Employment Relations Authority
TE RATONGA AHUMANA TAIMAHI

Annual Report 2024

Te Kāwanatanga o Aotearoa
New Zealand Government

Employment Relations Authority
TE RATONGA AHUMANA TAIMAHI

More information

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June 2025

Employment Relations Authority
TE RATONGA AHUMANA TAIMAHI

26 May 2025

Hon Brooke van Velden, MP
Minister for Workplace Relations and Safety
Parliament Buildings
WELLINGTON

Dear Minister,

I am pleased to present to you the third annual report of the Employment Relations Authority Te Ratonga Ahumana Taimahi.

Yours sincerely

Dr Andrew Dallas
Chief of the Authority

Te Kāwanatanga o Aotearoa
New Zealand Government

Contents

Introduction from the Chief

I am pleased to introduce the Employment Relations Authority's third annual report. The report documents a reflection on 2024. It outlines our key milestones and gives some brief insight into the work we have been undertaking. While the focus here is on the year past, some statistics from 2022 and 2023 are provided as they demonstrate trends in particular areas.

A note on statistics

In 2024, there was a 22 percent increase in employment relationship problems lodged in the Authority. This increase was relatively uniform across offices with all receiving a proportionate increase of problems lodged over 2023. Suffice to say, this increase has ultimately resulted in significantly more work flowing through the Authority with some of the effects of this continuing to be experienced. As with previous years, personal grievances for unjustified dismissal, including unjustified constructive dismissal, remain the primary problems lodged.

Last year the Authority issued 781 determinations, 96 percent of which were issued within three months of the date of the investigation meeting or the provision of the last information.[1] This figure represents an eight percent improvement over 2023. This is an outstanding result. It is also outstanding when assessed against the performance of comparable institutions like the Australian Fair Work Commission, which issued 91 percent of its reserved decisions within 12 weeks in reporting year 2023/2024.[2]

In terms of representation of parties before the Authority, there has been some fluidity over the last few years, but it has now stabilised. In 2024, 50 percent of parties were represented by lawyers, 24 percent were represented by advocates and 19 percent were self-represented. There was no appearance from seven percent of parties.[3]

Bargaining facilitation

As with last year, collective bargaining facilitation remained a significant part of our work. In 2024, the Authority facilitated ten bargaining disputes:

- Canterbury SCL Ltd and Association of Professional and Executive Employees (APEX)
- Eastern Bay Independent Industrial Workers Union Inc and McKay Ltd
- Auckland International Airport Ltd and E tū
- Te Whatu Ora Health New Zealand and New Zealand Resident Doctors Association (RDA)
- First Union and ASB Bank Ltd
- New Zealand Nurses Organisation and Access Community Health Care Ltd
- OJI Fibre Solutions (New Zealand) Ltd and Pulp and Paper Workers Union Kawerau
- Christchurch International Airport Ltd and New Zealand Public Service Association Te Pukenga Here Tikanga Mahi
- New Zealand Public Service Association Te Pukenga Here Tikanga Mahi and Visionwest Community Trust
- New Zealand Public Service Association Te Pukenga Here Tikanga Mahi and Chief of Defence Force

Six facilitations resulted in the issuance of recommendations to the parties.[4]

Regulation of advocates

In our 2023 annual report, the Authority called for the regulation of advocates. Our position has not changed. The lack of regulation of advocates is market failure and a consumer protection issue. Competent, transparent, and accountable representation is the right of every participant in the employment dispute resolution system.

[1] Employment Relations Act 2000, s 174C.
[2] Fair Work Commission (Australia) "Annual Report: Access to Justice 2023-24" (30 September 2024) available at: Australian Government Transparency Portal <www.transparency.gov.au/publications/attorney-general-s/fair-work-commission/fair-work-commission-annual-report-2023-24-access-to-justice/performance-/delivery-of-our-services> at 26.
[3] Clause 12 of Schedule 2 of the Employment Relations Act allows the Authority to proceed with its investigation if a party fails to attend or be represented.
[4] Employment Relations Act, s 50H.

Outreach

During 2024, the Authority continued to convene its well-attended biannual national engagement forums with organisations and entities interested in our work. Members also directly engaged with our communities including participation in the very successful inaugural conference of Tribunals Aotearoa and by presenting at conferences organised by the New Zealand Law Society and the Employment Law Institute of New Zealand and at the Annual Industrial and Employment Relations Summit.

Final word

I would like to thank all Members and Staff for their mahi in 2024. The commitment and dedication of the Authority's people continues to enable us to effectively and efficiently deliver on our statutory mandate to the community.

Finally, I would like to acknowledge Member Helen Doyle who left the Authority in December 2024 after 22 years of commendable, uninterrupted service. During her tenure, Helen issued 1110 determinations including many notable ones.[5] Helen was also instrumental in re-establishing Authority operations in Christchurch after the devastating earthquakes of 2010 and 2011. I wish Helen all the very best for the future.[6]

Dr Andrew Dallas
Chief of the Authority
June 2025

Photo: Members of Auckland International Airport Limited's Airport Emergency Service (AES) showing Dr Andrew Dallas, Chief of the Authority and Member Shane Kinley one of their two hovercrafts.

[5] See, for example, *Webb v PDL Holdings Ltd* ERA Christchurch CA2/03, 17 January 2003, *McDonald v Ontrack Infrastructure Ltd* ERA Christchurch CA159/09, 22 September 2009.
[6] In March 2025, to the delight of many, Helen was appointed as a part-time, acting judge of the Employment Court. Judge Doyle is the first Member of the Authority appointed to the Court.

About the Authority

Role and purpose

The Authority was established under the Employment Relations Act 2000 (the Act). The Authority is an investigative tribunal that resolves employment relationship problems by establishing the facts and making determinations according to the substantial merits of the case, without regard to technicalities.

General functions

While the Act places considerable emphasis on the primacy of mediation, to promote dispute resolution at the lowest possible level, it also recognises there will be some matters that will require adjudicative intervention by the Authority. This conceptualisation has been recognised by New Zealand's senior courts - the Court of Appeal[7] and the Supreme Court.[8] The New Zealand Law Commission has observed that employment mediation and the Authority form "part of an integrated dispute resolution process".[9]

The role of the Authority is to assist employers and employees (and their representatives) to achieve and maintain successful employment relationships including by resolving problems that arise.

As part of these functions, Members of the Authority usually sit alone investigating and determining matters for which the Authority has jurisdiction.[10] The Authority is quite unique among New Zealand tribunals. In order to properly exercise jurisdiction, it has been afforded extensive powers, including to:

- call for evidence from the parties or any other person;
- require any person to attend an investigation meeting to give evidence;
- interview any person at any time;
- fully examine any witness;
- decide whether an investigation meeting is held in public or private; and
- follow whatever procedure it considers appropriate.[11]

The Authority can also take into account such evidence and information as in equity and good conscience it thinks fit, whether strictly legal evidence or not.[12] The Authority can resolve an employment relationship problem, however described,[13] find that a personal grievance is of a type other than alleged[14]; and make, in relation to any employment agreement, any order that the District Court or High Court could make about contracts under any rule or enactment (except freezing and search orders).[15] The Authority also has powers under the Act to facilitate collective bargaining[16] and to fix terms and conditions for collective agreements.[17] This also includes pay equity matters under the Equal Pay Act 1972. The Authority performs similar functions under the Screen Industry Workers Act 2022.[18]

Support for the Authority, including Authority Officers and legal research services, is provided by the Ministry of Business, Innovation and Employment.[19]

[7] See *A Labour Inspector v Gill Pizza Limited* [2021] NZCA 192.
[8] See *FMV v TZB* [2021] NZSC 102.
[9] Law Commission *Tribunal Reform* (NZLC SP20, 2008) at 48.
[10] Employment Relations Act, s 161.
[11] Employment Relations Act, s 160(1).
[12] Employment Relations Act, s 160(2).
[13] Employment Relations Act, s 160(3).
[14] Employment Relations Act, s 122.
[15] Employment Relations Act, s 162.
[16] Employment Relations Act, s 50E.
[17] Employment Relations Act, s 50J.
[18] Screen Industry Workers Act 2022, s 74.
[19] Employment Relations Act, s 185.

