IN THE EMPLOYMENT COURT
CHRISTCHURCH

[2011] NZEmpC 172
CRC 16/11

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an appearance objecting to the Court's jurisdiction
BETWEEN	BRIAN GRANT Plaintiff
AND	VICE-CHANCELLOR OF THE UNIVERSITY OF OTAGO Defendant

Hearing: by memoranda of submissions filed on 27 and 28 October and 11 and 25 November 2011

Appearances: Len Anderson, counsel for plaintiff
Barry Dorking, counsel for defendant

Judgment: 20 December 2011

JUDGMENT OF CHIEF JUDGE G L COLGAN

---

[1] This judgment deals with the new statutory procedure by which the Employment Relations Authority may, instead of issuing a determination, give parties a recommendation which may, in turn, become binding on them if it is not objected to. The Court is not aware of any other case that has yet come to it about this new way of resolving employment relationship problems.

[2] There is also a preliminary issue raised by the defendant which has entered an appearance without conceding that the Court is empowered to decide the substantive point. The defendant says that the issue is one of the Employment Relations Authority's procedure which (under ss 179(5) and 188(4) of the Employment Relations Act 2000) the Court is not entitled to determine.

[3] In these circumstances, it is both necessary and appropriate to deal with the jurisdictional argument first. Before doing so, however, I set out the relevant background events.

Relevant facts

[4] Brian Grant was employed by the Vice-Chancellor of the University of Otago from 2001 until he was dismissed in August 2009. Mr Grant raised a personal grievance and, subsequently, filed a statement of problem with the Employment Relations Authority claiming that he had been dismissed unjustifiably.

[5] The parties agreed that, pursuant to s 173A of the Act (which will be set out subsequently), the Authority could make a recommendation to them about Mr Grant's grievance. The recommendation would become the Authority's final determination of the grievance on the 10th day following the date of recommendation unless either party gave notice before then that he did not accept the recommendation.

[6] The Authority issued its recommendation to the parties on 20 April 2011. This was to the effect that Mr Grant had been dismissed unjustifiably and set out the remedies the Authority recommended be awarded to him. The Authority specified the date by which its recommendation would become its determination, unless objected to by either party, as being 30 April 2011.

[7] Before 30 April 2011, counsel for Mr Grant (not Mr Anderson, his current counsel) sought the Vice-Chancellor's agreement to the extension of the period during which the parties could consider and object to the Authority's recommendation. The defendant agreed to that request. This agreement between the parties was confirmed in writing by counsel and the period for consideration and rejection of the recommendation was then extended to 9 May 2011. It is common ground that although Mr Grant's counsel agreed on his behalf to the extension, Mr Grant himself did not do so.

[8] Although not entirely clear, it appears that counsel for Mr Grant wrote to the Authority proposing the extension of time. The Authority Member's response was that if this course was agreed to by the Vice-Chancellor, the Authority would vary the period by extending it. The written agreement of the Vice-Chancellor was subsequently received. There was, therefore, a conditional written variation of the period by the Member with the condition having been satisfied.

[9] Although counsel for both parties notified the Authority that they had agreed to this extension, the Authority Member did not discuss that with counsel or obtain the confirmation of the parties themselves (as opposed to their legal representatives) about the extension.

[10] On 5 May 2011 the Vice-Chancellor gave written notice to the Authority that he did not accept its recommendation.

[11] The Authority issued its determination[1] on this point on 27 July 2011 upholding the Vice-Chancellor's contention that the consideration and rejection period had been validly extended to 9 May 2011. It concluded that the Authority's recommendation was rejected on 5 May 2011 so that it did not become the Authority's determination. That has, in turn, been challenged by Mr Grant and, in the meantime I assume, investigation of his personal grievance by another Authority Member has not been progressed.

[12] Mr Grant now asserts that there was no valid extension of the date to 9 May 2011 so that, in the absence of any objection by the Vice-Chancellor before 30 April 2011, the Authority's recommendation should have crystallised and have the force of a determination.

New legislative provisions

173A Recommendation to parties

(1) The parties to an employment relationship problem may agree in writing—

[1] [2011] NZERA Christchurch 109.

(a) to confer the power to make a written recommendation in relation to the matters in issue on a member of the Authority; and

(b) on the date on which the member's recommendation will become final, unless the parties do not accept the recommendation.

