IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE

[2025] NZERA 433
3353623

	BETWEEN	NICHOLAS KADEN Applicant
	AND	PRATT & WHITNEY AIR NEW ZEALAND SERVICES Respondent

Member of Authority:	Matthew Piper
Representatives:	John Horan, advocate for the Applicant Gwen Drewitt, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions and other information received:	9 and 27 June 2025 from the Applicant 16 June 2025 and 4 July 2025 from the Respondent
Determination:	18 July 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Nicholas Kaden has applied to remove his claims under matter 3352740 to the Employment Court. The application was made on the basis the case involves important questions of law and that it is of such a nature and urgency that it is in the public interest to remove it.

[2] Pratt & Whitney Air New Zealand Services (PWANZS) opposed the removal of Mr Kaden's claims to the Court. It says no important question of law arises, it is not in the public interest for the case to be removed and there is no other good reason for the matter to be removed to the Court.

Relevant background

[3] PWANZS is a partnership between Air New Zealand Limited and Pratt & Whitney Limited that provides jet engine maintenance and repair. Mr Kaden does electrical engineering work.

[4] On 21 January 2025 Mr Kaden lodged a statement of problem in the Authority claiming PWANZS had undertaken an unfair workplace investigation in relation to a piece of work allegedly done by him. Mr Kaden claimed that as part of the investigation he was said to have engaged in actions that could have caused an aircraft to malfunction, and that such a malfunction could have had catastrophic results.

[5] Mr Kaden's view appears to be that the issues that were the subject of the investigation were caused by "sabotage", and not by him. He claimed the investigation caused him stress and emotional harm, that he was dissatisfied with further steps taken by PWANZS to investigate related issues and that he has lost income by being forced to be away from the workplace as a result of PWANZS' unjustified actions.

[6] PWANZS lodged its statement in reply on 7 February 2025. PWANZS denies Mr Kaden's claims have merit and says it had legitimate reasons for its investigation, which it says was conducted in a fair and reasonable way. PWANZS further raises limitation issues in relation to some of Mr Kaden's claims.

[7] On 24 January 2025 Mr Kaden lodged his application for the removal of his claims to the Court. On 14 February 2025, PWANZS lodged its opposition to the application.

The Authority's investigation

[8] This removal application was determined 'on the papers' in accordance with a timetable directed by the Authority. The originating documents, correspondence and submissions from both parties were considered by the Authority.

Informality in the removal application

[9] The application for removal lodged in the Authority on 24 January 2025 did not provide detail of the grounds on which removal was being sought. Rather, it merely recited ss 178(2)(a) and 178(2)(b) of the Employment Relations Act 2000 (the Act),

without specifying the basis on which it was said those provisions applied. The application was, in this way, informal.

[10] On 6 May 2025 the Authority held a Case Management Conference (CMC) and issued directions to the parties in relation to the removal application.

[11] During the CMC it was agreed that the matter would be dealt with on the papers on the basis of legal submissions from each party. The applicant's submissions were due on 30 May 2025, and the respondent's were due on 9 June 2025. The directions were clear that each party must focus their submissions on the criteria set out in s 178(2) of the Act.

[12] Upon review of the submissions lodged by the applicant, it became apparent that the applicant had again failed to provide specific detail of what he said was the important question of law arising other than incidentally, for the purposes of s 178(2)(a) of the Act.

[13] On 19 Jun 2025 the Authority requested that Mr Kaden specify by 27 June 2025 what he said was the important question of law for the purpose of s 178(2)(a) of the Act, and gave PWANZS until 4 July 2025 to comment on any further information received from Mr Kaden.

[14] Both Mr Kaden and PWANZS took the opportunity to provide further information, with the applicant providing further information on 27 June 2025 and the respondent providing submissions in response on 4 July 2025.

[15] The Authority was therefore satisfied that Mr Kaden had the opportunity to clarify the basis of his application for removal.

The statutory context

[16] Section 178 of the Act recognises that there will be circumstances where it may be appropriate for a matter to be removed to the Court in the first instance and without the Authority investigating it. Those circumstances are set out in s 178(2) of the Act and are:

> (2) The Authority may order the removal of the matter, or any part of it, to the court if—

> (a) an important question of law is likely to arise in the matter other than incidentally; or
>
> (b) the case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the court; or
>
> (c) the court already has before it proceedings which are between the same parties and which involve the same or similar or related issues; or
>
> (d) the Authority is of the opinion that in all the circumstances the court should determine the matter

[17] Each of the factors in s178(2), which are listed as alternatives, stand alone and may justify removing a matter to the Court. Where one or more of these factors is satisfied, the Authority must exercise its discretion to determine whether the matter should be removed to the Court.

[18] In exercising this discretion, there is no presumption for or against removal once a ground has been established and the Authority retains a residual discretion to decline removal, even if one or more of the grounds in s 178(2) have been established.

The issues

[19] The issues for determination are:

a. Whether any of the grounds for removal in s 178(2) of the Act been established.
b. If so, should the Authority exercise its discretion not to remove the matter to the Court?
c. What costs should be awarded?

