IN THE EMPLOYMENT COURT
AUCKLAND

AC 61/06
ARC 46/06

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for leave to be heard
BETWEEN	NEW ZEALAND TRAMWAYS AND PUBLIC TRANSPORT EMPLOYEES UNION INCORPORATED First Plaintiff
AND	NATIONAL DISTRIBUTION UNION INCORPORATED Second Plaintiff
AND	TRANSPORTATION AUCKLAND CORPORATION LIMITED AND CITYLINE (NEW ZEALAND) LIMITED Defendants

Hearing: By application filed on 6 November 2006

Court: Judge B S Travis
Judge C M Shaw
Judge M E Perkins

Appearances: No appearances for the parties (determined on the papers)

Judgment: 7 November 2006

INTERLOCUTORY JUDGMENT OF JUDGE B S TRAVIS FOR THE FULL COURT

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[1] On 6 November 2006 Brian Webb, Byron Knight and Paul Carrucan (the applicants) sought leave to be heard in these proceedings. The case is to be heard by a full Court on 9 November 2006. The applicants correctly anticipated that both the plaintiffs and the defendants would object to their application.

[2] They have stated that their application concerns issues of considerable significance as to the jurisdiction of the Employment Relations Authority, the nature

of matters to be referred to the Employment Court, employment relationships and the process of negotiation and ratification of collective employment agreements.

[3] The applicants are parties to the collective employment agreement (the CEA) which is at the heart of the current proceedings to be heard by the full Court. Mr Webb says he is the delegate of the first plaintiff Union at the Wiri Depot. They claim that the Authority acted outside of its jurisdiction and altered the wording of the CEA.

[4] From reading its determination it is clear that the Authority interpreted the terms of the CEA, not on the basis of any agreed statement of facts but on the plain meaning of the words used as it is entitled to. The argument which the applicants advanced as to the applicablility of s163 of the Employment Relations Act 2000 which prevents the Authority from cancelling or varying any collective agreement, has no basis.

[5] The applicants also take issue with the negotiation and ratification process. This is new matter that has not previously been raised in the current proceedings. If allowed to be addressed it would widen the scope of the hearing. The current proceedings appeared to accept that the CEA was binding and contained a clause that required to be interpreted in the light of the Holidays' legislation. Those are the issues presently before the full Court.

[6] It also appears from email communications to the Court from the applicants and from the unsworn affidavit of Mr Gary Froggatt filed by the plaintiffs that the applicants have brought their own application in the Authority and are not happy with the way in which the Authority has dealt with it. If they have any such concerns these are matters which may be addressed by a challenge filed in the Court to the Authority's determination of their application.

[7] Counsel for the plaintiffs and defendants have both set out the legal test to be applied. In determining whether a person making an application under clause (2)(2) of Schedule 3 of the Employment Relations Act should be granted leave to appear or be represented, the Court must be of the opinion that the person is "*justly entitled to be heard*": see *Lowe v New Zealand Post Ltd* [2003] 2 ERNZ 172 at paragraph 32.

[8] We are satisfied from the responses the Court has received from the plaintiffs and the defendants that the issues as to the interpretation of the relevant clause and the effect of the Holidays' legislation will be addressed by the full Court. As members of the first plaintiff Union the applicants will be represented in that hearing. The resolution of those issues may provide the applicants with the answers they seek but, if they do not, the applicants have their own proceedings in the Authority to pursue.

[9] The full Court's considerations are limited to the issues presently before the Court which is operating under considerable time restraints because of the impending operation of the Holidays' legislation as at 1 April 2007. Any new issues, not previously raised in the proceedings between the present parties will prevent the hearing being able to be completed in the time allocated to it.

[10] For these reasons we conclude that the applicants are not justly entitled to be heard and leave is therefore declined. The applicants are of course free, as any member of the public is, to attend the hearing on 9 November 2006.

B S Travis
Judge
for the full Court

Judgment signed at 4.45pm on Tuesday, 7 November 2006