(2) The member must, before making and signing a recommendation under that power,—

(a) explain to the parties the effect of subsections (4) and (5); and

(b) be satisfied that, knowing the effect of those subsections, the parties affirm their agreement.

(3) Where, following the affirmation referred to in subsection (2) of an agreement made under subsection (1), a recommendation is made and signed by the member empowered to do so, a party has until the date agreed under subsection (1)(b) to give written notice to the member who made the recommendation that the party does not accept the recommendation.

(4) If a party gives notice under subsection (3) that the party does not accept the recommendation,—

(a) the Authority must continue to investigate and determine the matter; and

(b) either party to the problem may request that the matter be further investigated and determined by a member other than the member who made the recommendation.

(5) If a party does not give notice under subsection (3), the recommendation becomes final and must be treated as the Authority's determination of the matter.

(6) However, a recommendation under subsection (5) need not comply with section 174(a) (which relates to the content of a determination made by the Authority).

Preliminary jurisdictional point

[13] I address first the Vice-Chancellor's preliminary challenge to the entitlement in law of Mr Grant to challenge the Authority's determination.

[14] This turns first on s 179(5) of the Act which is as follows:

(5) Subsection (1) [which allows challenges to Authority determinations] does not apply—

(a) to a determination, or part of a determination, about the procedure that the Authority has followed, is following, or is intending to follow; and

(b) without limiting paragraph (a), to a determination, or part of a determination, about whether the Authority may follow or adopt a particular procedure.

[15] The Vice-Chancellor also contends that s 188(4) of the Act precludes consideration of the challenge by the Court. This provides as follows:

> (4) It is not a function of the Court to advise or direct the Authority in relation to—
>
> (a) the exercise of its investigative role, powers, and jurisdiction; or
>
> (b) the procedure—
>
> (i) that it has followed, is following, or is intending to follow; or
>
> (ii) without limiting subparagraph (i), that it may follow or adopt.

[16] The defendant focuses on the Authority's agreement to extending the time for consideration and rejection of its recommendation. The Vice-Chancellor submits that whether the Authority agreed to do so, had no effect on the substantive rights of the parties. In effect, he says, the Authority was being asked to allow the parties more time to decide how they wished to proceed and they retained all substantive rights to accept or reject its recommendation which would, in turn, determine how the employment relationship problem would be resolved.

[17] In these circumstances, Mr Dorking, counsel for the defendant, submitted that there were no consequences for the substantive rights of the parties so that the Authority's decision to allow the extension was a matter of procedure and/or advice to or direction of the Authority and so caught by ss 179(5) and 188(4) of the Act. In particular, the defendant says that the Authority's decision to allow the extension of time did not affect Mr Grant's remedies but simply allowed the parties additional time to decide the manner in which the employment relationship problem would be resolved. In these circumstances it is said that the Authority's decision to agree to an extension was procedural.

[18] The defendant concedes that if the decision had the effect of bringing the plaintiff's claim to an end, it would have been substantive and therefore amenable to challenge. But, the Vice-Chancellor says, it did not have that effect. Rather, it only dealt with the method by which the claim was resolved.

[19] Alternatively, the Vice-Chancellor submits that it is implicit in Mr Grant's challenge that he seeks to have the Authority's recommendation treated as a determination pursuant to s 173A(5) of the Act and that this amounts to inviting the Court to advise or direct the Authority not only as to the exercise of its powers, but also in relation to the procedure it has both followed (allowing the extension) and is intending to follow (conducting a full investigation). It is said for the defendant that s 188(4) prohibits this in that it is not the function of the Court in relation to the Authority's jurisdiction to advise or direct it on those matters.

[20] What was the Authority's determination which Mr Grant seeks to challenge? It was not to agree to an extension of the consideration and rejection period. The Authority's decision to this effect had been made before the determination issued subsequently, and was not recorded in writing in the form of a determination. What is challenged is the determination that the recommendation was not accepted and, therefore, that the Authority should continue to investigate the grievance and issue a determination.