Members of the Authority

The Chief and Members of the Employment Relations Authority are appointed by the Governor-General on the recommendation of the Minister for Workplace Relations and Safety

CHIEF OF THE AUTHORITY

Dr Andrew Dallas (Chief 2019–, Member 2015–)

MEMBERS

Rowan Anderson (2022–) (W)

Robin Arthur (2005–2012, 2013–) (A)

Antoinette Baker (2022–) (C)

David Beck (2020–) (C)

Sarah Blick (2022–) (A)

Philip Cheyne (2000–2012, 2020–) (C)

Nicola Craig (2015–) (A)

Helen Doyle (2001–2024) (C)

Claire English (2021–) (W)

Peter Fuiava (2021–) (A)

Andrew Gane (2022–) (A)

Sarah Kennedy-Martin (2021–) (W)

Shane Kinley (2022–) (W)

Rachel Larmer (2010–) (A)

Alex Leulu (2022–) (A)

Jeremy Lynch (2023–) (A)

Geoffrey O'Sullivan (2019–) (W)

Eleanor Robinson (2010–) (A)

Natasha Szeto (2022–) (W)

Davinnia Tan (2023–) (W)

Marija Urlich (2002–2010, 2020–) (A)

Peter van Keulen (2015–) (C)

Lucia Vincent (2022–) (C)

Note 1. (A) indicates the Member is based in the Auckland office, (W) indicates Wellington and (C) indicates Christchurch.

Note 2. In addition to their legal qualifications, the current Members collectively hold over 400 years of accumulated knowledge in employment relations derived from working for employers, unions, government and in private legal practice.

Note 3. During 2024, Members Peter van Keulen and Nicola Craig acted as Chief Delegate under s 166B of the Employment Relations Act.

Authority locations

The Employment Relations Authority has regional offices in Auckland, Wellington and Christchurch. Members of the Authority also travel to hold investigation meetings in other cities and towns across Aotearoa/New Zealand.

AUCKLAND TĀMAKI MAKAURAU	WELLINGTON TE WHANGANUI-A-TARA	CHRISTCHURCH ŌTAUTAHI
Email	**Email**	**Email**
aucklandera@era.govt.nz	wellingtonera@era.govt.nz	christchurchera@era.govt.nz
Mail	**Mail**	**Mail**
PO Box 105 117 Auckland 1143	PO Box 2458 Wellington 6140	PO Box 13 892 Christchurch 8140
Phone	**Phone**	**Phone**
09 970 1550	04 915 9550	03 964 7850
Location	**Location**	**Location**
Level 3 167B Victoria Street West Auckland	Mezzanine Floor 50 Customhouse Quay Wellington	Level 7 62 Worcester Boulevard Christchurch[20]
The Auckland office covers: • Northland; • Auckland; • Waikato; • Coromandel; • Bay of Plenty; • East Coast; and • Central Plateau.	The Wellington office covers: • Wellington; • Wairarapa • Manawatu-Whanganui; • Hawke's Bay; and • Taranaki.	The Christchurch office covers the: • South Island; • Stewart Island; and • Chatham Islands.

[20] Between April 2015 and May 2025, the Authority's office was located at Level 1, 53 Victoria Street, Christchurch.

Performance of the Authority

Statistics of the Authority's performance

Applications received

Applications received by Authority office

NUMBER OF APPLICATIONS RECEIVED BY OFFICE			
Office	**2022**	**2023**	**2024**
Auckland	1,100	1,298	1,623
Wellington	362	357	479
Christchurch	508	462	643
TOTAL	**1,970**	**2,117**	**2,745**

Matters referred to mediation

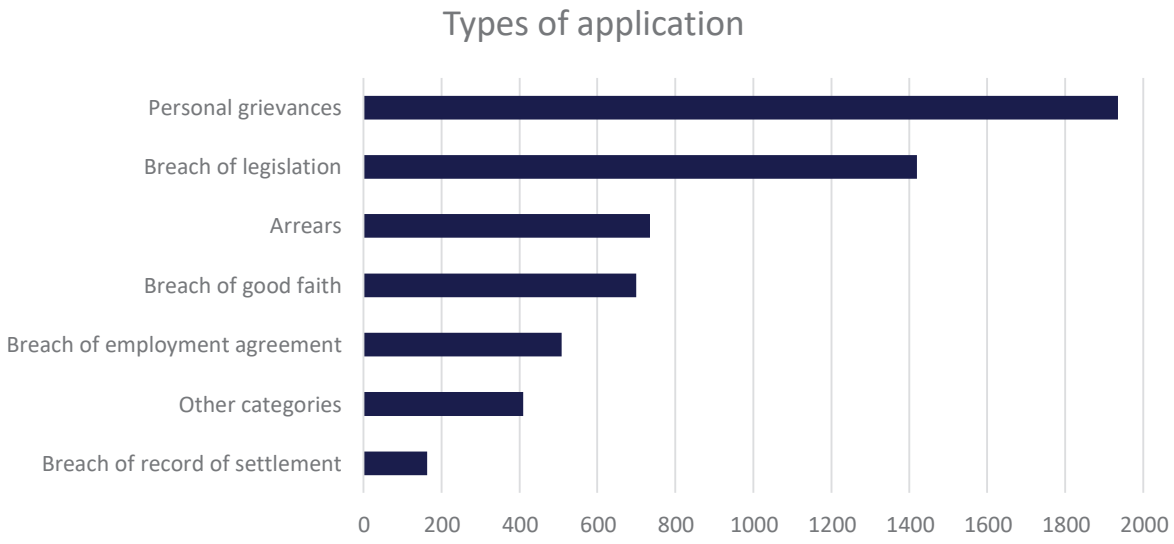
Number of applications referred or directed to the Employment Mediation Service of the Ministry of Business, Innovation and Employment

