

Remarks of Chief Judge GL Colgan on the occasion of the swearing-in as a Judge of the Employment Court of Judge Christina Inglis on 30 September 2011

Judge Inglis, on behalf of the Judges of the Employment Court, I welcome you as the 36th Judge of this Court and its predecessors. Others today have spoken about you so I will add only this. On several occasions recently I have chanced to speak with people who are or were formerly members of your staff. Spontaneously and unanimously, they have all told me how fortunate we are to have you as one of us. Good employment relations are what this job is all about and I am greatly heartened that you bring your own experience of these to your new position.

On a rare occasion such as this, I cannot and will not resist drawing on the experience of history.

I will speak briefly today about the Court you are joining and its historical role to put in context where we are today and what the future might bring. For many practitioners, memory and experience extend no further back than the Employment Relations Act 2000. For older ones, the world of employment relations was created in seven days in 1991 by the Employment Contracts Act. A few of us remember the era before the big bang in 1991. But even then there is much more to learn from earlier history, even if our actual experience does not go back beyond the 1970s.

The Employment Court, as a separate court, traces its whakapapa to the Arbitration Court established under the Industrial Conciliation and Arbitration Act 1894. Although its functions and names have changed over the last 117 years, its essence as a specialised court to adjudicate on problems that arise in the important relationships between employees (individually and collectively) and employers, has not changed. For the first 25 or so years of its existence, the Arbitration Court consisted of the most junior puisne judge of the Supreme Court, what we now know as the High Court. So it was our predecessor Mr Justice Sim, who presided over the series of cases about the Blackball miners' strike in 1908 which had a profound effect of New Zealand politics and the evolution of the labour movement.[\[1\]](#)

Later, it was our predecessors, Judge (Sir Arthur) Tyndall and Judge Blair who, in 1952[\[2\]](#) and then in 1968[\[3\]](#) respectively, delivered the infamous nil wage order decisions at a time when the Court set collective wages and conditions in awards covering significant numbers of workers. These judgments, and reaction to them, contributed to major economic and political events that, in turn, led to the abolition of the Court's involvement in setting terms and conditions of employment.

This was, in more recent times, the Court that ordered the sequestration of the assets of the New Zealand Seamen's Union when it defied injunctive orders to cease illegal strike action on Cook Strait ferries.[\[4\]](#)

It was this Court's predecessor that, drawing on both administrative law and the notions of common decency and fairness, first formulated rules for fair dealing in circumstances leading to potential loss of employment.[\[5\]](#)

It was this Court followed by the Court of Appeal^[6] which first adapted foreign law notions of good faith dealing between employers, unions, and employees in all aspects of their relationships that are now enshrined in statute and, I venture to suggest, accepted generally.

It was the Court that you join today that recognised more than a mono-cultural view of the significant consequences of loss of employment to Maori, in determining the absence of a *poroporoaki* may be a very real and compensable humiliation in the loss of employment^[7].

And it was this Court which determined that, while warranted and indeed necessary in particular circumstances, unconstrained drug and alcohol testing of employees cannot be justified or lawful^[8].

In all of these (and other) important developments of the law of employment, the Court, and even its Judges personally, faced trenchant criticism and sometimes unwarranted personal vilification. They were not popular decisions at their time but of course popularity is not in the job description of an Employment Court Judge. The passage of time has, however, not only placed these legal developments in an overall historical context but has proven them to be prophetic and even mainstream.

Finally, and not known widely, it was this Court and its Judges who, by quiet diplomacy, and I acknowledge with the intervention of a principled Attorney General, the Honourable Sir Douglas Graham, in 1994 opposed the determination of powerful interest groups to abolish the Employment Court altogether. There are, even now emerging, proposals that this should not continue to be the same independent specialist Court that it has been for the past 117 years. Critical examination and even radical change can be a good thing. However, change for its own sake or especially for collateral and illusory reasons that ignore the lessons of history, should not be this Court's legacy to the community it serves.

These events are recounted not to place the weight of history on your shoulders, Judge, but to illustrate that you join today a long-established Court with a proud history of independent development of the law of employment in New Zealand. It is no coincidence that we live and work in a relatively benign employment relations environment, certainly when compared to earlier times in this country and when to comparable nations elsewhere. No single factor can account for this but nor should the contribution to it of an independent Employment Court be discounted.

I and my colleagues, now your colleagues on the Court, know that you are up to the challenges that will inevitably present themselves as they have over the past 117 years.

We are delighted by your appointment and welcome you sincerely and most warmly to the Bench of the Employment Court.

^[1] *Inspector of Awards v Blackball Miners' Industrial Union of Workers* [1908] Book of Awards [Vol 1X] at 55, *Isdell [Inspector of Awards] re Blackball Miners' Industrial Union of Workers and Blackball Coal Co Ltd* [1908] Book of Awards [Vol 1X] at 371, and *Blackball Miners v The Judge of the Court of Arbitration* [1907] 27 NZLR 905.

[2] [1952] Book of Awards (Vol 52 Part 2] at 835.

[3] [1968] Book of Awards (Vol 68 Part 2] at 1281.

[4] *New Zealand Railways Corporation v New Zealand Seamen's IUOW and Evans* [1989] ERNZ Sel Cas 321.

[5] *NZ (with exceptions) Food Processing etc IUOW v Unilever New Zealand Ltd* [1990] ERNZ Sel cas 582, 594-595.

[6] For example, *Steel Link Contracting Services Ltd v Manu* [1998] 2 ERNZ 648.

[7] *Good Health Wanganui Ltd v Burberry* [2002] 1 ERNZ 668.

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