[21] Sections 179(5) and 188(4) were the subject of review by the Court of Appeal in *Employment Relations Authority v Rawlings.*[2] In that case, on appeal from judicial review proceedings in the Employment Court, the Authority had given a written direction that the applicant's statement of problem would be treated as withdrawn unless it was amended to remove irrelevant and abusive material in it. At [26] and [27] of the judgment the Court concluded:

> [26] We are satisfied that ss 179(5) and 184(1A) [a similar bar affecting judicial review proceedings] are intended to prevent challenge or review processes disrupting unfinished Authority investigations. But once the investigation is over and a determination has been made, there is no reason for limiting the challenge and review jurisdictions of the Employment Court. If the procedure adopted by the Authority has had a decisive influence on result (eg by refusing an adjournment and proceeding in the absence of a witness), the affected party, in the course of questioning that result, will be entitled to put in issue that procedure.
>
> [27] Consistently with that approach we are of the view that the actions of the Authority in the present case are, for the purposes of s 179(5), not just a determination about procedure. Accordingly that subsection would not bar a challenge to the course taken by the Authority. …

[2] [2008] NZCA 15, [2008] ERNZ 26.

[22] The question was also addressed by this Court in *Keys v Flight Centre (NZ) Ltd.*[3] At [51] of the judgment the Court held:

> … the notion of "procedure" is limited to the manner in which the Authority conducts its business and does not include outcomes, substantive or interim, and certainly not a determination of its jurisdiction.

[23] At [53] of the judgment in *Keys*, the Court decided:

> 'Practice', in its larger sense, is like 'procedure', and 'denotes the mode of proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the right' (per Lush L.J., *Poyser v Minors*, 7 Q.B.D. 333).
>
> The 'practice' of a court, when that word is used in its ordinary and common sense, denotes the rules that make or guide the *cursus curiae*, and regulate procedure within the walls or limits of the court itself, and does not involve or imply anything relating to the extent or nature of its jurisdiction ...

[24] At [54] of *Keys* the Court reinforced the distinction between substantive rights and the means by which the decision with regard to those rights was reached as follows:

> … The Authority's "powers" are set out in s 160 and under subs (l)(f) it is permitted to follow whatever "procedure" it considers appropriate. It is decisions made pursuant to that general procedural power that we consider is contemplated by reference to "procedure" in s 179(5).

[25] Further, at [55] the Court rejected an argument that the question of the Authority's jurisdiction to issue Anton Piller (now search) orders is a matter of procedure, stating:

> … Jurisdiction is a substantive question rather than one of process. It is not a question of how the Authority does it: rather, it is a question whether the Authority can do it. That is not "procedure".

[26] The question has also been addressed by this Court in *Oldco PTI (New Zealand) Ltd v Houston.*[4] At [37] the Court concluded that "procedure" in the context of legal proceedings "clearly encompasses any decision which affects the nature of the process by which the parties' rights and obligations are determined regardless of whether it may be said to advance that process." And at [49] of *Oldco* the Court stated:

---

[3] [2005] ERNZ 471, (2005) 2 NZELR 376.
[4] [2006] ERNZ 221.

> A key indication of whether a determination is substantive will be whether it affects the remedies sought by the parties or otherwise forms part of the resolution by the Authority of the employment relationship problem between the parties. If it does, the determination will almost certainly be a substantive one.

[27] By contrast, the Court said at [50], in relation to a procedural step, that it "will direct the manner in which the employment relationship problem between the parties is resolved or determine the environment in which the investigation process takes place."

[28] One-word, shortcut answers are not an invariably accurate tool in determining whether something is procedural or substantive. However, some clarity can be provided in this case by such an analysis. By asking whether the Authority is empowered to do something, the question tends to indicate that s 179(5) is not applicable. By contrast, asking how the Authority may do (or did) something it is empowered to do, tends to engage s 179(5). The same analysis applies to s 188(4).

[29] Although the answer may not always be sufficient, this is clearly a "whether" case so that s 179(5) does not bar the plaintiff's challenge. For a recent example of a "how" case, see *Pivott v Southern Adult Literacy Inc (formerly Southland Adult Learning Programme Inc).*[5]

[30] Mr Grant's challenge is not to how the Authority exercised a power that it undoubtedly had (in which case that would be a procedural matter covered by s 179(5)) but, rather, calls into question whether it had the power to extend the time and, therefore, to make a decision in reliance upon that extension. That is not a matter of procedure but, rather, one of jurisdiction of the sort that might be challenged by judicial review although it has not been in this case. So analysed, it is clear that the subject matter of the determination of the Authority is not caught by s 179(5) of the Act. Mr Grant is not disqualified by subs (5) from pursuing an appeal against the Authority's determination.

