

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2012] NZEmpC 42  
ARC 20/12**

IN THE MATTER OF      interim injunction and injunction

BETWEEN                C3 LIMITED  
                                 Plaintiff

AND                        RAIL AND MARITIME TRANSPORT  
                                 UNION INC  
                                 First Defendant

AND                        PHILIP SPANSWICK  
                                 Second Defendant

AND                        HEREMAIA RAIHIRA AND 72 OTHERS  
                                 Third Defendant

Hearing:                Following a hearing held by telephone on 4 and 5 March 2012  
                                 (Heard at Auckland)

Counsel:                Peter Chemis and Andrew Caisley, counsel for plaintiff  
                                 Geoff Davenport, counsel for RMTU  
                                 No appearance for the second and third defendants

Judgment:              6 March 2012

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**REASONS FOR ORAL INTERLOCUTORY JUDGMENT  
OF JUDGE B S TRAVIS**

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[1]      On Sunday 4 March 2012, after a “Pickwickian” telephone conference call hearing, where the first defendant was represented by Mr Davenport as counsel who had not yet been served with the proceedings, I issued interim injunctions against the defendants.

[2]      After a further hearing by telephone conference call in the evening of 5 March initiated by Mr Davenport, I modified the wording of the injunctions to read as follows:

1. The first defendant and the defendant's officers, employees (including the second defendant) and/or agents are restrained from participating in, or continuing to participate in, counselling, procuring, aiding and/or abetting unlawful strike action against the plaintiff during the term of the current collective employment agreement between the plaintiff and the first defendant until further order of the Court.

2. The first and second defendants are restrained from advising members of the first defendant employed by the plaintiff (including the third defendants) not to cross a picket line established by MUNZ at Tauranga, until further order of the Court.

3. The third defendants are restrained from participating or continuing to participate in unlawful strike action by refusing to cross a picket line established by MUNZ at Tauranga until further order of the Court.

[3] This matter was heard at the same time, by telephone conference call, as the application for interim injunctions in *Port of Tauranga Ltd v Rail and Maritime Transport Union Inc.*<sup>1</sup> Mr Chemis had instructed Mr Caisley to make submissions on behalf of the plaintiff company. In essence, for the reasons I have given in [2012] NZEmpC 41 (ARC 19/12), which should be read as part of these reasons, the interim injunctions were given because a strongly arguable case had been established that the employees of the plaintiff who had refused to cross the picket line imposed by representatives of the Maritime Union of New Zealand (MUNZ), were taking unlawful strike action.

[4] The third defendants are employees of the plaintiff and members of the first defendant the Rail and Maritime Transport Union Inc (RMTU). They are employed pursuant to a current collective agreement between the plaintiff and the RMTU. They undertake work as stevedores at the container terminal at the Port of Tauranga. As a result of their refusal to cross the picket line, the Maersk Shipping Line vessel, called MV *Irenes Remedy*, was unable, and continued to be unable, to be worked. I found it was strongly arguable that the refusal of the third defendants to comply with the plaintiff's instructions to undertake their usual and normal duties, constituted strike action, that it was done on the instructions of the second defendant, a union organiser for the RMTU and that the strike action would continue to affect the public interest. Therefore were it to be lawful in other respects, 14 days notice ought to

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<sup>1</sup> [2012] NZEmpC 41.

have been given as the plaintiff is carrying out an essential service as defined in schedule 1 of the Employment Relations Act 2000 (the Act).

[5] For the same reasons I gave in relation to [2012] NZEmpC 41, the balance of convenience and the overall justice of the case favoured the grant of the relief sought. The relief was to have remained in force until the injunction application could have been heard fully. In order to accommodate the need for counsel for the defendant to fully prepare, the hearing was to have taken place at 10am on Wednesday 7 March 2012 together with the hearing in ARC 19/12.

[6] Mr Davenport subsequently filed a memorandum on behalf of the RMTU advising that he and his client did not consider that the important issues involved in this case could be effectively addressed on the papers on Wednesday in the setting of an interim injunction application. He sought to have the wording of the injunctions modified, as is reflected in paragraph [2] of these reasons, and a direction to mediation on the substantive issues involved in these proceedings. On this basis, he sought to have the hearing on Wednesday adjourned.

[7] After the further telephone conference call and without objection from the plaintiff, the hearing on the interim injunction was adjourned. The parties were directed to mediation on the matters at issue between them, pursuant to s 188(2)(b) of the Act and such mediation is to be completed before any substantive proceedings arising out of these issues are set down for hearing.

[8] Costs were reserved as well as leave to apply for further directions.

B S Travis  
Judge

Judgment signed at 3.45pm on Tuesday 6 March 2012