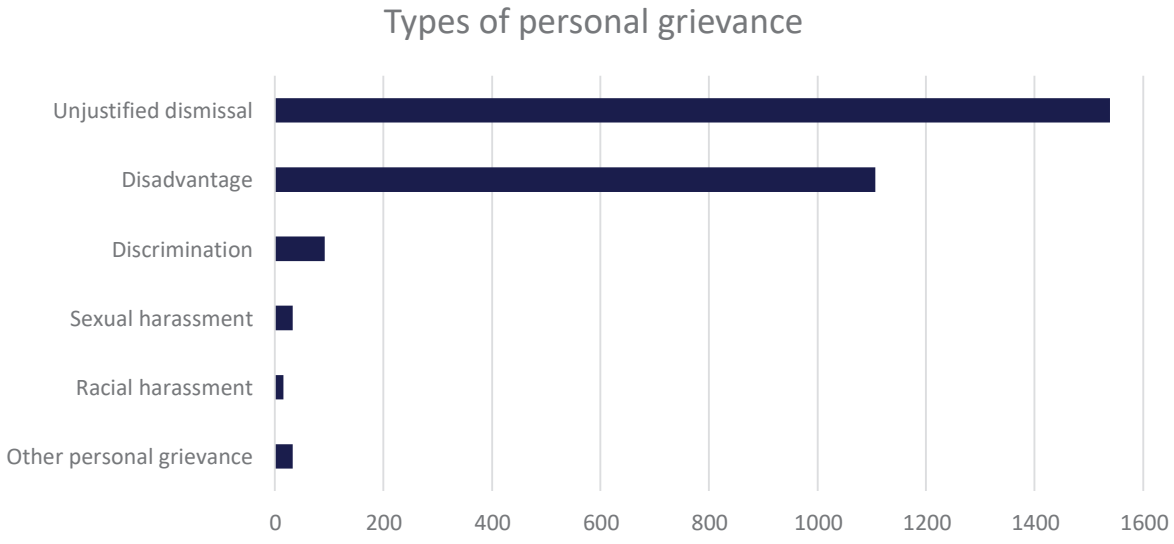
NUMBER OF MATTERS REFERRED TO MEDIATION		
2022	**2023**	**2024**
1,170	1,352	1,624

Note 1. The Authority has a duty to consider mediation under s 159 of the Act. If the parties have not yet attended mediation before the application is lodged with the Authority, it is very likely to be referred or directed to mediation.

Types of application

Number of applications by dispute type (most applications involve more than one dispute type, many involve several)





Note 1. The 1539 unjustified dismissal claims included 280 constructive dismissal claims.

Note 2. Other personal grievances under s 103(1) include: being treated adversely on the grounds of being affected by family violence; being subject to duress regarding union membership (or non-membership); the employer has failed to comply with specified legislation in the Act or the Health and Safety at Work Act 2015; the employer has retaliated against the employee in breach of the Protected Disclosures (Protection of Whistleblowers) Act 2022.

Note 3. Fifteen personal grievance applications included controlling third party claims under s 103B of the Act.

Location of investigation meetings

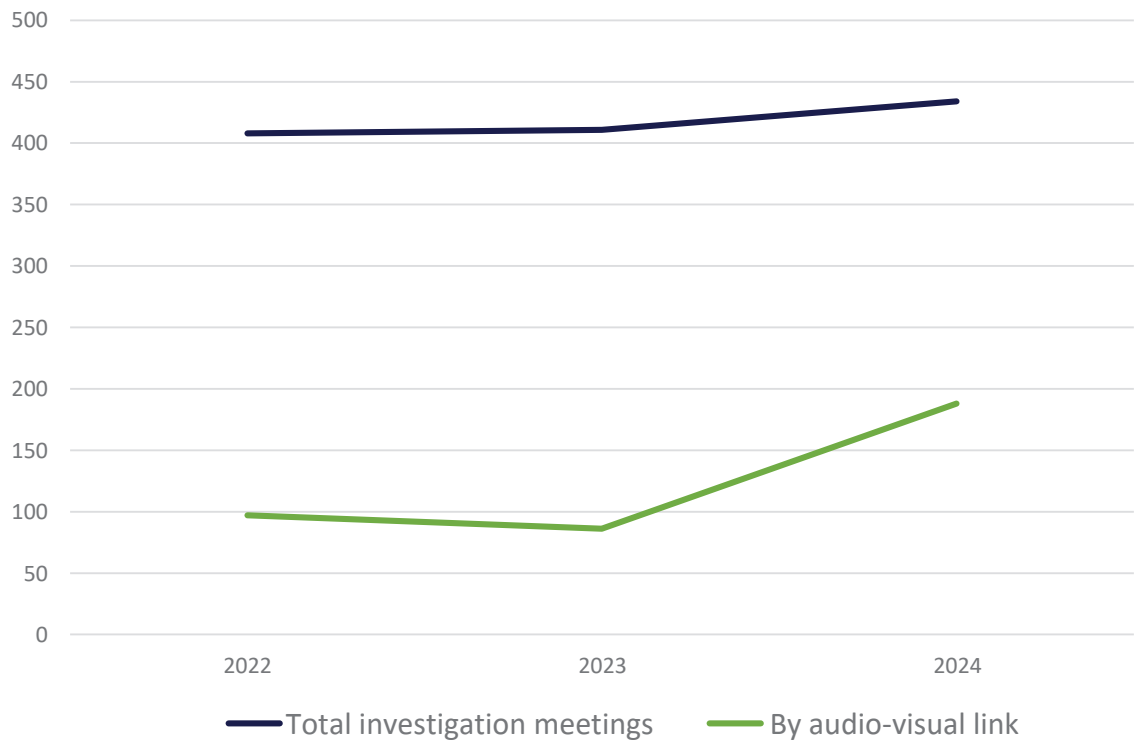
Towns across Aotearoa New Zealand where investigation meetings were held, and a determination was issued

LOCATION OF INVESTIGATION MEETINGS			
Location	**2022**	**2023**	**2024**
Ashburton	1	2	
Auckland	181	171	185
Balclutha		1	
Blenheim	2	8	3
Christchurch	72	71	88
Dunedin	6	7	7
Gisborne	3	4	1
Gore	1		
Greymouth	1	1	
Hamilton	8	16	7
Hastings			1
Hokitika		1	1
Invercargill	2	7	10
Kaikōura		1	
Kerikeri	4	3	3
Manukau	1		
Masterton	1	1	4
Napier	11	11	14
Nelson	9	9	13
New Plymouth	4	2	7
Ōamaru		1	2
Palmerston North	9	9	8
Queenstown	3	2	5
Rotorua	4	5	5
Taupō		1	3

Location	2022	2023	2024
Tauranga	8	9	12
Timaru	2	3	4
Tokoroa	1		
Wānaka		1	1
Wellington	67	56	40
Whakatāne	1	1	1
Whanganui	2	3	3
Whangārei	3	4	6
TOTAL	**408**	**411**	**434**

Investigation meetings involving audio-visual links

Number of investigation meetings that involved an element of audio-visual technology use



Representation of parties

Parties are able to choose whether to be represented in the Authority. If a party is represented, they can be represented by a lawyer or an advocate.