[31] Turning to s 188(4), the answer to the Vice-Chancellor's submission that to entertain the challenge would be, in effect, to advise or direct the Authority in

[5] [2011] NZEmpC 67.

relation to the exercise of its investigative role, powers and jurisdiction, or in relation to its procedure, is likewise clear. The Court is not being asked to determine how the Authority should have acted in the circumstances. Rather, the more fundamental question is whether the Authority was empowered to act as it did. Section 188(4) is likewise not engaged in this case.

[32] For the foregoing reasons, the defendant's preliminary challenge to the plaintiff's entitlement to challenge the Authority's determination is not upheld and I therefore proceed to determine the merits of the plaintiff's challenge.

Substantive challenge

[33] The plaintiff's challenge is based on six general propositions that were identified as such by Mr Dorking in his submissions and which summary I adopt for convenience. They are:

1. Parties can effect a change to the original agreed date by which objection must be notified, by further agreement between them.

2. The change must be agreed to in writing by the parties personally.

3. Any such agreement must be entered into before the Authority makes its recommendation, at which point the date becomes fixed by operation of law and can no longer be changed except in the following circumstances.

4. If the parties agree to change the date, the Authority is required to repeat the process of advising the party as to the effect of subss (4) and (5).

5. Following such advice, the parties must re-affirm their wish to continue with the recommendation process agreement.

6. The explanation and affirmation must be to and from the parties personally or in any event cannot be through counsel or other representative alone.

The scheme of s 173A

[34] This was enacted in 2010 and was without precedent. It is to be interpreted according to its text in light of purpose (s 5 of the Interpretation Act 1999) and the starting point is the object section of Part 10 of the Act (s 143).

[35] This provides (s 143(d)) that procedures for solving employment relationship problems need to be flexible and (pursuant to s 143(f)) should not be inhibited by strict procedural requirements.

[36] The scheme of s 173A is to expedite resolution of employment relationship problems (which include grievances) and to allow parties to retain a further degree of control over what has then become litigation in the Employment Relations Authority.

[37] Section 173A is made up of the following sequential constituents.

[38] First, the parties to an employment relationship problem must agree to attempt to resolve this by asking the Authority to make a recommendation for the problem's resolution and they must agree on a time within which they have to reject the Authority's recommendation.

[39] Next, a Member of the Authority, having received the parties' agreement to these effects in writing, must explain to them the consequences of subss (4) and (5) of s 173A and the Member must be satisfied that the parties affirm their agreement knowing the effects of those subsections. This might be termed 'the affirmation stage'. Importantly for this case, one of the elements to which the Authority must be satisfied the parties have agreed, and of which the implications are understood by them, is both that there will be a date by which the recommendation will become the determination of the Authority, unless it has been objected to, and the date after which that will occur.

[40] Next, although it is implicit rather than expressed in the statute, the Authority conducts an investigation of the problem. Then the Authority makes a recommendation in writing to the parties. Although out of sequence in the statute, it is nevertheless appropriate to record here the effect of subs (6) which relieves the Authority from the obligation to give reasons for its recommendation, which it would be otherwise obliged to give under s 174(a) if it were a determination.

[41] The next step is that if a party gives notice that it objects to the Authority's recommendation within the agreed and specified period, the Authority is to continue its investigation of the employment relationship problem and to determine it in the usual way. In such a case, either party may request the Authority to investigate the problem further and may ask that this investigation be decided by another Member of the Authority who will determine the matter.

[42] Finally, if no party gives notice to the Authority within an agreed and prescribed period of non-acceptance of the recommendation, this will be deemed to be a determination of the Authority. It is interesting to note that such a deemed determination appears to be appealable by a challenge under s 179.

[43] There are a number of considerations required of parties under s 173A before they commit to its use. First, a recommendation may be made before a full investigation of the problem is undertaken by the Authority so that the complete cases of the parties may not be known to each other at that stage. The decision to seek a recommendation cannot be other than a unanimous decision of the parties. And finally, the decision about the objection period (which the parties have to agree) is important because it will need to be both long enough to allow consideration of the recommendation, to take advice on that, and to notify an objection to the Authority, but not so long as to create undue uncertainty and delay finality. The timing question will also be affected by considerations such as accessibility to advice, ability to communicate decisions, the parties' other priorities and, as in this case, the effect of impending public holidays.

