IN THE EMPLOYMENT COURT OF NEW ZEALAND
CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI

[2022] NZEmpC 127
EMPC 473/2021

IN THE MATTER OF	an application for special leave to remove a matter to the Employment Court
BETWEEN	VMR First Applicant
AND	KRR Second Applicant
AND	WEN Third Applicant
AND	XDD Fourth Applicant
AND	AVIATION SECURITY SERVICE DIVISION OF CIVIL AVIATION AUTHORITY Respondent

Hearing:	29 June 2022 (Heard at Wellington via Virtual Meeting Room)
Appearances:	S Grey, counsel, and D Gilbert, advocate, for applicants P A Caisley, counsel for respondent
Judgment:	18 July 2022

JUDGMENT OF JUDGE B A CORKILL

Introduction

[1] The four applicants, who were aviation security officers (ASOs) at Christchurch Airport, had their employment terminated by the respondent, the Civil

Aviation Authority (CAA) through its division Aviation Security Service, because they had not been vaccinated against COVID-19.

[2] They raised employment relationship problems in the Employment Relations Authority, pleading that their terminations on this ground were unjustified so that they should be reinstated, and awarded other remedies.

[3] The CAA pleads that vaccination against COVID-19 was a mandatory requirement under the law for this class of worker, and that it was not possible to either modify the applicants' job description so as to avoid the effect of the applicable legal requirements, or to redeploy them.

[4] The applicants sought interim reinstatement to their former positions based on their alleged dismissal grievances, an application that was declined by the Authority.[1]

[5] The Court heard a challenge to that determination which was resolved against the applicants earlier this year.[2] That judgment sets out fully the background circumstances, which it is unnecessary to repeat.

[6] At the hearing of the challenge, on 17 December 2021, Ms Grey, counsel for the applicants, referred to the possibility of removal of the Authority's proceeding to the Court.[3] I was advised that the Authority had declined the applicants' application to remove the proceeding in a notice of direction issued on 9 September 2021. Ms Grey confirmed that the applicants intended to bring an application for special leave for removal.

[7] A notice of application for special leave was filed on 22 December 2021. The notice asserted that given the importance of the case, the issues raised by the applicants' claim and the possible conflict of interest which the Authority would be perceived as having since it is maintained by the Ministry of Business, Innovation and Employment (MBIE) which was a member of a relevant body dealing with vaccination issues, special leave should be granted.

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1 *VMR v Civil Aviation Authority* [2021] NZERA 426 (Member Doyle).
2 *VMR v Civil Aviation Authority* [2022] NZEmpC 5.
3 At [280]–[287].

[8] The CAA filed a notice of opposition on 19 January 2022, which recorded the respondent's position that the statutory tests for an order of removal could not be met and that, in the alternative, the Court should not exercise its residual discretion to remove the proceeding.

[9] In the notice of direction of 9 September 2021, the Authority Member said she had initially indicated at a telephone conference with the parties that she may consider removing the matter to the Employment Court of her own motion.

[10] The Authority then went on to describe subsequent communications received from the parties, including emails and a memorandum, which were treated as an opposed application for removal.

[11] The Authority then referred to another recent determination concerning an application for removal, which had a similar background, and which had been declined.[4] The investigation meeting had in that case taken place and a determination had been issued.[5] The Authority in the present case thought a similar path would be appropriate in the interests of consistency.

[12] I observe that the second case has subsequently been challenged in this Court. It is plainly one of some significance, as is evidenced from the various interlocutory judgments which have been issued to date.[6] It is also clear from these judgments that the second case is not a direct comparator to this case.

[13] A final preliminary matter is to record that not only have the applicants been involved in four defended applications in the employment jurisdiction – applications for reinstatement in the Authority and the Court,[7] and applications for removal in the Authority, and now the Court – but they were also plaintiffs in judicial review proceedings brought in the High Court, which challenged the validity of the COVID-19 Public Health Response (Vaccinations Order 2021). Following a two-day

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4 *GF v OO* [2021] NZERA 251.
5 *GF v New Zealand Customs Service* [2021] NZERA 382.
6 *GF v New Zealand Customs Service* [2021] NZEmpC 162; *GF v Comptroller of the New Zealand Customs Service* [2022] NZEmpC 41; *GF v Comptroller of the New Zealand Customs Service* and *GF v Comptroller of the New Zealand Customs Service* [2022] NZEmpC 71.
7 *VMR v Civil Aviation Authority, above n 1; and VMR* v Civil Aviation Authority, above n 2.

hearing in October 2021, the High Court issued a judgment on 8 November 2021 dismissing the application.[8]

[14] On any view, it must be acknowledged that the applicants have faced procedural complexity in bringing their claims, although they themselves have initiated the various claims and applications.

