

**IN THE EMPLOYMENT COURT
WELLINGTON**

**WC 18/09
WRC 23/09**

IN THE MATTER OF an application for interim injunction

BETWEEN THE NEW ZEALAND FIRE SERVICE
 COMMISSION
 Plaintiff

AND THE NEW ZEALAND PROFESSIONAL
 FIREFIGHTERS UNION
 First Defendant

AND JEFFREY REGINALD MCCULLOCH
 Second Defendant

AND BOYD GORDON RAINES
 Third Defendant

Hearing: By telephone on 6 August 2009

Appearances: Geoff Davenport, counsel for plaintiff
 Peter Cranney, counsel for defendants

Judgment: 6 August 2009

ORAL JUDGMENT OF JUDGE B S TRAVIS

[1] The plaintiff has applied for interim injunctions to prevent what it alleges is an unlawful strike which commenced at 8am this morning, 6 August 2009.

[2] The papers filed by the plaintiff indicate that it has serious concerns that the safety of the New Zealand public and its employees will be compromised if the strike action being carried out by members of the first defendant union is able to continue without the plaintiff having received 14 days notice so that it could put in place appropriate contingency plans.

[3] The defendants have not had the opportunity to file any affidavits and only to be heard over the phone on a “Pickwickian” basis.

[4] However, if the plaintiff is able to establish an arguable case, as the papers filed to date indicate, the balance of convenience favours the granting of interim relief against what is allegedly unlawful strike action.

[5] In order to hold the position and appreciating that if the plaintiff’s claim fails after a more formal hearing next week it will be liable in damages, I have issued interim injunctions until further order of the Court in the following terms:

(a) an interim injunction will issue restraining the first defendant (including its officers, employees, agents or members) and/or the second defendant and/or the third defendant from continuing to participate in the allegedly unlawful strike action relating to the notice of strike the subject of these proceedings and the first defendant’s directive of 5 August 2009, which action is said to have commenced at 8am on 6 August 2009;

(b) an interim injunction will also issue requiring the first defendant to immediately contact its members requesting them to desist from continuing to participate in the allegedly unlawful strike action relating to the notice of strike the subject of these proceedings and the first defendant’s directive of 5 August 2009, which action is said to have commenced at 8am on 6 August 2009. This communication is to include email and phone communication with a view to having the allegedly unlawful strike action suspended forthwith.

[6] The injunctions are issued on the basis that the plaintiff has undertaken to abide by any order the Court may make in respect of damages sustained by any of the defendants through the making of the interim orders issued today and that the Court decides that the plaintiff ought to pay.

[7] Costs are reserved.

[8] The plaintiff will file and serve any further affidavits by 12 noon on Friday 7 August 2009.

[9] The defendants will file and serve any affidavits in opposition by 9am on Monday 10 August 2009.

[10] The hearing of the interim injunction will commence at 11.30am on Monday 10 August 2009 in the Employment Court in Wellington.

B S Travis
Judge

Oral judgment signed at 5.30pm on 6 August 2009