Ability of parties to vary the date

[44] Although the date by which objection to a recommendation cannot be varied by the parties unilaterally, an agreed variation can be accepted and made by the Member as occurred in this case. Consonant with the scheme of s 173A, the parties' agreements and the Member's variation of the date are to be in writing as they were in this case.

Variation by representative or personally?

[45] One of the plaintiff's arguments is that his personal agreement to a change to the duration of the objection period was required. It is common ground that Mr Grant was not consulted by his counsel and did not give his own approval to the change of date to 9 May 2011.

[46] Section 173A does not deal with this matter expressly except to the extent that the Authority's affirmation process requires the Member to be satisfied of the parties' knowledge of the proposed agreement and the implications of it. There is no question in this case that Mr Grant himself approved the original proposal to use the s 173A procedure (including the proposed duration of the objection period) and that the Authority was satisfied that he understood the implications of it under subss (5) and (6).

[47] There is no evidence of the terms of Mr Grant's engagement or retainer of his lawyers and, in particular, the extent, if any, that they were permitted to act on his behalf about specific instructions. In these circumstances, I can only conclude that Mr Grant's then lawyer had ostensible authority to represent him in the proceedings and, in particular, in respect of decisions under s 173A except where Mr Grant was, by statute, himself required to be involved.

[48] As in court proceedings generally, parties in the Employment Relations Authority can act through their appointed representatives (counsel, advocates or

agents)[6] and the latter will be assumed to have ostensible authority to convey decisions to the Authority and other parties that will bind their clients. If a representative acts without, or contrary to, instructions that will generally be a matter between client and representative unless the statute requires personal action by the party (as in the case of s 173A(2)).

[49] The Authority and other parties are entitled to assume that a decision made and conveyed by a representative is the decision of that representative's client.

[50] It follows that unless s 173A provides otherwise, decisions about its operation in practice conveyed by Mr Grant's representative are to be taken as his decisions. I therefore reject the submission that Mr Grant's lawyer could not exercise the plaintiff's powers on his behalf and that Mr Grant had to do so personally.

Date variation only before recommendation made?

[51] Mr Grant's argument is that any valid variation to the objection date would have to be agreed and affirmed by the Member before his or her recommendation was made.

[52] As a matter of commonsense practicality (and as occurred in this case), parties will initially agree on a period (probably but not necessarily expressed as a number of days) during which, following the Authority's recommendation, objection will have to be taken. The Authority will usually convert that period to a calendar date calculated by reference to the date of its recommendation. So, to use the example of this case, the parties initially agreed to a period of 10 days for objection by either of them to the Authority's recommendation. The Authority converted that to 30 April 2011, being 10 days after the release of its recommendation.

[53] So viewed, it would be illogical to accept Mr Grant's submission because parties would not be able to predict the date of release of the Authority's recommendation. The other logical answer in rejecting the submission is that unforseen events are as likely to occur after the recommendation is released as

[6] Employment Relations Act 2000, sch 2, cl 2.

before it. The flexibility intended by the object sections would be stymied by a restrictive interpretation as is proposed by the plaintiff. I conclude that a variation, agreed by the parties, accepted by the Authority, and recorded properly, can be made at any time up until the expiry of the period set by the Member for objection.

A repeated affirmation procedure?

[54] The plaintiff's strongest argument under this head is that if there is to be a variation to the period within which a recommendation is objected to, the Authority must repeat the affirmation rigmarole that it was required to (and did) follow in the first place. Section 173A does not contemplate expressly a variation to the process put in place and to be followed in any particular case. The initial affirmation process certainly required Mr Grant's personal involvement and he so participated. Is it implicit in the words of the statute that any change to that procedure requires that it be undergone in full again?

[55] In support of his position, the plaintiff argues that the most important aspect of the affirmation procedure is the date by which a recommendation will either be objected to or, if not, will be deemed to be the Authority's determination. I do not agree. Certainly the existence of a period within which to take objection is very important but the date or other detail by which this period is defined is no more important than any other part of the affirmation procedure. It is certainly no more significant, for example, than the need for the Member to ensure that the parties understand the implications of subss (5) and (6).

