

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2025] NZERA 482  
3364104

BETWEEN	WILSON PARKING NEW ZEALAND LIMITED Applicant
AND	PETER TURNER First Respondent
	VERNON AUBREY Second Respondent (Discontinued)
	ATE PROPERTY LTD Third respondent

Member of Authority:	Peter van Keulen
Representatives:	Kalev Crossland, counsel for the Applicant Glenn Jones, counsel for the First Respondent and Third Respondent
Investigation Meeting:	On the papers
Submissions Received:	5 August 2025 from the Applicant 5 August 2025 from the Respondent
Date of Determination:	7 August 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Wilson Parking New Zealand Limited has lodged a statement of problem seeking remedies against a former employee, Peter Turner and penalties against Mr Turner and ATE Property Ltd, a company that Mr Turner is a director of that competes with Wilson Parking.<sup>1</sup>

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<sup>1</sup> Wilson Parking also sought a penalty against Vernon Aubrey but discontinued this part of the employment relationship problem.

[2] The allegations that form the employment relationship problem are that Mr Turner has breached his employment agreement, breached the duty of good faith and breached various fiduciary duties he owes to Wilson Parking. And ATE has aided and abetted the breaches of Mr Turner's employment agreement.

[3] In addition to the penalties sought, Wilson Parking seeks damages, an account of profits, a declaration that the receivables gained by Mr Turner and ATE, during the operation of the ATE business, are held on trust for Wilson Parking and for disgorgement to it.

[4] In addition, Wilson Parking seeks interim orders against Mr Turner pending the determination of the substantive problem.

[5] Mr Turner and ATE deny liability and oppose the interim orders sought. Amongst the matters raised in reply, Mr Turner and ATE raise the issue of whether the Authority has jurisdiction to grant the equitable remedy of a declaration of a constructive trust and disgorgement of profit.

[6] Wilson Parking had also filed a claim in the High Court against ATE with causes of action based on knowing receipt, knowing assistance and breach of the duty of confidence.

[7] ATE responded to the High Court claim by questioning the High Court's jurisdiction, raising an objection. The basis for ATE's objection to the High Court's jurisdiction was that Wilson Parking's claims were within the exclusive jurisdiction of the Authority, based on a straightforward application of the Supreme Court decision in *FMV v TZB*.<sup>2</sup>

[8] Wilson Parking applied to set aside ATE's appearance objecting to the High Court's jurisdiction. Wilson Parking's position being that the claim against ATE was an equitable claim against a third party and the Authority cannot grant equitable remedies, so the claim was appropriately filed in the High Court. Wilson Parking noted that *FMV* does not address this point of the Authority's power to grant appropriate remedies, particularly equitable remedies against third parties.

[9] In a decision dated 1 August 2025, Associate Judge Paulsen found that the Authority had exclusive jurisdiction over Wilson Parking's equitable claims against ATE and he dismissed the High Court claim.<sup>3</sup>

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<sup>2</sup> *FMV v TZB* [2021] NZSC 102.

<sup>3</sup> *Wilson Parking New Zealand Limited v ATE Property Limited* [2025] NZHC 2141.

[10] So, I currently have this employment relationship problem between Wilson Parking and Mr Turner and ATE in which Wilson Parking is seeking interim orders and, amongst other things, equitable remedies. There is the prospect of an expansion to this employment relationship problem based on Wilson Parking's equitable claims against ATE, that the Authority has jurisdiction over - I anticipate this would be added to the current problem by way of an amended statement of problem.

[11] Amongst the issues to be resolved for this employment relationship problem, and the expanded problem if this occurs, is the question of the Authority's jurisdiction to grant the equitable remedies sought.

[12] Considering all these circumstances, Wilson Parking has now applied to remove this employment relationship problem to the Employment Court.

### **Removal to the Court**

[13] The Authority's power to remove a matter to the Employment Court is set out in s178 of the Employment Relations Act 2000 (the Act):

- (1) The Authority may, on its own motion, or on the application of any party to a matter, order the removal of the matter, or any part of it, to the court to hear and determine the matter without the Authority investigating it.
- (2) The Authority may order the removal of a 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.

[14] I may remove a matter of my own motion or on the application of any party to the matter. To remove a matter to the Employment Court I must be satisfied that one of the grounds specified in s 178(2) of the Act are met.

