Supreme Court of New Zealand

17 May 2010

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

Air Nelson Limited v The New Zealand Amalgamated Engineering Printing and Manufacturing Union Incorporated
(SC 78/2009 [2010] NZSC 53)

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

In a judgment delivered today the Supreme Court has allowed an appeal from the Court of Appeal in a case concerned with the anti strike breaking provisions of section 97 of the Employment Relations Act 2000. Those provisions prohibit employers, except in certain circumstances, from employing or engaging another person "to perform the work of a striking or locked out employee."

In June 2007 contract engineers engaged by Air Nelson Limited carried out certain maintenance work, known as line maintenance, on the airline's aircraft on occasions when Air Nelson's line maintenance engineers were conducting a lawful strike. Generally, employees of Air Nelson did line maintenance but

for about 5 hours each per week contract engineers also did it. The Union complained that in permitting contract engineers to do the line maintenance jobs in issue, Air Nelson was in breach of section 97 of the Act.

The dispute came before the Employment Court, which held that Air Nelson had not breached section 97. In that Court's view the contract engineers had not been performing the work of striking employees; they had been performing their own work.

The Union appealed to the Court of Appeal, which found in favour of the Union. It held that the Employment Court had decided the case on an incorrect legal basis. The correct approach was to interpret the expression "the work of a striking or locked out employee" as "the work that a striking or locked out employee would probably have been performing had he or she not been striking or locked out."

Air Nelson appealed, by leave, to the Supreme Court, which has held by a majority (Elias CJ, Blanchard, McGrath and Anderson JJ) that the approach adopted by the Employment Court was correct. Whether a person was or was not performing the work of a striking or locked out employee is essentially a question of fact to be ascertained by analysis of the circumstances of a particular case. The Court of Appeal was in error in treating the issue as one of legal definition rather than one involving factual analysis. It was not open to the Court of Appeal to take a view of the facts different from that taken by the Employment Court. Wilson J dissented from the majority in preferring the interpretative approach of the Court of Appeal.

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