The grounds of the application and opposition

[15] The applicants say that there are important and novel questions of law which establish the statutory criteria which would justify the removal of their disadvantage and dismissal grievances to the Court. These have been refined over time and may now be summarised:

(a) What, if any, lawful authority or grounds existed at the time of the dismissals and what, if any, lawful authority or grounds did the CAA rely on to terminate employment?

(b) Could, as a matter of law, the grounds relied on by the CAA for dismissal be changed later during employment proceedings?

(c) Could the CAA use s 103A of the Employment Relations Act 2000 (the Act) to create a novel ground for justifying dismissal, or is its purpose limited to specifying the criteria for assessing whether a dismissal under an orthodox ground is justified?

(d) Was the CAA correct to assert that ASOs must be responsible for all potential statutory duties or could different ASOs be allocated different duties, dependent on the circumstances including location, special skills and expertise, as well as medical, religious or other reasons?

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8 *Four Aviation Security Service Employees v Minister of COVID-19 Response* [2021] NZHC 3012, [2022] 2 NZLR 26.

(e) Did s 103A of the Act trigger redundancy entitlements on the grounds that there was a "de facto redundancy" of the applicants which should result in "redundancy type compensation" being paid?

[16] It was also argued that there would be an issue of apparent bias were the Authority to resolve the relationship problem, given its relationship with MBIE and, in turn, MBIE's role in developing public health protections at the border.

[17] Finally, Ms Grey said that the various identified questions were too complex for the Authority, and the case would inevitably return to the Court by way of challenge even if it was first investigated by the Authority.

[18] In summary, Mr Caisley, counsel for the CAA, submitted that there were no important questions of law likely to arise in the matter, other than incidentally, such as would justify the granting of special leave.

[19] By way of response to the points which had been identified for the applicants, Mr Caisley submitted:

(a) The lawful authority for the terminations was found in cl 53.1 of the relevant collective employment agreement (CEA); a distinction was to be drawn between the authority for taking the action, and the justification for taking that action. The CAA's justification for exercising its right to terminate was the practical impact of the Vaccinations Order.

(b) With regard to the assertion that the CAA had changed the grounds it relied on for the terminations, it had relied on cl 53.1 of the CEA at the time of termination; the justification for proceeding as it did was the terms of the Vaccinations Order. This had been its position throughout.

(c) Section 103A of the Act was not used to create a novel ground for dismissal. The CAA had a contractual right to terminate employment. Counsel accepted that the employer could be called on to justify its

actions. If this occurred, then the test of justification under s 103A would guide the Authority and/or the Court. There would thus be a simple factual question about whether the employer could prove that what it did and how it acted were what a fair and reasonable employer could do in the circumstances.

(d) The provisions of sch 3A to the Act were not relevant in the present case as they were enacted after the termination of the applicants' employment.

(e) The ground raised as to the scope of each ASO's duties required consideration of whether such an officer should work airside or not, a question which was relevant to the application of the Vaccinations Order. The CAA's position was that this is fundamentally a question of fact and would not require complex legislative interpretation. Rather, application of the Vaccinations Order to the facts as they existed in the workplace would have to be considered.

(f) As regards the claim for redundancy, such a claim had not been pleaded to date and, in any event, would be a relatively straightforward factual question.

[20] Dealing with broader issues, Mr Caisley submitted that the claims were fact heavy and suitable for investigation by the Authority in the usual way. He also said that one of the reasons the CAA considered the matter should in the first instance be considered by the Authority was that the applicants' claims appeared to have evolved over time. It was important, therefore, that the CAA's right of challenge should be preserved in case it found itself facing allegations which had not previously been notified.