REPRESENTATION OF EMPLOYEES (%)			
Representation	**2022**	**2023**	**2024**
Legal	43%	45%	39%
Advocate	42%	38%	40%
Self-represented	13%	15%	19%
No appearance	2%	2%	2%

REPRESENTATION OF EMPLOYERS (%)			
Representation	**2022**	**2023**	**2024**
Legal	59%	56%	61%
Advocate	13%	13%	8%
Self-represented	17%	18%	19%
No appearance	11%	13%	12%

AGGREGATE TOTAL (%)			
Representation	**2022**	**2023**	**2024**
Legal	52%	50%	50%
Advocate	27%	25%	24%
Self-represented	15%	17%	19%
No appearance	6%	8%	7%

Determinations issued

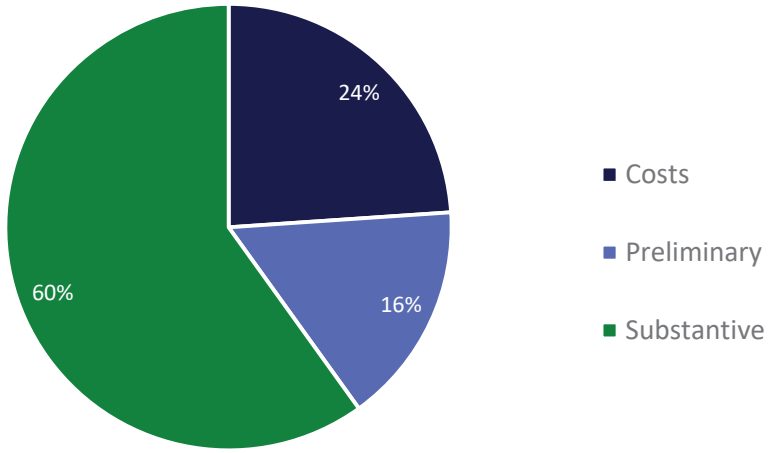
Number of determinations issued by Authority office

NUMBER OF DETERMINATIONS			
Office	**2022**	**2023**	**2024**
Auckland	356	410	408
Wellington	168	188	164
Christchurch	165	182	209
TOTAL	**689**	**780**	**781**

2024 DETERMINATIONS BY OFFICE BY MONTH				
Month	**Auckland**	**Wellington**	**Christchurch**	**Total**
January	27	19	6	**52**
February	33	11	25	**69**
March	29	13	23	**65**
April	32	12	18	**62**
May	42	17	17	**76**
June	28	17	15	**60**
July	43	15	26	**84**
August	27	9	19	**55**
September	26	10	16	**52**
October	45	14	14	**73**
November	40	14	14	**68**
December	36	13	16	**65**
TOTAL	**408**	**164**	**209**	**781**

Types of determination

Percentage of preliminary, substantive and costs determinations



Facilitations and recommendations

Number of collective bargaining facilitations and recommendations

	2022	2023	2024
Facilitations	11	8	10
Recommendations	8	6	6

Parental leave

Number of determinations where parties have asked the Authority to review parental leave decisions by Inland Revenue and the Ministry of Business, Innovation and Employment

PARENTAL LEAVE		
2022	**2023**	**2024**
11	10	11

Labour Inspectorate

Number of substantive determinations involving breaches of minimum employment standards brought by the Labour Inspectorate of the Ministry of Business, Innovation and Employment

LABOUR INSPECTORATE		
2022	**2023**	**2024**
15	21	20

Reinstatement

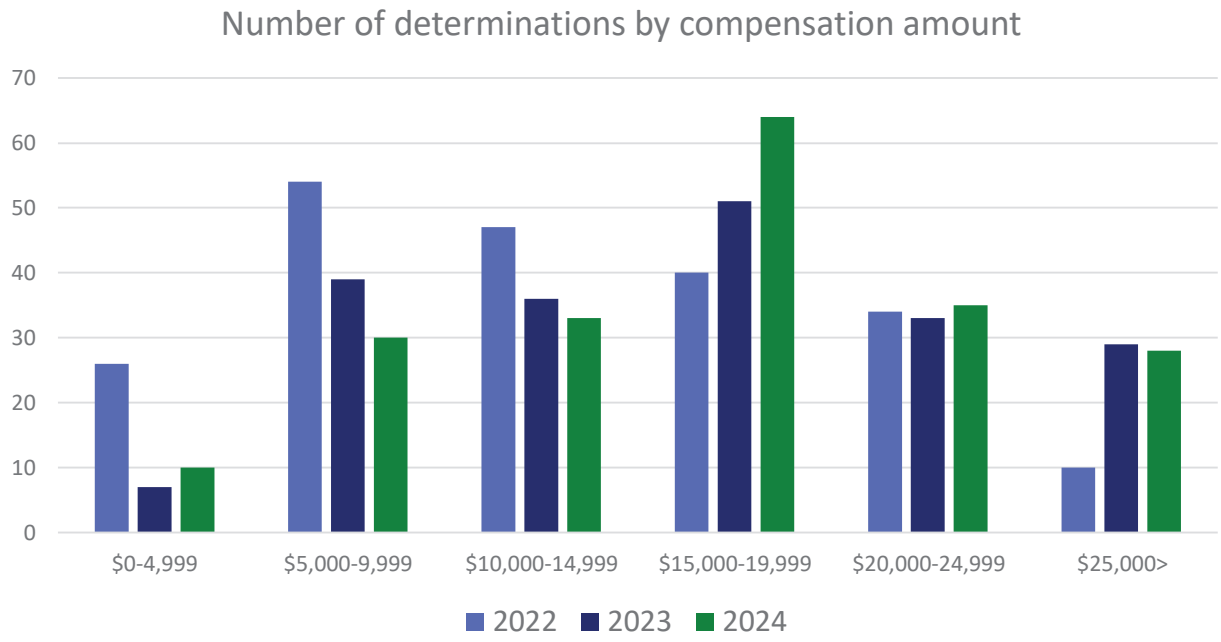
Number of interim and permanent reinstatement determinations

INTERIM REINSTATEMENT			
	2022	**2023**	**2024**
Successful	5	5	11
Unsuccessful	9	8	11
TOTAL	**14**	**13**	**22**

PERMANENT REINSTATEMENT			
	2022	**2023**	**2024**
Successful	2	1	5
Unsuccessful	8	15	14
TOTAL	**14**	**16**	**19**

Compensation

Compensation awarded for successful personal grievances under s 123(1)(c)(i) of the Employment Relations Act 2000

