



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

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MEDIA RELEASE

FMV v TZB

(SC 72/2019) [2021] NZSC 102

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 Judicial Decisions of Public Interest: www.courtsofnz.govt.nz.

Suppression

There is an order suppressing the names and identifying particulars of the parties remains in force so long as the suppression order made by the Employment Relations Authority remains in force.

Background

The appellant, FMV, was employed by the respondent, TZB, for a period of one year, before she resigned in 2010. Almost seven years later, FMV filed proceedings against TZB in the High Court. At the same time, she pursued a personal grievance in the Employment Relations Authority (the Authority). In the Authority, she claimed she had been unjustifiably dismissed and disadvantaged, while her High Court claims were in tort for breach of duties (variously formulated) to ensure a safe work environment.

FMV did not immediately serve the High Court proceedings on TZB. She first pursued her personal grievance in the Authority. But the Authority stayed that proceeding because it considered FMV could not demonstrate that she had the capacity to prosecute her claim. She therefore served and pursued her High Court proceedings.

TZB responded by applying to strike out the High Court proceedings, claiming that only the Authority had jurisdiction to hear FMV's claims.

The High Court granted the application for strike-out, and that decision was upheld by the Court of Appeal.

The Supreme Court granted FMV leave to appeal. The approved question was whether the Court of Appeal was correct to dismiss the appeal.

The issue

The issue in this case was whether the High Court has jurisdiction to hear FMV's claims, or whether they fall under the exclusive jurisdiction of the Authority.

Under s 161(1) of the Employment Relations Act 2000, the Authority has exclusive jurisdiction to make determinations about "employment relationship problems generally". An employment relationship problem is defined to include any problem "relating to or arising out of an employment relationship".

Section 161(1) also contains a long list of matters within the Authority's exclusive jurisdiction. The second-to-last item in the list, s 161(1)(r), provides the Authority with exclusive jurisdiction in relation to "any other action ... arising from or related to the employment relationship ... (other than an action founded on tort)".

FMV's case was that the High Court has jurisdiction to hear her claims because they are founded on tort, and the Authority has no jurisdiction over tort actions.

TZB argued that FMV's claims are within the exclusive jurisdiction of the Authority because they are employment relationship problems, even if they can be framed as torts.

Decision

By a majority comprising Winkelmann CJ, William Young, O'Regan and Williams JJ, the Supreme Court has dismissed the appeal.

The majority has held that the tort exception in s 161(1)(r) applies only to s 161(1)(r). It is not a carve-out from the Authority's exclusive jurisdiction generally. This meant that because FMV's High Court claims can also be framed within one or other of the jurisdictional subheadings listed in s 161(1) (for example, as a personal grievance), the Authority has exclusive jurisdiction even though the claims can also be framed in tort.

As for the interpretation of "employment relationship problem" generally, the majority has held that the Authority's exclusive jurisdiction is not limited to problems that "directly and essentially" concern the employment relationship, overruling the approach in *JP Morgan Chase Bank NA v Lewis*. The majority also held that the Authority's jurisdiction is not necessarily limited to problems between parties to employment relationships themselves.

Winkelmann CJ, O'Regan and Williams JJ held that the correct approach to jurisdiction is a factual inquiry into whether the problem relates to or arises from an employment relationship. If it does, then the problem must be dealt with in the Authority, regardless of how it is framed. Employment relationship problems would include any disputes arising during the course of an employment relationship and in a work context, as well as disputes arising after the employment itself has ended where the dispute concerns obligations entered into during the course of the relationship and in the work context.

William Young J, writing separately, considered that the approach should be to ask whether the dispute is within what Parliament contemplated the Authority's exclusive jurisdiction

would encompass. For cases on the margin, this would involve consideration of the text and purpose of the Employment Relations Act (including the institutional, procedural and remedial capability of the Authority to deal with all facets of the dispute), and the text and purpose of any other statute which appears to provide for jurisdiction.

Glazebrook J would have allowed the appeal. She considered that the tort exception in s 161(1)(r) excludes all tort actions from the Authority's exclusive jurisdiction.

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