

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 33/2011  
[2011] NZSC 59**

BETWEEN                      OPEN COUNTRY CHEESE COMPANY  
   LIMITED  
   Applicant

AND                              NEW ZEALAND DAIRY WORKERS'  
   UNION INCORPORATED  
   Respondent

Court:                      Blanchard, McGrath and William Young JJ

Counsel:                  I R Millard QC for Applicant  
   R E Harrison QC for Respondent

Judgment:              2 June 2011

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed with costs of \$2,500 to the respondent.**

**REASONS**

[1]     The proposed appeal is on a question of law involving s 97(2) of the Employment Relations Act 2000, which forbids an employer from employing or engaging another person to perform the work of a striking or locked out employee. The applicant's employees went on strike. The applicant's parent company then sent some of its employees into the plant of the applicant to operate it, but their salary or wages continued to be paid by the parent company and they continued to be its employees and under its direction. However, their activities required the cooperation of staff of the applicant who were involved in training and familiarising parent company employees with the operations of the applicant.

[2]     The Court of Appeal, correctly in our view, took the view that the words "employ" and "engage", when read in the light of the purpose of s 97(2), refer to the

employer's use of other persons, irrespective of its legal relationship with them; and that in law the work done by the employees of the parent company was the applicant company's work which those on strike normally undertook for it. The work enabled the applicant to satisfy its contractual obligations. That constituted an employment or engagement by the applicant.

[3] We find the Court of Appeal's conclusions to be unimpeachable and accordingly we are not satisfied that it is necessary in the interests of justice for this Court to hear and determine the proposed appeal.

Solicitors:  
Solutions Law Office, Nelson for Applicant  
Oakley Moran, Wellington for Respondent