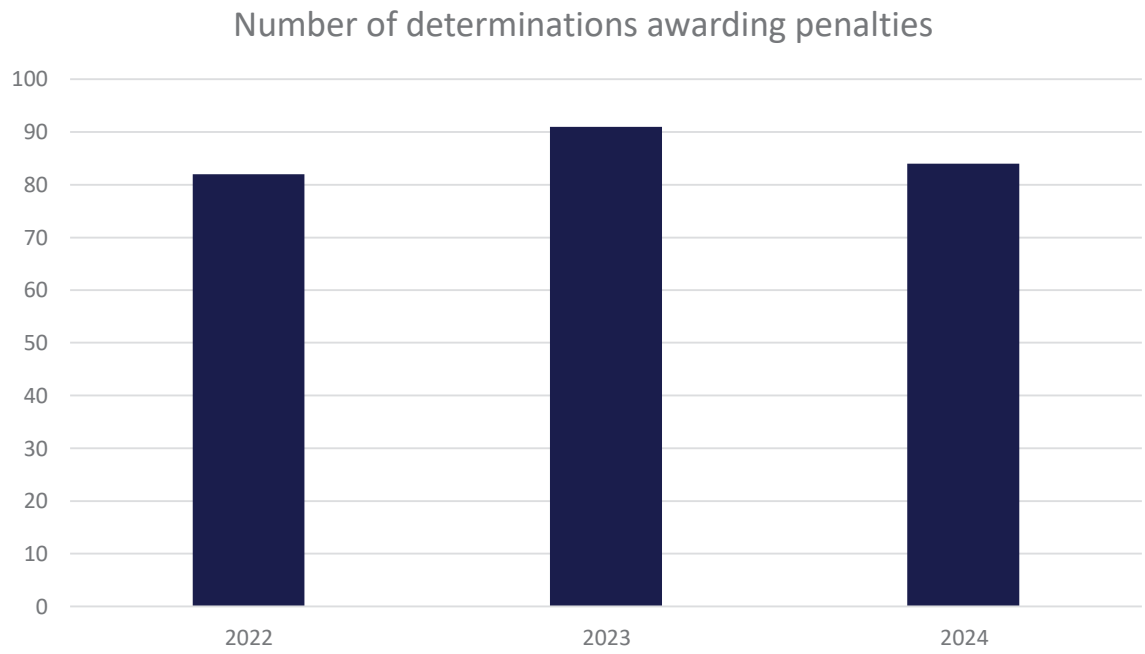


Note 1. Two hundred applicants were awarded compensation as a remedy for a successful personal grievance in 2024.

Note 2. In 2024, the lowest compensation award was $700 and the highest $105,000 (being two awards of $50,000 and one award of $5,000 in *Parker v Magnum Hire Ltd* [2024] NZERA 85).

Penalties

Penalties awarded for breaches of employment legislation

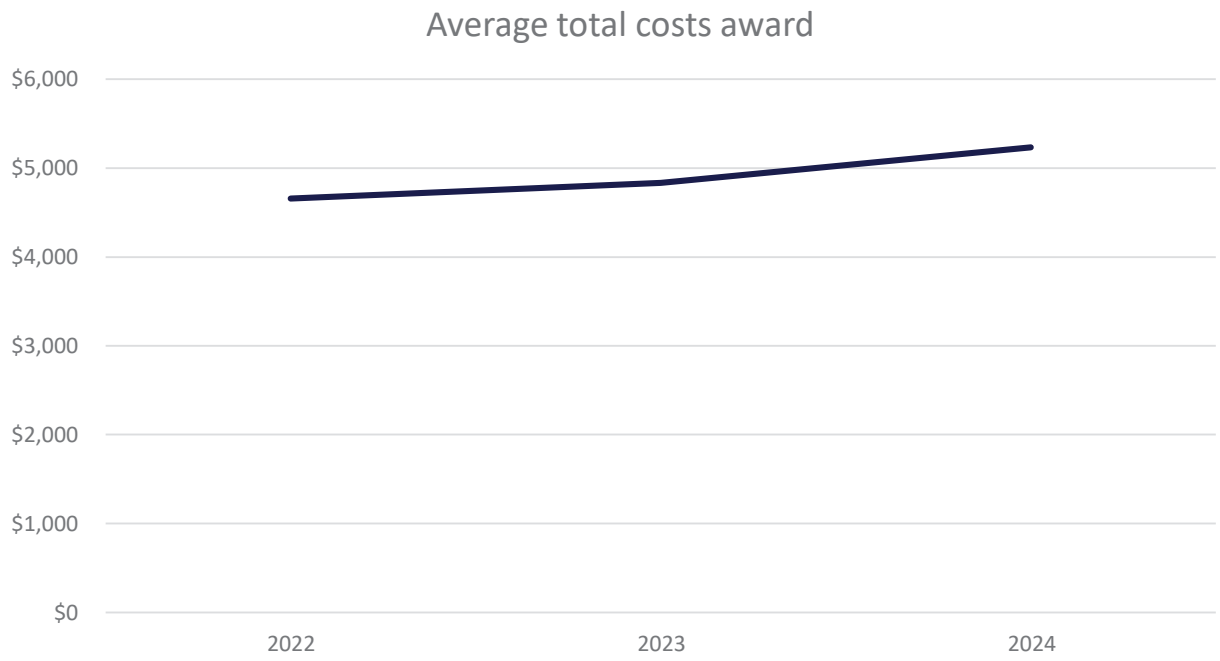


Note 1. In 2024, the lowest penalty award was $350 for a breach of the terms of a record of settlement. The highest award of penalties in one determination was $215,000 for multiple breaches of minimum employment standards by the employer and the director in *Labour Inspector v Rural Practice Ltd* [2024] NZERA 183. The determination is currently under challenge in the Employment Court.

Note 2. Penalties were most commonly issued for breaches of the Employment Relations Act 2000 (failure to keep wage and time records, breaches of employment agreement, breaches of records of settlement); the Holidays Act 2003 (failure to keep holiday and leave records, failure to pay annual leave or public holiday entitlements); the Minimum Wage Act 1983 and Wages Protection Act 1983.

Costs

Contribution to costs awarded to the successful party



Note 1. The Authority uses a notional tariff as a starting point to awarding costs:

- $4,500 for the first day of an investigation meeting; and
- $3,500 for each additional day of an investigation meeting.

The notional starting point can be adjusted to reflect the circumstances of the particular case.

Note 2. The Authority's practice direction on costs is available at: www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf

Improving participation

Number of determinations that noted a party was the recipient of legal aid or was represented by a Community Law Centre

DETERMINATIONS INDICATING ACCESS TO JUSTICE			
	2022	**2023**	**2024**
Legal aid	14	19	15
Community Law (representation)	5	-	3
Community Law (advice/preparation)	4	6	4

Timeliness of determinations

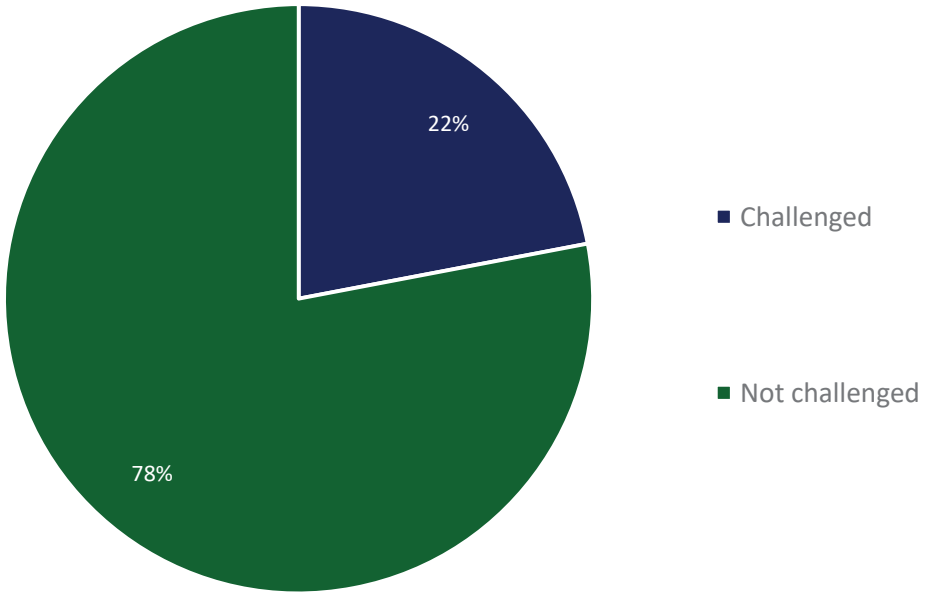
Timeframe in which determinations issued from the date of the investigation meeting or provision of final material

The Authority issues an overwhelming majority of determinations within 3 months of the date of the investigation meeting or the date on which the Authority received the last evidence or information from the parties.

