

BETWEEN REFINERY CONSTRUCTORS  
JOINT VENTURE

Plaintiffs

AND THE AUCKLAND DISTRICT  
BOILERMAKERS'  
INDUSTRIAL UNION OF  
WORKERS

First Defendant

AND A. MACLEAN

Second Defendant

AND THE NEW ZEALAND  
ENGINEERS' INDUSTRIAL  
UNION OF WORKERS

Third Defendant

AND M. SWEENEY

Fourth Defendant

AND C. HOOPER

Fifth Defendant

AND THE NEW ZEALAND  
LABOURERS' INDUSTRIAL  
UNION OF WORKERS

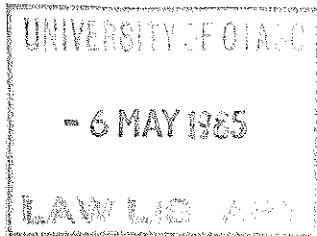
Sixth Defendant

AND R. BIANCHI

Seventh Defendant

AND B. WIHONGI

Eighth Defendant



Hearing: 13 December 1984

Counsel: R.L. Towner for Plaintiff  
M.B. O'Brien for 1st & 2nd Defendants  
M.D. Edwards for 3rd, 4th & 5th Defendants  
J. Haigh for 6th, 7th & 8th Defendants



Judgment: 13 December 1984

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(ORAL) JUDGMENT OF BARKER, J.

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On 6 December 1984, the plaintiffs issued an action against three of the unions and certain officials of those unions which represent workers at the Marsden Point Oil Refinery site. The action seeks damages for breach of statutory duty, inducing breach of contract, unlawful interference with economic interests; the prayers were for permanent injunctions.

In addition, there was an application for interim injunctions which was set down for hearing on Tuesday, 11 December 1984, to restrain the defendants by themselves, their officers, agents or servants from instructing, directing, advising, inducing or causing members of the various unions to withdraw their labour or services in respect of the plaintiffs or to breach in any way their contracts of employment with the plaintiffs; or alternatively, not to seek re-employment with the plaintiffs or to participate in any illegal ban, obstructing, picketing, strike or other industrial action.

There were other injunctions sought; principally, and in summary, the plaintiffs sought to restrain the unions and their officials from counselling or advising the work force against entering into re-employment contracts with the plaintiffs.

What has happened is that most of the workers were dismissed by the plaintiffs; they were told by the plaintiffs that they could seek re-employment on condition that they sign a document stating that they were prepared



to accept re-employment (a) on the same conditions as existed at the date they were sacked, namely, 27 November 1984 and (b) that they would continue that employment without exception as provided in their original contract of employment, the collective agreement and the Whangarei Refinery Expansion Project Disputes Act 1984 ("the Act").

A considerable number of workers have signed such a document; I am advised from the Bar that as at today, there are 2,154 workers on the site. This figure of 2,154 represents the total workers on site including employees of sub-contractors.

I am advised from the Bar that there are approximately 400 boilermakers, 170 engineers and 300 labourers formerly employed by the plaintiffs not at work. These persons have stated, through their unions' counsel, and in affidavits filed by the unions' officers, that they will return to work immediately if they are not required to sign the document referred to earlier.

The Engineers' Union, the third defendant, has filed a counterclaim; it seeks an interim injunction restraining the plaintiffs from preventing the union officials from entering on the work site, and restraining the plaintiffs from requiring workers seeking re-employment to sign the document referred to earlier. This motion was filed only this morning; Mr Towner for the plaintiffs seeks an adjournment of the motion.

Mr Towner of counsel for the plaintiffs, advised the Court today that the plaintiffs wish to withdraw their application for interim injunction on the grounds that more and more workers have been returning to the site; that the plaintiffs consider that it will make industrial relations sense not to have the application current before the Court. However, the substantive action is not being withdrawn; it is still on foot.



Mr Haigh asks for costs on the interim injunction, submitting that the plaintiffs were not genuine in their application to the Court. I am not able to assess allegations of that nature without a full hearing; no doubt the trial Judge will be able to do so, if and when the substantive action comes on for hearing. I therefore reserve the question of costs on the plaintiffs' application for interim injunction; the application itself is hereby dismissed at the plaintiffs' request.

With regard to the motion for interim injunction brought by the Engineers' Union, Mr Edwards acknowledged that the first injunction he seeks is more properly to be dealt with by the Arbitration Court because it involves the interpretation of a site agreement - a matter peculiarly within the province of the Arbitration Court. However, he stated that his clients wished to proceed with an injunction to restrain the plaintiffs from requiring the workers to sign the document referred to earlier.

I am prepared to grant Mr Towner's application for adjournment, but only for a limited time. It is a matter of national importance that work resumes at Marsden Point in full as soon as possible. Therefore, any Court proceedings which may be of assistance in achieving that end should be heard as soon as possible. I therefore adjourn the motion by the third defendant to 2.15 p.m. on Monday, 17 December 1984.

Before parting with this matter, because counsel have canvassed what seems to be the "sticking point" amongst the unions, I should perhaps add some comments of my own - made more out of a desire to assist the parties to a resolution of this matter than strictly on their legal merits.





As far as the application itself is concerned, there could be legal difficulties in the way of having the Court grant an injunction against a would-be employer requiring a particular document to be signed as a condition of re-employment. The offer of the employer is for re-employment on particular terms which workers presumably can take or leave as they see fit.

However, having said that, the document which the employers wish the workers to sign does not strike me as conferring on the employers any additional right in law whatsoever. The workers are clearly bound by:

- (a) Their contract of employment; there seems to be no argument that their previous terms of employment must obtain and apply to this new employment contract;
- (b) Their collective agreement;
- (c) The Act;

It is perfectly clear to me, both from these proceedings and also from an application for injunction I heard in October last relating to the now dissolved Commission of Inquiry on Marsden Point problems, that the Act is a matter of great contention with the workers at Marsden Point. Be that as it may, the Act is law until such time as Parliament repeals or modifies it; if it is law, it must be obeyed by all concerned - employers and unions.

However, I should not have thought that it would have helped to obtain obedience of the law to have a worker sign a statement that he is going to comply with an Act by which he is bound in any event. I wonder whether, in the greater public interest, it might not be of assistance if the employers were to waive this requirement in the hope of having everybody go back to work.



I repeat that it seems clear from what counsel tells me and from the affidavits that if this requirement is waived, then the work force will return to work immediately; this is something one would have thought would have been in the interests of the families of the persons concerned.

Perhaps what I have said is more in the role of trying to mediate or assist in the resolution of this dispute; it is not to be taken as expressing any views on the legality of the matter, which is something which will have to be canvassed at the adjourned hearing.

Affidavits in opposition are to be filed by 10 a.m. on Monday, 17 December 1984. Any other affidavits that Mr Edwards wishes to file in reply may be filed at the hearing on that day.

*M. G. Barker, J.*

SOLICITORS:

Russell, McVeagh, McKenzie, Bartleet & Co., Auckland, for Plaintiffs.

Wallace, McLean, Bawden & Partners, Auckland for, 1st & 2nd Defendants.

Dickson & Co., Auckland, for 3rd, 4th & 5th Defendants.

Haigh, Lync & Co., Auckland, for 6th, 7th & 8th Defendants.





IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

A.1414/84

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