

NOTE: This determination contains orders prohibiting publication of certain information at paragraphs [9] and [54]

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 532
3390964

BETWEEN

KNN
Applicant

AND

FIRE AND EMERGENCY
NEW ZEALAND
Respondent

Member of Authority: Shane Kinley

Representatives: Ashleigh Fechny, advocate for the applicant
Paul McBride, counsel for the respondent

Investigation Meeting: On the papers

Submissions: Up to 11 August 2025

Determination: 28 August 2025

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] KNN claims he was unjustifiably dismissed from his employment with Fire and Emergency New Zealand (FENZ) due to a review of his appointment under the Fire and Emergency New Zealand Act 2017 (the FENZ Act). KNN initially sought interim reinstatement and urgency.

[2] FENZ considers KNN's employment was provisional, as a conditional appointment, and it has acted justifiably in undertaking a statutorily mandated review of his employment.

[3] By agreement, this preliminary determination addresses a preliminary issue related to the interplay between provisions of the Employment Relations Act 2000 (the Act), KNN's employment agreement and the FENZ Act.

Non-publication orders

[4] In directions dated on 23 July 2025, I invited the representatives to make submissions on whether non-publication orders were appropriate under cl 10(1) of sch 2 of the Act. I have considered these submissions in light of the Employment Court's judgment in *MW v Spiga Ltd*.¹

[5] KNN seeks non-publication of his identity based on claims there could be specific adverse consequences if his name were to be published. These relate to an online media report which could be connected with this application if he is named. KNN also asserts that because he continues to work in another, fixed-term role with FENZ, publicity could undermine his employment relationship with FENZ and ability to carry out his current role. KNN also says given the interim nature of the proceedings, there remains a possibility the parties will resolve the underlying issues through a confidential settlement, following this determination.

[6] FENZ advised it would abide by the Authority's decision on non-publication, however questioned whether a non-publication order was appropriate for the following reasons. First, KNN's name has been published in relation to his original appointment, which gave rise to the application for review of his appointment. FENZ also say there is no suggestion KNN has done anything wrong in his employment, rather the basis for non-publication is KNN's disagreement with the content of the online media report and KNN's perceived risk that this application will be connected with that report. In these circumstances, FENZ say a non-publication order is not available for these purposes.

[7] FENZ also say the law does not provide for all interim reinstatement applications to have non-publication orders, and it will ultimately be required to publish KNN's name if he is reappointed, due to the requirement it notify all appointments under s 28 of the FENZ Act.

[8] I do not consider there are grounds for a non-publication order of KNN's name based on the possibility this matter will be connected to the online media report. While

¹ *MW v Spiga Ltd* [2024] NZEmpC 147.

KNN is dissatisfied with the content of that report, I do not consider this is sufficient to warrant non-publication, as the online media report remains available and easily identifiable. I also accept FENZ's submission that the law does not provide for all interim reinstatement applications to have non-publication orders.

[9] I was advised there is an active recruitment process for the role which KNN was previously appointed to. Given that process and the possibility of the parties will resolve the underlying issues through a confidential settlement following this determination, I consider an interim non-publication order in relation to KNN's name and any identifying details is appropriate under cl 10(1) of sch 2 of the Act, until further order of the Authority. An order is made accordingly.

[10] This interim non-publication order does not prevent FENZ from complying with the requirement under s 28 of the FENZ Act to publish KNN's name if he is reappointed, following the active requirement process.

The Authority's investigation

[11] A case management conference was held on 23 July 2025 where it was agreed the preliminary issue would be investigated on the papers. By agreement urgency was not accorded to this matter given the agreed timetable for consideration of the preliminary issue.

[12] For the Authority's investigation submissions were lodged on behalf of KNN and FENZ. I have also considered the statement of problem, statement in reply, and affidavits from KNN and for FENZ, a FENZ Region Manager and a FENZ People Business Partner. Both affidavits for FENZ were from individuals who have been involved in the process of KNN's conditional appointment and the review of his appointment, which resulted in this matter coming before the Authority.

[13] Following the case management conference, I identified information which I considered would be beneficial for the purposes of the Authority's investigation and identified a number of points I considered would be helpful for submissions to address. The representatives provided the requested information and written submissions, including addressing the points I had identified, which are outlined at paragraph [17] below.

[14] As permitted by s 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The preliminary issue

[15] The preliminary issue requiring investigation and determination is:

What impact is there on KNN's rights under the Act and his employment agreement, from the provisions of the FENZ Act, particularly s 29 Review of appointments?

[16] While I advised the representatives they may wish to refine the preliminary issue, they have not done so, and I proceed to determine the preliminary issue as described above.

