lockout” due to commence upon work becoming available be lifted subject to agreement with the plaintiff and the other terms and conditions set out in this memorandum.
- (iii) The notice of lockout given by the defendant on 22 March 2012, set to commence on 6 April 2012, is to be lifted.
- (iv) The members of the plaintiff union available for work next week (excluding casuals) be paid from today until Thursday 5 April 2012 on the same basis as the interim arrangement made on Tuesday 27 March 2012.
- (v) In the intervening period from today, representatives of the plaintiff and defendant work through the requirements of a return to work with the plaintiff and the defendant providing acceptable assurances from themselves.
- (vi) The defendant envisages that these requirements would include those that would normally be applicable upon the return to work of an employee who has been absent from work for a period of six weeks.
- (vii) If difficulties arise in concluding agreement on a return to work as above, the parties will use mediation assistance or return to the Court by way of the adjourned Judicial Settlement Conference.
- (viii) Subject to rostering arrangements to be determined by the defendant, a return to work will commence as soon as possible, but no later than Friday 6 April 2012.

- (ix) The parties agree to jointly apply on an urgent basis for facilitated bargaining under the Employment Relations Act 2000. Prior to an application being made, the parties agree to undertake a further session of mediated bargaining.
- (x) The plaintiff agrees to engage in the discussions as contemplated by the collective agreement in relation to the redundancy process commenced by the defendant in December 2011.
- (xi) The defendant undertakes to take all reasonable steps to encourage Maersk's Southern Star Service to return to Auckland.
- (xii) Costs are reserved.

[4] Before I adjourn the Court, however, I would like to commend the parties on both sides in open Court on this resolution which enables the parties to proceed in a more constructive manner. I would also recommend that neither side take from today's agreement any form of self-congratulation in the press, because that will only possibly exacerbate the situation that exists at the moment. I would urge the parties to put their efforts not into press statements but into trying to achieve a mediated settlement and if necessary facilitated bargaining. In that regard, I would note that the criteria for such bargaining appears to have been met.¹ Whilst I cannot and do not direct the Employment Relations Authority on the matter, I would encourage it to accept an agreed facilitation application that falls within its jurisdiction.

[5] I also invite, as usual, the Authority to make whatever resources are available to assist the parties, as the Mediation Service has done up until this point, in the hope that this difficult dispute is resolved by conciliation and agreement rather than by the involvement of the Court.

B S Travis
Judge

Oral interlocutory judgment delivered at 12.50pm on 30 March 2012

¹ See *McCain Foods (NZ) Ltd v Service & Food Workers Union Nga Ringa Tota Inc* [2009] ERNZ 28.