	2023	2024
Issued within 1 month	41%	45%
Issued between 1 and 2 months	15%	16%
Issued between 2 and 3 months	24%	30%
Issued outside of 3 months	12%	4%
On the papers (no submissions date)	8%	5%

Challenges in the Employment Court

Percentage of Authority matters challenged in the court



Note 1: A challenge does not necessarily result in a substantive outcome as many matters resolve prior to this point.

Website visitors

Website views and individual users

WEBPAGE VIEWS			
Website	**2022**	**2023**	**2024**
Employment Relations Authority (total) era.govt.nz	220,550	283,125	339,670
Employment New Zealand (total) employment.govt.nz	11,215,238	8,916,204	8,238,769

INDIVIDUAL USERS			
Website	**2022**	**2023**	**2024**
Employment Relations Authority (total) era.govt.nz	38,282	55,388	73,333
Employment New Zealand (total) employment.govt.nz	3,559,265	2,863,133	2,587,523

Summary of key Authority determinations in 2024

***STRINGER V MCBRIDE* [2024] NZERA 59**

Arrears – Annual leave – Personal grievance – Unjustified disadvantage

At issue was whether the employer owed the employee annual leave entitlements and, if so, whether that could constitute an unjustified disadvantage personal grievance.

The employee was an architect who worked for the employer for almost 9 years before resigning. The employer accepted he did not pay the employee wages for his last day of employment. The parties disputed the employee's annual leave entitlements. The Authority noted that although an employer is able to keep manual wage and leave records, they must meet the minimum requirements of section 81 of the Holidays Act 2003 and section 130 of the Employment Relations Act 2000. It found that the employer's records failed to do so (see paragraph 18). Also, the employer erroneously believed that employees are not entitled to annual leave until their second year of employment (see paragraphs 29–31, 53). The Authority found the employee was entitled to 15 days annual leave plus 8 per cent of his wages for his final year's employment (see paragraphs 47, 49).

The employee claimed the employer's refusal to pay his annual leave entitlement was an unjustified action that caused him disadvantage. The Authority agreed, relying on the Employment Court case *O'Boyle v McCue* [2020] NZEmpC 175. The Authority found the employee was respectful in his requests to the employer. However, the lack of adequate record keeping and the employer's mistake about calculations elongated the dispute. The Authority held "it was a case that should never have had to get this far" (see paragraph 57).

The Authority ordered the employer to pay the employee $250 wage arrears, $9,470 unpaid holiday pay and $4,000 compensation to remedy his personal grievance (see paragraph 73).

***E TŪ INC V TELEVISION NEW ZEALAND LTD* [2024] NZERA 276**

Compliance order – Contractual interpretation – Consultation requirements prior to redundancies – Collective agreement

At issue was whether the employer had complied with its consultation requirements under the collective agreement when proposing a restructure involving redundancies.

The employer experienced a decline in advertising revenue as people increasingly moved from television to online platforms for their entertainment. The employer held an "ideas week" which was a staff brainstorming session around how to adapt to the decline in revenue and the move to digital platforms. As a result of the ideas generated, the management level was restructured. The employer later realised it needed to save an additional 10 million dollars in labour costs. The executive held a meeting and considered cancelling the Fair Go, Sunday, Tonight and Midday programmes and some video content. Under the proposal 68 roles would be disestablished. The employer discussed the proposals with the union before making its proposal to the employees.

The union challenged the proposal on the basis the employer had failed to comply with cl 10.1.1 of the collective agreement. The clause stated that the employer would support the active participation of staff in changes to workplace practices. This participation was to include staff being involved in the developmental stages of decision-making processes (see paragraph 25).

The Authority found the employer had had time to involve staff in the pivotal developmental stage but had failed to do so (see paragraphs 32–33). The Authority held (see paragraph 34):

> TVNZ have assumed the risk of making workplace changes without the relevant clause in mind and if having to redo things again comes at significant cost, that is a natural consequence of its breach.

The Authority issued a compliance order requiring the employer to comply with cl 10.1.1 of the collective agreement (see paragraph 35). It directed the parties to mediation (see paragraph 36).

***O'CONNOR V SYMONS* [2024] NZERA 304**

Personal grievance – Unjustified dismissal – Compensation level

At issue was whether the employee was unjustifiably dismissed by the employer, and if so, the level of compensation the Authority would award.

The employee was a courier driver for the employer for around seven months. The employee objected to some clauses in the proposed written employment agreement, including a clause related to liability for vehicle damage. The parties never signed an agreement. The employee originally drove a business courier run. After four months, the employer changed her run saying there had been complaints about her. The employee asked for details of the complaints, but the employer did not give her any further information. The employee was driving a courier van on a rainy day when it hit a concrete barrier on a driveway. The front bumper was partially dislodged on one side as a result. It was reattached later in the day. The employee went to the employer's office at the end of the day to apologise when the employer became angry and accused her of being incompetent and a liar. After a meeting five days later, the employer dismissed the employee.

The Authority found the employee was unjustifiably dismissed. In doing so, it considered:

- The procedure flaws in the employer's investigation were significant and led to the employee being treated unfairly (see paragraph 66).
- The employee was not told that she could bring a support person to the disciplinary meeting. Nor was she told that the meeting may result in the termination of her employment (see paragraphs 67–68).
- The employer raised alleged previous complaints during the meeting, but did not provide any detail of them to the employee (see paragraph 71).
- The employer had asked around to try to find "dirt" on the employee (see paragraph 73).
- The employer gave different reasons for the dismissal at different times (see paragraphs 75–76).
- There was effectively no damage to the courier van (see paragraph 77).
- A fair and reasonable employer could not have conducted an unfair investigation and then dismissed the employee in the circumstances (see paragraph 78).

The employee claimed $40,000 as compensation for humiliation, loss of dignity and injury to feelings. The Authority noted that only 16 determinations since January 2019 had awarded over $30,000 compensation. It decided it was consistent with other recent awards to award $20,000 as compensation. It also ordered the employer to pay the employee $5,974.82 as reimbursement for lost remuneration.

***PARK V DATA INSIGHT LTD* [2024] NZERA 334**

Personal grievance – Unjustified dismissal – Redundancy – Reinstatement

At issue was whether the employer was unjustifiably dismissed when his employment was terminated on the grounds of redundancy, and if so, whether he would be permanently reinstated.

The employee was a data engineer and architect. Four and a half months into his employment, the employer invited him to a meeting and proposed to disestablish his role, claiming it was not feasible to maintain. The employer said the role was not producing enough billable hours. The employee said he was shocked by the proposal. He and his team did not have any targets around billable hours. The employee suspected the proposal was a sham. The parties corresponded about the proposal for weeks. During that time, the employer alleged the employee deleted client information, but later accepted he had not. The employer decided to disestablish the employee's role and dismiss him on the grounds of redundancy. The employee raised a personal grievance for unjustified dismissal.

