

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2010] NZEMPC 101
ARC 31/10**

IN THE MATTER OF an application for interim injunction
AND IN THE MATTER OF an application for urgency
BETWEEN PORTS OF AUCKLAND LIMITED
 Plaintiff
AND MARITIME UNION OF NEW
 ZEALAND INCORPORATED
 Defendant

Hearing: 2 and 3 August 2010 (by telephone conference calls)

Appearances: Richard McIlraith, Counsel for Plaintiff
 Simon Mitchell, Counsel for Defendant

Judgment: 3 August 2010

INTERLOCUTORY JUDGMENT OF JUDGE ME PERKINS

[1] The plaintiff in the substantive proceedings filed an ex parte notice of application for interim injunction on 2 August 2010. The application is supported by an undertaking as to damages, an amended statement of claim dated 2 August 2010, an application for urgency, and affidavits from officers of the plaintiff company.

[2] Once filed, the proceedings were served on the defendant union and its legal counsel on the basis of *Pickwick International Inc (GB) Ltd v Multiple Sound Distributors Ltd*.¹

¹ [1972] 3 All ER 384.

[3] During the afternoon and evening of 2 August 2010 I held a series of telephone conferences with counsel, which culminated in the application being adjourned with the prospect of a hearing at 3.30 pm on Tuesday 3 August 2010. This would be on the basis that the defendant union would file an affidavit or affidavits in answer to the allegations contained in the affidavits in support of the application.

[4] Mr Mitchell, on instructions from his client, has now written to the Court advising that he is not instructed to oppose the application for interim orders and that this position is based on advice from counsel for the plaintiff that there would be co-operation in seeking, and preparing for, an urgent substantive fixture. Accordingly, the defendant, he indicated, would not be filing any affidavit or affidavits as provided for in the directions made on the evening of 2 August 2010.

[5] Following the receipt of Mr Mitchell's letter, I arranged a further telephone conference with counsel at 12.30 pm on 3 August 2010. I indicated that in view of the letter received, I would make interim orders on the ex parte applications. I indicated that I would also record, and do now record, that despite the stand taken by the defendant that it would not instruct its counsel to oppose the application, no inference is to be taken that it accepts the allegations contained in the plaintiff's affidavits.

[6] In making the interim orders, two further things are necessary. First, it is appropriate that the parties be directed to attend further mediation urgently. Secondly, it is necessary to advance the substantive proceedings to a hearing and for that purpose a call-over conference will be convened next week.

[7] The following orders are accordingly made:

- (a) That the Maritime Union of New Zealand Incorporated (MUNZ) and its officers, employees and agents refrain from being a party to, or directing, encouraging or inducing its members to engage in a strike on 2 August 2010 and thereafter or any strike of a similar nature.

- (b) That MUNZ and its officers, employees and agents advise its members to accept engagement for work in which they are usually employed and to continue the full performance of their normal duties.
- (c) That MUNZ by its secretary/treasurer, Auckland, or a person he delegates for such purpose, file with the Employment Court at Auckland by 5 pm on 3 August 2010 written confirmation that MUNZ has complied with (b) above.
- (d) That orders (a) and (b) above are to continue until further order of the Court.
- (e) That pursuant to s 188 of the Employment Relations Act 2000 the plaintiff and defendant are directed to attend mediation or further mediation urgently and to comply with the directions given by the mediator appointed, for the purposes of facilitating such mediation.
- (f) That the proceedings are adjourned to 9.30 am on Wednesday 11 August 2010 for the purposes of a call-over conference to deal with necessary timetabling directions for the advancement of the substantive proceedings to a hearing.

ME Perkins
Judge

Judgment signed at 3 pm on Tuesday 3 August 2010