

**UNDER THE HOLIDAYS ACT 2003**  
**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY**  
**AT WELLINGTON**

NO. WEA 129/04

**BETWEEN**

**NEW ZEALAND PROFESSIONAL  
FIREFIGHTERS UNION**, of P.O. Box  
38213, Petone

Applicant

**A N D**

**THE CHIEF EXECUTIVE NEW  
ZEALAND FIRE SERVICE** of P.O.  
Box 2133, Wellington

Respondent

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**APPLICATION FOR REMOVAL**  
**Section 178 of the Employment Relations Act 2000**  
**Dated this 24<sup>th</sup> day of June 2004**

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**PRESENTED FOR FILING BY:**

**OAKLEY MORAN**  
Solicitors, Wellington.  
P.O. Box 241 DX SP20003  
Phone: (04) 472.3055  
Fax: (04) 472.6657  
Person Acting: Peter Cranney

Firefighters/Applcn Removal 24.6.04

TO: The Employment Relations Authority

AND TO: The Respondent

1. The Applicant seeks an order removing this matter to the Employment Court on the following grounds:

1.1. Important questions of law are likely to arise in this matter other than incidentally (ERA s 178(2)(a)).

**Particulars of important questions of law.**

1.1.1. The proper construction of sections.6, 40(1), 44(2) and (3), 46(2), 56 and 57 of the Holidays Act 2003, and of the Act as a whole.

1.1.2. Whether and to what extent *Small v New Zealand Fire Service* AEC 21/96 was correctly decided and/or continues to have application.

1.2. The case is of such a nature and of such urgency that it is in the public interest that it be moved immediately to the Court (ERA s178(2)(b)).

**Particulars of urgency and public interest**

1.2.1. The Respondent is a major public sector employer.

1.2.2. The Respondent is in continuing breach of the Holidays Act 2003 and the Applicant's members are being denied basic holiday rights.

1.2.3. Large sums of public money are at stake (that is, around \$500,000 for each alternative holiday).

- 1.3. It is appropriate in all of the circumstances for the Court to determine the matter. (ERA s178(2)(d)).

**Particulars**

- 1.3.1. The Holidays Act 2003 is a new Act, and as with the major cases decided following the 1991 amendment to the Holidays Act 1991, removal is appropriate so as to have the Court authoritatively determine the issues.
  - 1.3.2. The case will involve a consideration of *Small* which can more appropriately be done in the Court.
  - 1.3.3. Appeal from any decision of the Authority is inevitable.
  - 1.3.4. It is in the interests of justice that the matter be finally determined sooner rather than later, given the ongoing breach alleged.
  - 1.3.5. The Applicant under this head also relies on the matters raised under para 1.1 and 1.2 above.
2. This application is accompanied by the prescribed fee of \$150.00.

**Dated this 24<sup>th</sup> day of June 2004.**

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Peter Cranney  
Solicitor for the Applicant

THIS Application for Removal is filed by Peter Cranney Solicitor for the abovenamed Applicant of the firm of Oakley Moran. The address for service is 1st Floor, Leaders Building, 15 Brandon Street, Wellington.

**DOCUMENTS** for service on the abovenamed Applicant may be left at that address for service or may be -

- (a) Posted to the solicitor at P.O. Box 241, Wellington; or
- (b) Left for the solicitor at a document exchange for direction to DX SP20003, Wellington; or
- (c) Transmitted to the solicitor by facsimile to (04) 472.6657.

**NOTICE TO THE RESPONDENT**

1. If you intend to respond to this application, you must, within 14 days after the date of the service of this application on you, lodge 2 copies of a statement in reply with an office of the Employment Relations Authority at Wellington.
  
2. The term **days** (in paragraph 1 of this notice) does not include any day in the period beginning with 25 December in any year and ending with 5 January in the following year.
  
3. You will be notified of the place, date, and time at which the Authority will conduct any investigation meeting in respect of this application.

Officer of the Employment Relations Authority: .....

Date: .....