The Authority found the employer did not make it clear to the employee at the time of the offer of employment, or acceptance, or commencement, that "the role was in effect conditional on the expected securing of a pipeline of work" (see paragraph 50). While the employer may have taken a risk in employing the employee to offer a new service to its clients, it could not assume the employee had also shared the risk. The Authority found the employer could not show its actions were consistent with good faith obligations (see paragraph 53). The

Authority also found the employer's approach to redeployment left the impression the decision had already been made not to redeploy the employee (see paragraph 60).

The Authority held the employee was unjustifiably dismissed (see paragraph 61). The Authority determined the trust and confidence between the parties had eroded during the redundancy process and that reinstatement was not appropriate (see paragraph 66). The Authority ordered the employer to pay the employee $16,000 compensation and three months lost remuneration (see paragraph 77).

***BOWEN V BANK OF NEW ZEALAND* [2024] NZERA 361**

Personal grievance – Unjustified dismissal – Redundancy – Unjustified disadvantage – Bullying – Protected disclosure

At issue was whether the employee was unjustifiably dismissed by way of redundancy or disadvantaged by the actions of the employer.

The employee was the manager of a small team at a bank. She complained that her senior manager and one of her team members, who were in a relationship with each other, were bullying her. She also complained her senior manager had engaged in unethical or questionable business conduct. The employer then proposed a restructure which would result in the employee's team being disestablished. The employee raised a personal grievance, alleging the restructure was motivated by retaliation for her complaint. The employer suspended the restructure. The employee made a protected disclosure under the then Protected Disclosures Act 2000. The employee was placed on paid special leave while the employer investigated for over a year. The investigation found there was no bullying or questionable business conduct. The employer proceeded to make the employee's role redundant.

The Authority found the employee was unjustifiably dismissed and disadvantaged because she was subjected to a restructure in retaliation for her complaints (see paragraphs 198–200). The Authority based its finding on the following:

- Extensive work had been undertaken shortly before the proposal to change the job descriptions of the employee's team to redefine their roles. It made no business sense to disestablish the roles less than five months later (see paragraph 128).
- The employer had originally intended to move the team to another area within the bank, but after the senior manager the employee had complained of became involved in the process, the proposal became to disestablish the team instead (see paragraph 135).
- The employer still needed the work the employee had performed to be done. A new similar role was created and filled without the employee being given an opportunity to apply (see paragraphs 99, 108, 121, 131 and 135).
- The employer's consultation regarding the restructure was flawed. It did not provide the employee with new information after the long hiatus. Although the employee raised valid concerns with the employer, it proceeded to confirm the disestablishment of her role 45 minutes later (see paragraph 185).

The employee's claims for four other disadvantage personal grievances were dismissed, two of which because they were raised outside of 90 days (contrary to section 114 of the Employment Relations Act 2000). The employee was also unsuccessful with her claims for penalties on the basis that the employer had breached good faith and the terms of her employment agreement.

The determination was limited to ascertaining liability (see paragraph 18). A decision quantifying remedies may follow.

***UNITE UNION INC V EMPLOYER ASSOCIATIONS* [2024] NZERA 404**

Fair pay agreements – Application to initiate bargaining – Repeal of legislation

At issue was whether the union could initiate bargaining for a fair pay agreement with the employer associations.

The union applied to initiate bargaining for a hospitality industry fair pay agreement. The government then repealed the Fair Pay Agreements Act 2022 (FPAA). The employer side had not yet agreed to an inter-party side agreement or appointed a lead advocate, although the legislated timeframe to do so had expired. After the FPAA was repealed, the union side applied to the Authority to fix the terms of a fair pay agreement. The employer side raised the jurisdictional issue of whether the Authority could fix the terms when the FPAA had been repealed.

The Authority noted that Parliament had not provided transitional arrangements for FPAA related matters still in progress at the date of repeal (see paragraph 14). The Authority found that the fixing application could not stand alone from the framework of the repealed FPAA (see paragraph 20). Under the FPAA, the Authority would have undertaken a threshold assessment to consider whether the bargaining sides had "exhausted all other reasonable alternatives for reaching agreement". The reasonable alternatives, such as bargaining, mediation, support services and the resolution of disputes in the Authority were no longer available to the bargaining sides. Therefore, the Authority was unable to undertake the threshold assessment (see paragraph 21). Even if the Authority could still fix the terms, the mechanism for the creation of a fair pay agreement was no longer available due to the repeal (see paragraph 23).

The Authority concluded it could not fix the terms (see paragraph 24):

> The context of the legislation, including the repeal of key mechanisms bookending the fixing application – those which buttressed fair pay bargaining and those which manifested the outcome of that bargaining be it by determination or otherwise – requires an interpretation that the proceeding cannot continue for want of jurisdiction.

***PUBLIC SERVICE ASSOCIATION – TE PŪKENGA HERE TIKANGA MAHI INC V SECRETARY FOR EDUCATION* [2024] NZERA 432**

Contractual interpretation – Collective employment agreement – Consultation requirements – Requirement to consult before commencing change management process

A key issue was whether the employer had complied with consultation requirements under the change management provisions in the collective employment agreement, prior to commencing a change management process.

The employer, a government Ministry, commenced a change management process that was to potentially result in 755 job losses. The relevant union claimed that the Ministry had commenced the change process without following the consultation requirements in clause 11.7 of the collective agreement. Clause 11.7 governed restructure processes. At dispute between the parties was the meaning of the final sentence in clause 11.7:

> The aim of this mechanism will be to reach agreement and make recommendations to management, who will endeavour to take the views into account as far as possible before making final decisions.

The union sought a determination as to (see paragraph 16):

- Whether clause 11.7 required the Ministry to participate in a process with the union with the aim of reaching agreement as to joint recommendations to be made to management.
- Whether clause 11.7 required that the Ministry's management take the joint recommendations into account as far as possible before making a final decision.
- Whether the Ministry had complied with clause 11.7.

The Authority found the effect of clause 11.7, based on its ordinary natural meaning (see paragraph 34) and considering context (see paragraph 42) was that (see paragraph 51):

> …clause 11.7 obligates both parties to engage collaboratively with the aim of reaching agreement and making recommendations to management although the recommendations may not necessarily be joint or agreed.

The Authority determined that obligations under clause 11.7 were significant (see paragraph 52):

> Collaborative engagement must be between members of the Ministry and PSA at an appropriate level and the contractual right of the PSA to be an active participant in the change management process must be secured.

The Authority determined the Ministry did not comply with clause 11.7 (see paragraphs 74, 80). The Ministry gave evidence of only one meeting between the Hautū (Deputy Secretaries) and leadership team members with the PSA and the Authority said it was unclear what the purpose of that meeting was. The Authority said (see paragraphs 74, 75):

> The PSA was involved in the change management process, but as a recipient of information from the Ministry and disseminator of information to its members. The evidence falls short of demonstrating the PSA was an active participant in the change management process and the Ministry engaged collaboratively with the PSA with the shared aim of reaching agreement and making recommendations to management.
>
> … there was no evidence before the Authority of meetings or discussions for the shared purpose of formulating recommendations to Hautū. Each Hautū worked with their own leadership team and sometimes other Hautū to understand the programmes of work, and where savings could be made. The Ministry did not work with the PSA to make recommendations to the Hautū.