## Analysis

### *Wilson Parking's reasons for seeking removal to the Employment Court*

[15] As described above, this application for removal has its origins in the jurisdictional dispute between Wilson Parking and ATE in the High Court and involves the application of the Supreme Court's decision in *FMV* to the employment relationship problem.

[16] In setting out its reasons for seeking removal Wilson Parking refers to paragraph [68] in *Wilson Parking New Zealand Limited*:<sup>4</sup>

[68] Here, given the complexity and importance of the problems that arise between these parties, along with the existence of uncertainty as to the Authority's ability to grant all remedies to which [Wilson Parking] considers it is entitled, there is ample scope for all matters between [Wilson Parking], Messrs Turner and Aubrey and ATE to be removed to the Employment Court under s 178(2) ....

[17] Wilson Parking does not rely on this passage to suggest that the High Court is stating that the matter should be removed to the Employment Court. Rather Wilson Parking relies on this passage to support its view that removal is prudent when there is uncertainty surrounding the Authority's power to award some of the remedies it seeks and relative certainty about the Employment Court's jurisdiction to award such remedies.

[18] Second, Wilson Parking says removal will mean its claims against Mr Turner and ATE are heard in one place at the same time. Specifically, removal will:

- (a) Consolidate all claims against Mr Turner and ATE.
- (b) Avoid duplicative hearings and inconsistent determinations.
- (c) Enable streamlined resolution of both liability and remedies in a single specialist forum.

[19] Third, Wilson Parking says there is a significant quantum at stake – more than \$6m.

[20] Fourth, Wilson Parking says there are three types of complex expert evidence that will need to be analysed.

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<sup>4</sup> *Wilson Parking New Zealand Limited*, above n 3, at [68].

[21] Fifth, there remains an issue raised regarding the ability to cross examine Mr Turner in respect of his affidavit evidence lodged in the interim application.<sup>5</sup>

*Mr Turner and ATE do not oppose the removal application*

[22] Mr Turner and ATE do not oppose Wilson Parking's application to remove this matter to the Court, accepting that the grounds set out by Wilson Parking justify removal.

*Wilson Parking's first reason for removal*

[23] Wilson Parking's first reason for removal is based on what it says is a prudent approach to determining the employment relationship problem. It says that the Authority's jurisdiction to award equitable remedies is unclear, yet the Employment Court's jurisdiction is clear, and Wilson Parking should be afforded that certainty through removal.

[24] It strikes me that the point being made by Wilson Parking has more significance than just prudence. The excerpt identified from *Wilson Parking New Zealand Limited* signals a more important and relevant reason for removal – where there is a question over aspects of the Authority's jurisdiction a matter can be removed so that the Employment Court can address the uncertainty. The matter is not being removed because the Employment Court has the jurisdiction, and it is prudent to give it to the Employment Court to resolve; it can be removed so the Employment Court can answer the question of whether the Authority has jurisdiction. The ground for removal being, an important question of law that the Employment Court should answer - section 178(2)(a) of the Act.

[25] A question of law is important if its resolution may have a wide impact, either on a number of employers and/or employees or the question may be significant to employment law.<sup>6</sup> But this point cannot be taken too literally; some questions of law may be significant to the resolution of a case but the principles engaged in answering the question are sufficiently established such that the question is not one that assumes importance for the purposes of removal to the Court.<sup>7</sup>

[26] So, in deciding if the ground in s 178(2)(a) of the Act is established I need to find that there is a question of law that has significance, and it is a question where the answer is

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<sup>5</sup> Wilson Parking has applied to cross examine Mr Turner on his affidavit evidence in the interim application. This application is opposed by Mr Turner and ATE. The resolution of that application is on hold pending the determination of this removal application.

<sup>6</sup> *Hanlon v International Education Foundation (NZ) Inc* [1995] 1 RENZ 1 at p 7.

<sup>7</sup> *Grant Johnston v The Fletcher Construction Company* [2017] NZEmpC 157 at [22].

not so well established by the Employment Court. This does not mean the question needs to be novel, complex or tricky; but it could be. I am looking for a question of law where the answer is not clear because it has not been addressed at all or fully by the Employment Court.

[27] I would also add that these cases are removed because the answer to the question of law has significance and the Employment Court should answer it and set a precedent, not because Authority cannot be trusted to get it right.