[17] I also invited the representatives to address the following points in submissions, which they have done and I refer to as relevant below:

- a. Whether FENZ waived its right to rely on s 29 of the FENZ Act due to allowing KNN to commence employment;
- b. Whether FENZ failed to advise KNN of any request for formal review of his appointment, prior to him commencing employment and any implications from FENZ failing to do so;
- c. Whether FENZ has complied with its Review of Appointments Policy (FENZ's Policy or the Policy) and, if not, any implications from FENZ failing to do so (including timing of receipt of any requests for formal review of KNN's appointment notification, advice to KNN of the review having been commenced and outcome of the review process); and
- d. Implications of *Rackham v New Zealand Fire Service*² and *Fraser v Attorney-General*.³

Context: process leading to KNN's appointment and the review of his appointment

[18] The factual history of what has occurred is essentially agreed, with the problem before me relating to whether FENZ's actions are justified due to the provisions of the FENZ Act. I consider it is helpful for this determination to record the chronology of what occurred:

² *Rackham v New Zealand Fire Service* ERA Auckland AA73/06, 13 March 2006, [2006] EMHNZ 165.

³ *Fraser v Attorney-General* [2000] 1 ERNZ 439.

- (a) KNN applied for and was the successful applicant for a role with FENZ as an Advisor Risk Reduction, with the initial offer to him dated 2 April 2025 – the offer expressly stated it was on a conditional basis, as discussed further at paragraphs [20] to [22] below;
- (b) KNN accepted the offer on employment on 7 April 2025, with a commencement date of 21 April 2025. On 9 April 2025 he accepted a revised start date of 28 April 2025;
- (c) On 8 April 2025 notification of his appointment was published, as required under s 28 of the FENZ Act;
- (d) On 21 April 2025 a formal review of his appointment was requested, under the Policy, which is required under s 29 of the FENZ Act – provisions of the Policy are discussed further at paragraphs [23] and [25] below;
- (e) On 21 May 2025 FENZ advised KNN that a review was being undertaken;
- (f) On 23 June 2025, Kerry Gregory, Chief Executive of FENZ advised KNN he had accepted the review recommendations, with effect his provisional appointment was cancelled and the position was to be readvertised. Mr Gregory went on to state:
 - ... in accordance with your 2 April 2025 conditional offer of employment, this letter serves to terminate your employment to Advisor Risk Reduction ... This will be effective from 24 June 2025.
- (g) On 25 June 2025 KNN received an apology from FENZ for the manner in which he had been notified of the outcome of the review process and he was advised he would be paid wages for a notice period of one month.
- (h) On 26 June 2025 KNN's former representative raised concerns about his termination and requested the readvertising of the role be postponed; and
- (i) On 7 July 2025 KNN's current representative advised they were filing a personal grievance and interim reinstatement application, asserting that by failing to complete the review process prior to him commencing work, FENZ had waived the condition and KNN was a permanent employee, meaning FENZ could not rely on the condition as grounds for termination.

[19] The key action which is said to be unjustified is the cancelling of KNN appointment following the review, by the Chief Executive's decision of 23 June 2025. I was advised subsequently that KNN had been able to apply for the readvertised position, although that process had not been completed at the time of the case

management conference and no further update on that process has been provided. In any event, the steps subsequent are not the subject of this determination.

What do KNN's offer of employment and FENZ's Policy say?

[20] KNN's offer of employment included three references to the offer being conditional – the first page started with the heading “CONDITIONAL OFFER OF EMPLOYMENT” before saying:

I am pleased to offer you the position of Advisor Risk Reduction with [FENZ] on a conditional basis.

[21] A more substantive explanation was provided on the third page:

Appointment reviews

[FENZ] is required by law to have a process whereby existing member of [FENZ] can formally challenge an appointment to any position, including the position you are now being offered. They have 14 days in which to lodge a request for review. In the event that a request for review is lodged, we shall make every effort to notify you that this has occurred. You should be aware that if a request for review is lodged, the employee making the request may be entitled to your assessment and selection information. **This offer is therefore conditional upon there not being any successful application for review of your appointment as any successful review of appointment could result in your offer being revoked or your employment being terminated if you have already commenced work.** (emphasis added)

[22] The fourth and fifth pages state:

Conditional offer

To confirm, this offer is conditional on [FENZ] receiving the following:

- ... [two other conditions, not expressly invoked in this matter]
- Confirmation that there has not been a successful application for review of your appointment.
- [one other condition, not expressly invoked in this matter]

If the above conditions are not satisfied then the offer may be revoked, or if you have already commenced work then your employment may be terminated. (emphasis added)

[23] FENZ's Policy provides for both informal and full review processes, with both invoked in this instance but the full review process being the one which is relevant to KNN's claim that FENZ's actions are unjustified.

[24] The relevant sections of the Policy state under the heading “FORMAL REVIEW”:

An applicant unsatisfied with the explanation given may seek a formal review. A request for formal review must be made in writing and received within 14 days, (inclusive of any time spent on an informal review), of the publication of an appointment in the Fire Service Gazette or other written notification of the outcome to the appointment process, which ever is earlier.