Legal framework

[21] The salient provisions of s 178 of the Act are:

> **178 Removal to court**
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> (1) The Authority may, on its own motion or on the application of a party to a matter, order the removal of the matter, or any part of it, to the court to hear and determine the matter without the Authority investigating it.
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> (2) The Authority may order the removal of the matter, or any part of it, to the court if—
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> (a) an important question of law is likely to arise in the matter other than incidentally; or
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> (b) the case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the court; or
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> (c) the court already has before it proceedings which are between the same parties and which involve the same or similar or related issues; or
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> ...
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> (3) Where the Authority declines to remove any matter on application under subsection (1), or a part of it, to the court, the party applying for the removal may seek the special leave of the court for an order of the court that the matter or part be removed to the court, and in any such case the court must apply the criteria set out in paragraphs (a) to (c) of subsection (2).
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> …

[22] In summary, an application to the Court is one for special leave, which is governed by the criteria of s 178(2)(a)–(c).

[23] This case focuses on the first of the stated criteria under s 178(2)(a).

[24] Dealing with the specifics of that subsection, a question of law does not need to be complex, tricky or novel to warrant being called important.[9] It may be important if the answer is likely to have a broad effect or could assume significance in employment law generally. But previous cases have made it clear that it is not necessary for the issue to have an impact beyond the particular parties. Rather, a question may be regarded as important if it is decisive of the case, or some important aspect of it, or is strongly influential in bringing about a decision in the case, or a material part of it.[10]

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9 *Johnston v Fletcher Construction Co Ltd* [2017] NZEmpC 157, [2017] ERNZ 894 at [22].

10 *Auckland District Health Board v X (No 2)* [2005] ERNZ 551 (EmpC) at [35].

[25] In assessing s 178 criteria, there is no presumption in favour of or against removal. To do so would undermine Parliament's clear intent that while some matters ought to be dealt with in the Authority, for others, because of their nature or circumstances, that is not the appropriate methodology.[11]

[26] While there is no discretion available to order removal, there is one to allow an application for special leave to be declined.[12] This consideration may require an assessment of context or any other matter relevant to the statutory ground relied on in order to determine whether special leave should be declined.

[27] Finally, no inference may be drawn as to prospects of success of either party from the outcome of an application for special leave.

Analysis

Important question of law likely to arise?

[28] Both parties chose to argue that whether or not the legal questions were important turned on whether they would be "too complex" for the Authority. The applicants said this would be the case, whilst the respondent said the issues were mainly factual and routine.

[29] This is not necessarily the focus under s 178(2)(a). The issue is whether it is likely there will be an important question of law, which is more than incidental. In some instances, the complexity of a legal question may suggest it is an important one; in others it may be the effect of the legal question that is pivotal. But in my view, asking if the legal question is too complex for the Authority is not an appropriate test.

[30] I consider first the question raised for the applicants that there was no lawful authority to justify their dismissals. This is said to arise from several considerations.

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11 *Johnston*, above n 9, at [21]; *Auckland District Health Board*, above n 10, at [44].
12 *Johnston*, above n 9, at [30]–[33].

[31] First, that the Vaccinations Order itself does not create a power to dismiss. This is not in dispute; the CAA contends that the authority for the right to terminate was contained in cl 53.1 of the CEA and not the Vaccinations Order.

[32] Turning to cl 53.1, the applicants contend that the clause only provides a minimum period of notice, and that any other interpretation of that clause would cut across well-established employment law jurisprudence.

[33] In elaboration of this point, Ms Grey submitted that if there is any ambiguity or doubt when interpreting the clause, it must be interpreted in favour of the employees under the contra proferentem rule.

[34] However, that rule is only one mechanism to which reference may be made when construing a contractual provision; moreover, it may not be a helpful aid to interpretation since CEAs are the product of bargaining by both parties to the agreement.

[35] The overarching principles for interpreting provisions in an employment agreement are well-known. The approach is an objective one, the aim being to ascertain the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.[13] Recently, the Supreme Court set out the approach as to the admissibility of extrinsic evidence which may be considered for the purposes of the necessary cross-check.[14]

[36] Although counsel did not analyse the CEA, the document is before the Court. There are several provisions that are relevant to termination, all of which would require careful consideration when construing cl 53.1. It is unclear at this stage what background evidence may be relevant to the interpretation of the clause.

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13 *Firm PI 1 Ltd v Zurich Australian Insurance Ltd* [2014] NZSC 147, [2015] 1 NZLR 432 at [60]; *New Zealand Air Line Pilots' Association Inc v Air New Zealand Ltd* [2017] NZSC 111, [2017] 1 NZLR 948, [2017] ERNZ 428 at [71].