Have any of the grounds in s 178(2) of the Act been established?

[20] As noted above, the two grounds advanced by the applicant in support of his application for removal were that there was an important question of law likely to arise other than incidentally and that the case was of such a nature and urgency that it is in the public interest that it be removed immediately to the court.

[21] Whether these threshold tests have been satisfied and whether the Authority should exercise its discretion to remove the matter to the Court are dealt with below.

Is an important question of law likely to arise in the matter, other than incidentally?

[22] A question of law arising in a matter will be important if it is decisive of the case or some important aspect of it.[1] Any such question must fall within the jurisdiction of the Authority or Court, as it is prescribed by the Act.

[23] Mr Kaden's 27 June 2025 submission suggests that two important questions of law are likely to arise in the matter. Each are dealt with below.

First question of law Mr Kaden says is likely to arise in the matter

[24] Firstly, Mr Kaden submits that the phrase "act of sabotage" and its meaning when considering s 79 of the Crimes Act 1961 (which creates the offence of Sabotage) will need to be considered in order for this case to be dealt with.

[25] The question of whether the s 79 offence of Sabotage has been committed is not one within the jurisdiction of either the Authority or the Court. It is therefore not capable of being an important question of law likely to arise in the matter other than incidentally.

[26] In the alternative, if Mr Kaden's claim is that the word sabotage is being used in a more colloquial sense, in that he may be suggesting that someone in management at PWANZS interfered with materials or equipment he was working on or with, this does not give rise to an important question of law. Rather, whether this occurred would be a factual matter to be established.

[27] If what Mr Kayden is claiming falls within the second of these categories, the Authority is the appropriate forum for the investigation and determination of his claims.

Second question of law Mr Kaden says is likely to arise in the matter

[28] The second important question of law Mr Kaden submits is likely to arise in the matter relates to racial discrimination under the Human Rights Act 1993 (the HRA). More specifically, Mr Kaden submits that Part 6 of the HRA may be engaged by his claims.

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[1] *Johnston v Fletcher Construction Company Ltd* [2017] NZEMPC 157

[29] Part 6 of the HRA deals with the imprisonable offence of inciting racial disharmony. Neither the Authority nor the Court has the jurisdiction to deal with an offence of this kind. Accordingly, whether Part 6 of the HRA has been engaged is not capable of constituting an important question of law likely to arise in the matter for the purposes of s 178(2) of the Act.

[30] For the above reasons, Mr Kaden has failed to establish that an important question of law is likely to arise in the matter.

Is the case of such a nature and of such urgency that it is in the public interest that it be removed immediately to the Court?

[31] Under s 178(2)(b) of the Act the Authority may order the removal of a matter to the Court if it is of such a nature and urgency that it is in the public interest for it to be removed to the Court.

[32] Section 178(2)(b) requires both the elements of "nature" and "urgency" to be established. Considered together, the nature and urgency of the matter must demonstrate a public interest in the case being immediately removed to the Court.

[33] Mr Kaden submits the phrase "in the public interest" in s 178(2)(b) is inclusive of him, his family, his close friends and other work colleagues who are said to have been impacted by the issues involved. While each of these individuals, or categories of individuals, may be affected in some way by these proceedings, this does not amount to a "public interest" for the purposes of provisions of the Act in question.

[34] In the context of s 178(2)(b) a broader public interest than that identified by Mr Kaden based on the nature and urgency of the case must be found to qualify as a public interest supporting the removal application.

[35] Mr Kaden's claims are not of such a nature as to be unique or impactful on others and are not more urgent than other matters currently being investigated by the Authority. No broader public interest has been identified by Mr Kaden.

[36] Mr Kaden therefore fails to establish that the case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the Court.

[37] Where any of the individuals identified by Mr Kaden as having been affected by the case have standing to do so, they may bring their own proceedings. In this way they are not deprived of their access to justice by the Authority's finding that an impact on them does not constitute a public interest for the purposes of s 178(2)(b) of the Act.

Where a ground under s 178(2) is established, should the Authority exercise its discretion not to remove the matter to the Court?

[38] Had Mr Kaden been successful in establishing one of the grounds for removal in s 178(2) of the Act, the Authority would have needed to consider whether to exercise its residual discretion not to remove the case[2].

[39] Given Mr Kaden has not successfully established any of the grounds for removal in s 178(2) of the Act, it is unnecessary for the Authority to determine whether to exercise a discretion against removal.

Outcome

[40] For the reasons set out above, Mr Kaden's application for removal is declined.

Costs

[41] Costs are reserved.

[42] This matter will be treated as involving a half-day of investigation meeting time, so the notional starting point for considering costs will be $2,250. Parties may identify any factors they say should result in this notional starting point being adjusted.

[43] The parties are encouraged to resolve any issue of costs between themselves.

[44] If they are not able to do so and an Authority determination on costs is needed PWANZS may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of the written determination in this matter.

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[2] *Auckland District Health Board v X (No 2)* [2005] ERNZ 551

[45] From the date of service of that memorandum Mr Kaden would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

Matthew Piper
Member of the Employment Relations Authority