***STRAUSS V FIRE AND EMERGENCY NEW ZEALAND* [2024] NZERA 554**

Interim injunction – Preventing employer from proceeding with disciplinary process

At issue was whether the Authority would issue a quia timet injunction as sought by the employee to prevent the employer from proceeding with its disciplinary process while a dispute about the applicable terms of the collective agreement was resolved.

The employee was a senior firefighter. The collective agreement between the parties provided for a "mess allowance" for each worker to "be used for the purchase of tea, coffee, sugar, milk and biscuits and/or to pay all or part of the wages of a cook" (see paragraph 18). The employee's station used its Mess Allowance to buy common supplies. It then distributed the leftover monies to each of the four watches for additional purchases. The money for the employee's watch was sitting in a container at the station. With the agreement of the other watch members, the employee opened a personal bank account for the money. Other watch members had access to the account by way of an eftpos card. The account was regularly contributed to by the Mess Allowance and the watch members directly. It was used for communal food and the purchase of a fridge.

The employee took military leave. The other watch members were unable to activate a new eftpos card for the account and could not access the funds. The employer tried to access the account but was unable to do so before the employee returned to the fire station. The employee was asked to transfer the money to a new account set up by another watch member. The employee transferred the amounts that had been deposited for the watch members still working on the watch. He retained the remainder, which had been deposited by previous watch members, as they planned to use their contributions for an end of year function. Another watch member later organised access to the account, even though the current members' share had been transferred. The employer thought there were discrepancies with five transactions in the account. It was concerned the employee had transferred the money for personal use. The employer commenced a disciplinary process.

The employee raised a personal grievance, alleging the employer had used unlawfully obtained information to level allegations against him. The union disputed the ability of the employer to assert authority over a private bank account, or investigate its use, under the relevant terms in the collective agreement. The relevant terms included peace obligations which required presentation of the status quo pending resolution of disputes. The employer nonetheless continued with the disciplinary process. It came to a preliminary conclusion the employee's actions amounted to serious misconduct and dismissal was the appropriate outcome.

The employee sought a quia timet injunction in the Authority, which means to restrain a wrongful act that is threatened. The Authority noted that it is rare that it will prevent an employer from proceeding with a disciplinary process (see paragraph 14). However, in the circumstances the Authority granted the interim injunction (see paragraph 114). In making its determination to take the unusual step, the Authority considered:

- There was a serious question to be tried about whether the employer could access the private bank account. Any information gained from the access could have been unlawfully or improperly obtained (see paragraphs 84 and 85).
- The employee and the union had strong cases (see paragraph 92).
- The Authority was concerned the employer wished to proceed with the disciplinary process despite its peace obligations in the collective agreement (see paragraph 95).
- Granting the interim injunction would effectively be preserving the status quo, leaving the employee employed and protecting the union's rights under the collective agreement until the dispute was resolved (see paragraph 103).

***MARITIME UNION OF NEW ZEALAND V LYTTELTON PORT COMPANY LTD* [2024] NZERA 573**

Health and safety procedure – Contractual interpretation – Collective agreement – Unilateral variation

At issue was whether a mandatory health monitoring policy introduced by the employer was inconsistent with its collective agreement with the union.

The employer operated a port. The workplace was very concerned with health and safety. The union was one of four unions representing employees at the port. It represented around 38 per cent of employees.

The employer introduced a Health Monitoring Policy and procedures (monitoring policy) after consultation with employees. It required employees to be subjected to health monitoring depending on their role. The union disputed whether the monitoring policy was lawful or reasonable. The parties asked the Authority to resolve their dispute.

The Authority considered the collective agreement and the monitoring policy. It noted that

- The collective agreement specified health monitoring that the parties had agreed to for hearing, sight and respiratory conditions. The monitoring policy included testing for more conditions that were not specified in the collective agreement (see paragraph 45).
- The Health and Safety at Work Act 2015 placed obligations on the employer that may have informed an expansive approach to interpretation of the monitoring policy. However, the Authority could not read permissive language into the collective agreement where monitoring was already covered (see paragraph 54).
- The obligation of good faith and the objects of the Employment Relations Act 2000 did not support an expansive approach (see paragraph 55).
- The specific measures provided for in the collective agreement could not be widened by the monitoring policy (see paragraph 56).
- If the union employer wished to implement the monitoring policy to meet health and safety obligations, it could only do so by agreement with the union members (see paragraph 63).

The Authority found the monitoring policy was inconsistent with the collective agreement and amounted to a unilateral variation of terms and conditions. It found there was no basis upon which the employer could unilaterally vary the terms and conditions, and the monitoring policy was therefore not lawful for union members (see paragraphs 66 to 68).

***ARUSHI V ISHER ENTERPRISES LTD* [2024] NZERA 615**

Personal grievance – Unjustified dismissal – Unjustified disadvantage – Arrears – Premium – Migrant exploitation

At issue was whether the employee was unjustifiably dismissed after an incident with a customer; whether the employer owed her underpaid wage arrears; and whether she had paid a premium for employment.

The employee was originally from India. She alleged her parents paid a person in India $10,000 to secure her employment with the third respondent employer. The employee obtained a work visa and moved to New Zealand. After one year, she was promoted to General Manager of a public bar with the first respondent employer. The employee successfully applied for a further work visa. The director of both employer companies then asked her for a further payment of $10,000, which she paid him. Although the employment agreement stated she would be paid $26 an hour to meet Immigration New Zealand requirements, the employer instead paid her $20 an hour. The employee worked for the employers for over 3 years altogether.

There was an incident in the bar between the employee and a customer. The customer made racist comments. The employee replied, "how would you feel if I called you white trash?" The first respondent employer alleged she breached her employment agreement by asking that question of a customer. The employee engaged legal representation. The employer offered to pay her a large amount of money to "get the lawyers out of the way" (see paragraph 46). The employee raised a personal grievance on the grounds the first respondent employer had failed to provide wage and time records when requested, undermined her right to representation, underpaid her wages and leave and demanded premiums. After a disciplinary meeting, the first respondent employer dismissed the employee. The employee then raised a personal grievance for unjustified dismissal.

The Authority found that on the balance of probabilities the employers did request the premium payments from the employee in return for her employment. The Authority relied upon obiter comments of the Employment Court in *Labour Inspector v Newzealand Fusion International Ltd* [2019] NZEmpC 181 to order the employee could recover both premium payments from the employers, although one had been paid in India (see paragraphs 79–84).

The Authority found the employee was unjustifiably dismissed because the first respondent employer did not provide her with the statement provided by the customer in a timely manner or genuinely consider her explanations. Nor did the employer consider alternatives to dismissal (see paragraphs 125, 128 and 136). The Authority also found the first respondent employer unjustifiably disadvantaged the employee by its attempts to dissuade her from taking legal advice, unlawfully suspending her and not paying her correctly (see paragraph 139). The Authority ordered the first respondent employer to pay her $34,000 in compensation (see paragraphs 143–145).

The Authority also ordered the first respondent to pay the employee $10,000 for the premium payment and $54,207.90 plus interest as arrears of wages and holiday pay. It ordered the third respondent to pay $10,000 for the premium and $6,972.92 plus interest as arrears (see paragraphs 147–150). The employers were each ordered to pay an $8,000 penalty for failing to provide wage and time records and charging a premium for employment (see paragraph 111).

Employment Relations Authority

TE RATONGA AHUMANA TAIMAHI