14 *Bathurst Resources Ltd v L&M Coal Holdings Ltd* [2021] NZSC 85, [2021] 1 NZLR 696; *Vulcan Steel Ltd v Manufacturing & Construction Workers Union* [2022] NZEmpC 78 [28]–[30].

[37] Whether or not the rule of contra proferentem will ultimately fall for consideration, the process of interpretation is without doubt a question of law.[15]

[38] Ms Grey submitted that two other particular tools might assist interpretation of cl 53.1. The first of these are the provisions of the New Zealand Bill of Rights Act 1990 (Bill of Rights) and in particular the right to refuse to undergo medical treatment.[16] She cited *NZ Amalgamated Engineering Printing and Manufacturing Union Inc v Air New Zealand Ltd*, where a full Court referred to the rights and freedoms of the Bill of Rights when considering whether a drug testing policy was fair and reasonable.[17] Ms Grey submitted that the exercise undertaken by the full Court would be "indirectly" relevant to the interpretation of the clause relied on by CAA, presumably as a matter of context.

[39] There is a threshold point as to whether the Bill of Rights would apply to the interpretation of cl 53.1 of the CEA.

[40] In previous cases, it has been held that employment agreements of public bodies fall outside the threshold criteria of s 3 of the Bill of Rights.[18]

[41] When discussing that point with the bench, Ms Grey said that all decisions that are made by the Crown are required to comply with the Bill of Rights, and that consideration of these would be relevant when assessing the scope of the CAA's authority to dismiss. Ms Grey also submitted that other statutory provisions would be relevant to interpretation, although as I will explain shortly, that submission was not developed in any detail.

[42] Although this submission may face difficulties, I accept that the potential application of such provisions is a question of law, and potentially an important one.

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15 *Bryson v Three Foot Six Ltd* [2005] 3 NZLR 721 (SC) at [20].

16 New Zealand Bill of Rights Act 1990, s 11.

17 *NZ Amalgamated Engineering Printing and Manufacturing Union Inc v Air New Zealand Ltd* [2004] 1 ERNZ 614 (EmpC) [*Air New Zealand Ltd*].

18 *Low Volume Vehicle Technical Association Inc v Brett* [2019] NZCA 67, [2019] 2 NZLR 808 at [24]; see also *Ioane v R* [2014] NZCA 128; and *Electrical Union 2001 Inc v Mighty River Power Ltd* [2013] NZEmpC 197, [2013] ERNZ 531 at [53].

[43] Secondly, Ms Grey said that the applicants will also argue that the recently enacted sch 3A of the Act is a significant aid to interpretation. This is the case, she submitted, because cl 3 of that schedule expressly provides for termination of an employment agreement for failure to comply with relevant COVID-19-related duties or determinations. That Parliament saw fit to enact such a provision was, it will be submitted, due to the fact that there was a "gap" which needed to be filled.

[44] The point was not developed in any depth and, at first blush, does not seem to be a strong one because the power to dismiss is generally contained in the applicable employment agreement, and was in this instance, according to the CAA. Following its enactment in November 2021, cl 3 of sch 3A may be relevant if an employment agreement does not have a provision that would permit dismissal of an employee who declined to be vaccinated.

[45] However, what the enactment of the clause does reinforce is the importance of the legal right to terminate, since it was included in a suite of urgent and important provisions enacted to deal with pressing COVID-19 issues.[19]

[46] Standing back, I am satisfied that the question of whether the CEA contained an applicable power to dismiss is an important question of law which will arise in the course of the assessment of the applicants' claims. Significant legal issues will arise other than incidentally. The question will be important not only for the applicants but potentially for others covered by the CEA or one containing similar provisions.

[47] I turn next to the test of justification. Application of the test is often a question of fact, but legal questions can arise. Will any important questions of law be likely to arise other than incidentally when applying the section in this case?

[48] Ms Grey submitted that the issue as to the scope of the applicants' duties under the CAA legislation was an important point of law. As noted earlier, the issue is whether, as CAA asserts, ASOs must be responsible for all CAA duties, or whether it is permissible, either as a matter of law or practice, for different ASOs to be allocated

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19 COVID-19 Response (Vaccinations) Legislation Act 2021.

different duties dependent on circumstances. Mr Caisley submitted that the scope of the duties was essentially a factual determination.

[49] In my assessment, this is a mixed question of fact and law. The realities of the applicants' employment relationships will need to be tested against the applicable provisions of the Civil Aviation Act 1990.