[56] In this case the only change proposed was an extension of the date by which an objection had to be taken to a further defined date which allowed for the effects of an imminent public holiday period. It is not insignificant that it was the plaintiff, through his counsel, who proposed the extension in the first place, so that it must be presumed that Mr Grant (by counsel) understood the consequence of this extension. It is unclear whether he sought the extension for his own benefit, for the benefit of the University or for both parties. I assume that he would have been acting in his own best interest, or at least in the interests of both parties, rather than solely in the interests of the University. I do not accept the plaintiff's submission that the

Authority was required to redo the whole affirmation procedure if the date variation was to be valid.

Variation requires written advice by Member?

[57] The next submission made by the plaintiff is that the Authority Member did not comply with s 173A because he did not record the variation to the procedure in writing in the same manner as he was obliged to have recorded (and did record) the parties' original agreement to the recommendation procedure.

[58] Although it is not entirely clear, it seems that Mr Grant's counsel wrote to the Authority proposing the extended date. Next, an administrative representative of the Authority wrote to both parties to the effect that the Member would accept the parties' agreement to extend the date if it was so advised. Finally, it appears that counsel for the University advised the Authority in writing of the Vice-Chancellor's agreement to the proposed extension.

[59] In these circumstances, whilst the Authority did not issue a revised timetable to the parties in writing, it did nevertheless advise them in writing of a conditional change to the timetable. The condition (the Vice-Chancellor's agreement in writing) was satisfied so that the Authority (albeit not the Member personally but by a member of its support staff) did record the agreed change in writing. This ground of the challenge also fails.

Express or implied power of variation in s 173A?

[60] There must be an ability for the parties and the Authority to vary the date by which the Member's recommendation becomes a determination if it is not objected to. The plaintiff accepts this, albeit as a fall-back position. Not to permit any variation would disqualify the parties from recourse to the procedure in circumstances such as delay in receipt of the Authority's recommendation, the inability of one of the parties through illness or indisposition to consider the recommendation in good time, and the like.

[61] It is necessarily implicit that the date for objection to a recommendation may be varied by agreement of the parties and with the concurrence of the Authority Member without the necessity to repeat the statutory processes in subss (1) and (2). The "date on which the member's recommendation will become final, unless the parties do not accept the recommendation" under subs (1)(b), can include a subsequently varied date so long as the parties agree to this in writing and the Authority's concurrence is likewise in writing.

Express power to extend time elsewhere in the Act?

[62] Alternatively, if this interpretation of s 173A as having an implied power to vary the date is wrong, there is statutory authority for doing so elsewhere in the Act. That is contained in s 221 as follows:

> **221 Joinder, waiver, and extension of time**
>
> In order to enable the Court or the Authority, as the case may be, to more effectually dispose of any matter before it according to the substantial merits and equities of the case, it may, at any stage of the proceedings, of its own motion or on the application of any of the parties, and upon such terms as it thinks fit, by order,—
>
> …
>
> (c) subject to section 114(4), extend the time within which anything is to or may be done; and
>
> (d) generally give such directions as are necessary or expedient in the circumstances.

[63] Section 114(4) is inapplicable to the questions in this case. Although the Authority, in its determination, did not find it necessary to resort to s 221, I consider it permits the Authority to vary the originally specified agreed date under subs (3) where the parties agree in writing that the Authority should do so.

Result of challenge

[64] For the foregoing reasons, the plaintiff's challenge to the Authority's determination is dismissed. Because of the effects of s 183(2), the Authority's determination, although correct, is set aside. In its place, therefore, I conclude that the defendant was entitled to, and did, not accept the Authority's recommendation before the expiry of the agreed period for doing so. In these circumstances, the

Authority should now recommence its investigation of Mr Grant's personal grievance and, subject to s 173A(4)(b), in the usual way leading to the issuing of a determination.

Costs

[65] Although the defendant has been successful and might, as such, be entitled to an award of costs, I decline to make any award for two reasons. The first is that this was a test case, the result of which has hopefully assisted these and other parties, not to mention the Authority, in interpreting and applying new law. The second reason is that although the defendant had been successful overall, he was unsuccessful in his challenge to the Court's jurisdiction to entertain the plaintiff's challenge. So a fair result will, for this reason also, be that the parties should meet their own costs of representation in this Court.

GL Colgan
Chief Judge

Judgment signed at 10.15 am on Tuesday 20 December 2011