IN THE EMPLOYMENT COURT
CHRISTCHURCH

CC 2/09
CRC 3/09

IN THE MATTER OF	An application for an injunction to restrain a strike
AND	
IN THE MATTER OF	An application for interim relief
BETWEEN	SOUTH PACIFIC MEATS LIMITED Plaintiff
AND	NEW ZEALAND MEAT WORKERS AND RELATED TRADES UNION INCORPORATED First Defendant
AND	DAVID LEWIS, ROBERT CORBETT, WILLIAM MACKINNON, WAYNE HAMLIN, COLIN TAMOU, ADRIAN WILLIAMS, BRIAN WELCH & RON HOARE Second Defendants

Hearing: 10 March 2009 by telephone conference

Appearances: Graeme Malone, counsel for plaintiff
Karina Coulston, counsel for defendants

Judgment: 11 March 2009

JUDGMENT OF JUDGE A A COUCH

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[1] The plaintiff operates a meat processing plant at Malvern. The majority of the employees who work at that plant, including the 8 named as second defendants, are members of the first defendant.

[2] The terms of employment of the employees at the Malvern plant require the plaintiff to provide them with protective clothing. Until recently, that has comprised pants and singlets or shirts. Last year, the plaintiff proposed that these garments be replaced with overalls, similar to those used at other meat processing plants. Some the employees objected to this change and a dispute arose about whether the plaintiff was entitled to make this change without the agreement of the employees. That dispute was the subject of mediation involving the plaintiff and the first defendant on 27 February 2009 but it was not resolved.

[3] When the employees at the plant reported for work on Monday 10 March 2009, the plaintiff offered them overalls as protective clothing. Most of the employees accepted that clothing and commenced work. The 8 employees who are the second defendants refused to work unless certain conditions were met. Six of them refused to work unless they were provided with pants and singlets as before. The other two defendants, whom I understand to be freezer hands, refused to work unless provided with undergarments to keep them warm.

[4] The result of the second defendants' refusal to work was that the mutton chain at the plant could not be operated. Stock on hand for killing had to be sent to another plant and the carcasses brought back again for processing. Ten or so other employees who were ready and willing to work on the mutton chain were deployed to alternative work but that will shortly run out. The plaintiff is incurring additional costs and there is said to be a risk that its relationship with customers will be affected.

[5] The plaintiff alleges that the actions of the second defendants constitute an unlawful strike. It has filed a statement of claim seeking relief in the form of a permanent injunction requiring the second defendants to return to work. An injunction is also sought restraining the first defendant from inciting, aiding or abetting such strike action and requiring the officers of the first defendant to encourage its members to return to work. By way of an interlocutory application, the plaintiff has also sought interim relief of a similar nature. It is that application for interim relief which came before me on 10 March 2009.

[6] The application for interim relief was accompanied by affidavits sworn by the operations manager and the Malvern plant manager of the plaintiff. Mr Malone also provided a detailed memorandum which included legal submissions.

[7] The application was made *ex parte* but copies of all documents filed were provided to Ms Coulston who has recently been acting as counsel for the union in relation to the dispute.

[8] The application was heard by means of a telephone conference with counsel which began at 4.15 pm yesterday, 10 March 2009. At the outset, Ms Coulston confirmed that she had authority to represent all defendants and that she had read all of the relevant documents. As the matter was being dealt with on an urgent basis, and without the defendants having had an opportunity to provide evidence in opposition, I invited Ms Coulston to inform me of both the factual and legal position of the defendants on the basis of her instructions.

[9] Ms Coulston told me:

a) The general response of the defendants is that the situation at the plant was a lockout rather than a strike.

b) There may be a health or safety issue in relation to the two defendants who are freezer hands in that the overalls provide less warmth than the garments previously provided to them.

c) The defendants' position in relation to the dispute is that the provision of singlets and pants at the Malvern plant is a very longstanding practice which is incorporated into the employees' terms of employment. They also say that such garments are required as opposed to overalls because they provide greater freedom of movement and absorb more perspiration. This is said to be necessary at the Malvern plant because it has old equipment which requires the employees to exert more effort than at other plants where overalls are worn.

d) The first defendant has facilitated discussion of the dispute by its members at the plant but has not encouraged or incited them to take the position they have adopted. That has been a decision taken freely by the members.

[10] There is a legal issue whether the actions of the second defendants constitute a strike within the meaning of s81 of the Employment Relations Act 2000 but, on the basis of the submissions contained in Mr Malone's memorandum, I am satisfied at this stage that there is a clearly arguable case for the plaintiff in this regard. Subject to any possibility that it may have been motivated by concerns over health or safety, I am also satisfied at this stage that any such strike is unlawful. It does not appear to be in support of collective bargaining and the 3 days notice required by s90 does not appear to have been given.

[11] Having regard to the evidence provided in the affidavits of Mr Miles and Mr Kelly, I am persuaded at this stage that the balance of convenience favours the grant of interim relief in the form of an injunction requiring an immediate return to work. On the other hand, I am not persuaded that there is any reason to make interim orders affecting the first defendant. Standing back and looking at the matter as a whole, I am of the view that this response to the application is also in the interests of justice.

[12] In reaching that conclusion, I am conscious that the defendants have had no opportunity to provide evidence and only a very limited opportunity to be heard through counsel. For that reason, I expressly made the injunction without prejudice to any application the defendants may wish to make to set it aside. The defendants must, however, decide promptly whether they wish to take that course. Ms Coulston told me that she expected to have full instructions by late today, 11 March 2009. Accordingly, I directed that she advise the registrar by 10 am on 12 March 2009 whether the defendants wish to apply to set aside or modify the interim relief granted.

[13] It is a matter of considerable concern to me that this work stoppage has occurred in relation to a dispute which has been on-going for 6 months or more and which has already been the subject of mediation. For the plaintiff, Mr Malone

suggested that this was solely the responsibility of the defendants. I disagree. Where there is a dispute about the interpretation, application or operation of an employment agreement, particularly a collective agreement as is the case here, it is the responsibility of all parties to take the steps necessary for it to be resolved in an orderly manner. In order that this happen without further delay, I directed the plaintiff to immediately refer the dispute to the Employment Relations Authority for investigation.

[14] No order abridging time for the filing of a statement of defence was sought and both counsel agreed that none is required. If the defendants wish to have the substantive proceedings decided quickly, they may file a statement of defence promptly and seek urgency.

[15] I record that I have considered whether the parties ought to be directed to further mediation of the dispute underlying the work stoppage. As they have recently had mediation assistance and are represented by responsible counsel, it seems to me unlikely that further mediation at this stage will promote settlement. I am also conscious that the dispute is now to be investigated by the Authority which will have regard throughout its investigation to the desirability of further mediation.

[16] For these reasons, the orders I made at 5pm on 11 March 2009 were:

a) The second defendants are ordered to immediately return to work without condition as to protective clothing and continue to work without any such condition until further order of the Court.

b) That order is made without prejudice to any application by the defendants to set it aside or to modify it.

c) Ms Coulston is to advise the registrar and Mr Malone by 10 am on 12 March 2009 whether the defendants wish to make such an application.

d) The plaintiff is commence proceedings in the Employment Relations Authority on 11 March 2009 to resolve the dispute between the parties

regarding protective clothing and to make the Authority aware of the need for urgency.

e) Costs are reserved.

A A Couch
Judge

Judgment signed at 10.30am on 11 March 2009