[50] The provisional assessment of this issue by the Court when considering the interim reinstatement challenge suggests that a detailed legal analysis may be required to determine whether the ASOs' job descriptions applied in full to each ASO as a matter of law, or whether individual ASOs could be, and were, required to work according to some aspects only of their job descriptions.

[51] On the face of it, the issue is important, not only for the applicants, but also potentially, to others employed under the multi-union CEA which covers ASOs. I also note that the security role of an ASO is a significant one, which supports the proposition that the scope of such an officer's duties under the civil aviation legislation raises an important legal issue.

[52] Ms Grey submitted that the CAA altered the basis on which it terminated the applicants' employment. She argued that the CAA initially relied on the Vaccinations Order but later relied on cl 53, and on s 103A of the Act itself. She emphasised that s 103A does not, in and of itself, contain a power to dismiss.

[53] As already noted, Mr Caisley submitted that the employer had in fact relied on cl 53 of the CEA and not on s 103A. He accepted that s 103A provided for the test of justification in the circumstances and would be applicable when assessing the personal grievances raised.

[54] At this stage, then, I am not persuaded that on the facts of this case there is an important legal question as to the alleged reliance on s 103A for a power to dismiss.

[55] Ms Grey also submitted that it will be necessary when assessing justification to consider the impact of a range of statutory obligations, including the Bill of Rights,

the Human Rights Act 1993, the Code of Health and Disability Services Consumers' Rights[20] and the Health and Safety at Work Act 2015.

[56] Apart from the Bill of Rights, Ms Grey did not analyse the various enactments to which she referred. Rather, she relied, as I noted earlier, on the broad approach adopted in the *Air New Zealand Ltd* case.[21] At a general level, she said that the decision was instructive because it indicated how statutes other than the Act may need to be used to deal with novel employment situations.

[57] I note that the full Court, having concluded that the terms of the Bill of Rights did not strictly apply to the particular workplace which was under consideration, did state that this legislation was nonetheless "… valid to be considered when the question for decision is whether an employer's action is reasonable when it cuts across fundamental rights recognised by the [Bill of Rights]."[22]

[58] The same Court also considered a range of other statutory provisions when assessing reasonableness of the employer's actions when promulgating a drug testing policy, such as the human rights legislation and the health and safety legislation, both of which Ms Grey says will arise for consideration in this case other than incidentally.

[59] It appears the test of justification will likely involve a consideration of fundamental rights and freedoms as set out in the various statutes to which reference was made, when assessing whether the steps taken by the CAA were those which a fair and reasonable employer could have taken. Despite a lack of specificity in Ms Grey's submission, if these points are developed as she says will be the case, an important question of law would require consideration.

[60] The final point to be considered in relation to s 103A of the Act is the issue pertaining to redundancy – was the termination actually a "de facto redundancy", and should that have resulted in a different procedure and entitlements?

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20 Health and Disability Commissioner Act 1994, s 74; Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996.

21 *Air New Zealand Ltd*, above n 17.

22 At [208].

[61] Again, this point was not explained in any detail but, in essence, Ms Grey submitted that the applicants' jobs changed around them in that a central prerequisite became a requirement to submit to vaccination. Mr Caisley submitted that such an allegation, if pleaded, would raise a routine issue and not an important or novel question of law.

[62] A very similar point was argued for the employee in *QDY v Counties Manukau District Health Board* when considering removal.[23] In that instance, Judge Holden noted that there have, of course, been many cases concerning the definition of redundancy and employers' obligations, which fall for routine consideration.[24]

[63] But an argument that has not previously been considered by the Court relates to the scenario where the requirements for a role change, which the incumbent does not possess.[25] Judge Holden noted that such an argument had not previously been considered by the Court, including in other cases that involve vaccination mandates,[26] and that this is an important question of law. The same reasoning applies here.

[64] Standing back, I am satisfied that the test of justification will involve consideration of important points of law other than incidentally; they will be important not only for the applicants and others covered by the multi-union CEA, but potentially others as well.

[65] In summary, I find that the grounds for granting the special leave of s 178(2)(a) of the Act is established.

Should removal be granted?

