**IN THE COURT OF APPEAL OF NEW ZEALAND**

**CA396/2017**
**[2017] NZCA 477**

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| BETWEEN | CORRECTIONS ASSOCIATION OF NEW ZEALAND INC<br>Applicant |
| AND | CHIEF EXECUTIVE OF THE DEPARTMENT OF CORRECTIONS<br>Respondent |

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| Hearing: | 16 October 2017 |
| Court: | Kós P, Harrison and Gilbert JJ |
| Counsel: | J G Miles QC for Applicant<br>K F Radich for Respondent |
| Judgment: | 20 October 2017 at 10.30 am |

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**JUDGMENT OF THE COURT**

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**A The application to amend the grounds of appeal is granted.**

**B Leave to appeal the decision of the Employment Court in *Chief Executive of the Department of Corrections v Corrections Association of New Zealand Inc* [2017] NZEmpC 78 is granted.**

**C The approved question for consideration by this Court is whether the Employment Court erred in holding that the respondent's removal of a work category from the collective agreement did not amount to a variation itself requiring further agreement.**

**D No order for costs is made.**

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## REASONS OF THE COURT

(Given by Kós P)

### Introduction

[1] The Court is satisfied that the question approved is one raising a question of public importance and where good reason exists for consideration of it on appeal by this Court. Inasmuch as it is based on an alleged omission to consider relevant provisions of the collective agreement we are satisfied the question is not barred by s 214(1) of the Employment Relations Act 2000.

[2] The applicant sought to advance two further questions for consideration on appeal. The plain focus of those questions is construction of the collective agreement. Despite Mr Miles QC's ingenious efforts to enlarge the issues to embrace statutory construction, we are satisfied that those questions are barred by s 214(1). In reaching its decision the Employment Court did not adopt irregular or unorthodox contractual interpretation techniques.[1] As the Supreme Court has observed, where the Employment Court adopts an interpretation engaging an orthodox approach to contractual interpretation the senior appellate courts must observe the statutory constraint and not intervene, even if they were to doubt the correctness of the outcome.[2] We make no comment as to the correctness or otherwise of the Judge's interpretation of the collective agreement. But his approach, in context, was orthodox and cannot be recontested in a second appeal. That is the effect of s 214(1) of the Act.

### Result

[3] The application to amend the grounds of appeal is granted.

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1 *New Zealand Airline Pilots Association Inc v Air New Zealand Ltd* [2017] NZSC 111, [2017] NZELR 402 at [21], [46] and [66]; and *Corrections Association of New Zealand Inc v Chief Executive of the Department of Corrections* [2010] NZCA 196, (2010) 7 NZELR 329 at [18].

2 *New Zealand Airline Pilots Association Inc v Air New Zealand Ltd*, above n 1, at [21].

[4] Leave to appeal the decision of the Employment Court in *Chief Executive of the Department of Corrections v Corrections Association of New Zealand Inc* is granted.[3]

[5] The approved question for consideration by this Court is whether the Employment Court erred in holding that the respondent's removal of a work category from the collective agreement did not amount to a variation itself requiring further agreement.

[6] No order for costs is made.

Solicitors:
Hesketh Henry, Auckland for Applicant

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3 *Chief Executive of the Department of Corrections v Corrections Association of New Zealand Inc* [2017] NZEmpC 78.