[28] In terms of this employment relationship problem and the questions about the Authority's equitable jurisdiction there is a clear basis to conclude that the Authority has the jurisdiction to grant equitable remedies, and more generally the jurisdiction to grant remedies required to resolve employment relationship problems. In this regard, I note:

(a) Questions over the Authority's equitable jurisdiction have been addressed.<sup>8</sup>

(b) *FMV* also indicates that the Authority should have the jurisdiction to award necessary remedies arising out of its exclusive jurisdiction.<sup>9</sup>

(c) Pursuant to s 157(3) of the Act, the Authority must act as it sees fit in equity and good conscience – this aligns with and is arguably broader than s 189 of the Act which confers on the Employment Court jurisdiction to determine and make orders as in equity and good conscience it thinks fit.<sup>10</sup>

[29] However, the key point here is the question of the Authority's jurisdiction to award remedies has not been answered completely by the Employment Court in light of *FMV*.

[30] I am satisfied that there are important questions of law arising out of the jurisdictional issue relating to remedies the Authority can award. Specifically, the question is - given the expansive jurisdiction of the Authority based on employment relationships rather than causes of action, as confirmed in *FMV*, does the Authority have the power to grant equitable remedies. And then more generally, on the same basis, and as identified in *FMV*, does the Authority has the power to grant remedies as are necessary to determine an employment relationship problem.<sup>11</sup>

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<sup>8</sup> See *Wilson Parking New Zealand Limited*, above n 3, at [60] – [65].

<sup>9</sup> *FMV v TZB*, above n 2, at [58] and [165].

<sup>10</sup> See discussion of s 189 of the Employment Relations Act 2000, in light of *FMV* in *Harte v Midwifery Employee Representation and Advisory Service Incorporated* [2025] NZEmpC 5 at [82] – [87].

<sup>11</sup> *FMV v TZB*, above n 2, at [165].

*Wilson Parking's second reason for removal*

[31] I think Wilson Parking's reference to consolidation of all claims is misplaced. The Authority has jurisdiction over the employment relationship problem as currently articulated and will also have jurisdiction over an expanded problem that includes equitable claims against ATE (as decided by the High Court). There may be issues over the remedies that can be awarded but this does not mean separate claims can or should be lodged in the Employment Court. There is no basis for consolidating claims by removing this employment relationship problem to the Employment Court, and this is not a ground under s 178(2) of the Act.

*Wilson Parking's remaining reasons for removal*

[32] That the employment relationship problem involves a significant quantum, complex expert evidence, and issues of cross examination of Mr Turner in connection with the interim application could provide a ground for removal if these circumstances are such that the Employment Court should determine the matter - section 178(2)(d) of the Act.

[33] In my view complexity of a matter and/or significant quantum is not a reason for removal to the Employment Court. Further, matters of procedure are routinely addressed by the Authority and when it comes to evidence it has expansive powers – a single question over cross examination in an interim application is within the Authority's powers to resolve. Finally, expert evidence is provided to assist the Authority, it should not create complexity – appropriate expert evidence will be helpful and within the Authority's ability to understand and apply.

[34] I do not accept that circumstances of this employment relationship problem – a complex commercial dispute, large quantum, expert evidence and procedural issues about evidence – are such that the Employment Court should determine this matter. As a specialist body the Authority has the necessary experience and skill to deal with such matters, and it routinely does deal with such matters.

*Conclusion on grounds for removal*

[35] This employment relationship problem has serious questions of law regarding the Authority's jurisdiction and the ground set out in s 178(2)(a) of the Act is established.

*The Authority's discretion*

[36] Once a ground for removal is established there is no presumption that a matter will be removed, and the Authority retains a residual discretion to decline removal.<sup>12</sup>

[37] In this case I am satisfied that removal is appropriate and there is no basis to apply my residual discretion to retain this matter.

*Conclusion on removal to the Court*

[38] I am satisfied that there is a serious question of law in the current employment relationship problem, and it should be removed to the Employment Court.

**Order**

[39] This matter is removed to the Employment Court pursuant to s 178 of the Act.

**Costs**

[40] Costs are reserved.

[41] Counsel for Mr Turner and ATE has advised that they are considering their position in respect of costs and request an opportunity to lodge an application for costs within 10 working days. I accept this request.

[42] If Mr Turner and ATE consider there is a basis on which they should be awarded costs, they may lodge, and then should serve, a memorandum on costs within 10 working days of the date of this determination. From the date of service of that memorandum Wilson Parking will then have 10 working days to lodge any reply memorandum.

Peter van Keulen  
Member of the Employment Relations Authority

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<sup>12</sup> *Grant Johnston v The Fletcher Construction Company*, above n 7.