[66] Mr Caisley submitted that were a threshold criteria to be established, the Court should use its residual discretion to decline removal because the Authority is well placed to continue its investigation; there are a number of questions of disputed fact where the Authority's investigative powers could be useful; the applicants have unreasonably delayed in making their application for special leave without adequate

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23 *QDY v Counties Manukau District Health Board* [2022] NZEmpC 117.
24 At [25]
25 At [26].
26 At [25].

explanation; and the most expeditious and cost-effective means of dealing with the matter would be to have it investigated by the Authority. As already mentioned, it was also submitted that declining removal would preserve the parties' rights of challenge, including by way of a non-de novo hearing.

[67] In light of the findings I have made as to the important questions of law which are likely to arise other than incidentally, I do not accept that the issues in this case will be purely factual.

[68] Ms Grey frankly conceded during the challenge dealing with reinstatement that the applicants had "dropped the ball" in not applying to the Court for removal as promptly as they should have.[27] But it is fair to acknowledge that by December 2021, their case had become procedurally complicated. By the time the application for special leave had been filed, the application for interim reinstatement needed to be resolved. After the judgment was issued, the parties agreed to attend mediation. Following that event, this application was timetabled. Although progress has not been rapid, I do not think the delay is sufficient to warrant declining special leave given the potential importance of the issues.

[69] Ms Grey submitted that the applicants had already incurred significant expense in advancing their claims, and that the case would inevitably come to the Court if it was first investigated by the Authority. Thus, she said, the most cost-effective option was to order removal. As explained earlier, the applicants have been involved in a range of applications which they have brought, no doubt in good faith and on advice. Their affidavit evidence suggests financial pressure due to costs involved in this extended litigation, which is unsurprising.

[70] I have found the applicants' case raises important questions of law. There is a strong likelihood that the case would return to the Court by way of challenge. There is therefore, in my view, an access to justice issue for the applicants on grounds of cost and proportionality, which suggests special leave should not be declined.

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27 *VMR v Civil Aviation Authority*, above n 2, at [283].

[71] In support of CAA's position, however, is Mr Caisley's point that there is a case for preserving rights of challenge, given the way the issues have developed piecemeal over time, and that there is a risk of new points arising.

[72] He referred to the fact that the claim for redundancy has not yet been pleaded.

[73] Another example of this problem relates to the applicants' arguments concerning the relevance of legislation other than the Act, such as the Bill of Rights, the Human Rights Act, the Health and Safety at Work Act and the Code of Health and Disability Services Consumers' Rights. For most of these, particulars have not been spelled out.[28]

[74] However, the answer to this difficulty lies with the formal processes that are available to the Court, particularly with regard to its jurisdiction to require a proper pleading, and to define and refine issues for hearing. The Court is well placed to undertake intense case management to ensure unfairness does not arise.

[75] Standing back, I am satisfied that there is no reason for exercising the discretion not to grant special leave.

[76] Given that conclusion, it is not strictly necessary to consider the contention that there would be a perception of bias were the Authority to hear the case, since MBIE, which administers and operates the Authority, also had a central role in developing and promoting the Government's COVID-19 response, including its vaccination policy.

[77] However, it is appropriate to make a brief comment on that assertion. The Authority regularly deals in an even-handed way with cases brought by the Labour Inspectorate – another arm of MBIE. In doing so, it demonstrates its obligations of independence, as required under each member's oath of office as taken at the time of swearing-in. There is no evidence before the Court to suggest an Authority Member would not act in accordance with their oath of office if investigating a case of this kind.

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[28] Despite the Court making this point as long ago as January this year, in the interim reinstatement judgment, *VMR v Civil Aviation Authority*, above n 2, at [266].

Result

[78] The application is granted.

[79] The applicants are to file a statement of claim which conforms with reg 11 of the Employment Court Regulations 2000 within 28 days.

[80] I will then convene a telephone directions conference with counsel to address the question as to whether any further particulars are necessary. At the same directions conference, I will fix a timetable for the filing of a statement of defence, and deal with any other interlocutory issues that either party may raise.

[81] In light of the non-publication order made when resolving the interim reinstatement challenge,[29] I make a mirror order here: until further order of the Court, the identifying details of the plaintiffs are not to be published.

[82] I reserve costs. I previously indicated I would deal with those relating to the application for interim reinstatement after dealing with the application for special leave. I will discuss timetabling of costs issues for both these events at the directions conference.

B A Corkill
Judge

Judgment signed at 3.30 pm on 18 July 2022

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[29] *VMR v Civil Aviation Authority*, above n 2, at [291]–[299].