[25] The process for a formal review includes confirmation the application meets specified criteria, with the Chief Executive of FENZ then required to “appoint a Review Committee with instructions that the review is to be completed and recommendations forwarded to reach the Chief Executive no later than 21 days later”. The Review Committee is required to consider whether the requirement for appointments to be on merit⁴ “(to appoint the person who is best suited to the position) and/or relevant guidelines and policies (covering due process) have been complied with”. The Review Committee may make the following recommendations to the Chief Executive, who’s decision is stated to be final and will be advised in writing:

- (i) Confirmation of the original appointment.
- (ii) Cancellation of the original appointment and readvertising, or referral back to the initial section committee for further consideration.
- (iii) Any other means of addressing the concerns of the reviewee either in whole or in part.

What impact is there on KNN’s rights under the Act and his employment agreement, from the provisions of the FENZ Act, particularly s 29 Review of appointments?

[26] The key issue for this preliminary determination is whether FENZ’s actions in terminating KNN’s appointment, on the basis of the recommendations of a Review Committee under FENZ’s Policy, are authorised under s 29 of the FENZ Act.

[27] Section 29 of the FENZ Act states:

29 Review of appointments

- (1) The board must put in place for FENZ a procedure for reviewing appointments made within FENZ that are the subject of any complaint by FENZ personnel.
- (2) The procedure must comply with the guidelines prescribed by the Public Service Commission for such review procedures. ...

Submissions of the parties

[28] KNN says while s 29 of the FENZ Act requires FENZ to have a procedure for reviewing appointments, it does not provide FENZ with the ability to terminate an already-commenced employment relationship and subsequent actions needed to comply with the Act. KNN says if the FENZ Act was intended to override the Act, then

⁴ The version of FENZ’s Policy provided makes reference to the Fire Service Act 1975 and sections of that Act, rather than the FENZ Act. The Policy states it was last reviewed in 2013, approximately four years prior to the FENZ Act coming into force. I have treated references in FENZ’s Policy as if they were references to the relevant sections of the FENZ Act.

it would need to do so expressly, and the review process is intended to be used before employment takes effect.

[29] KNN said case law supported their view the review process under the FENZ Act did not override the Act's protections and the need, once employment has commenced, for actions to be justified in accordance with s 103A of the Act. KNN cited *Rackham*⁵, *New Zealand Professional Firefighters Union v New Zealand Fire Service Commission*⁶, *Draper v Timms*⁷ and *Fraser*⁸ in support of the proposition that once an employment relationship has commenced, the courts are reluctant to interfere with it through appointment review mechanisms.

[30] KNN also said that conditionality ended upon commencement of employment and there was no legal basis under the FENZ Act or the Act to "retrospectively undo an employment relationship once it has been formed and taken effect". KNN went on to say that once he "began work and continued beyond [the 14 day challenge] period, the condition was either satisfied, waived, or overtaken by the parties' conduct". KNN says FENZ's actions amount to a dismissal, which in the absence of fair process or opportunity to respond, cannot be justified. For completeness, KNN also says the exclusion from unjustifiable actions under s 103(3) of the Act does not apply, as their claim is an unjustified dismissal not an unjustified disadvantage, and does not derive "solely from the interpretation, application, or operation, or disputed interpretation, application, or operation, of any provision of any employment agreement".

[31] FENZ says it is a creature of statute, it can only employ someone as authorised by the FENZ Act, and it cannot waive or contract out of the law, or be required to do so by the Authority, citing the Court of Appeal in *New Zealand Professional Firefighters Union Inc v Fire and Emergency New Zealand*⁹ and *Principal of Auckland College of Education v Hagg*.¹⁰

⁵ Above n 2.

⁶ *New Zealand Professional Firefighters Union v New Zealand Fire Service Commission* [2008] ERNZ 196.

⁷ Cited as *Draper v Chief Executive Officer of the New Zealand Fire Service Commission* [2000] NZEmpC WC 58A/00. Alternate citation *Draper v Timms* [2000] EMHNZ 985.

⁸ Above n 3.

⁹ *New Zealand Professional Firefighters Union Inc v Fire and Emergency New Zealand* [2021] NZCA 60.

¹⁰ *Principal of Auckland College of Education v Hagg* [1997] 2 NZLR 537; [1997] ERNZ 116 (Hagg No 2).

[32] FENZ says in this matter KNN was provisionally or conditionally employed, under both the terms of the applicable collective agreement and the offer of employment, with a review validly initiated under the Policy and the Chief Executive of FENZ validly determining employment should end. For completeness FENZ say to the extent there is any conflict of laws, the FENZ Act provisions override the Act, and in any event its actions are substantively justified, which precludes interim reinstatement.

[33] FENZ say, contrary to KNN's submission the conditional element of employment could not act retrospectively, this was precisely what was envisaged in this context, which it says is a *condition subsequent*. FENZ conclude contract law arguments do not assist KNN, having referred to commentary which states:¹¹

.. a condition subsequent denotes an event upon the happening of which an existing contract is discharged. This discharge is seen as operating retrospectively back to the time that the agreement was made, so that the parties do not accrue any rights or obligations under it.

[34] FENZ also said case law supported its position, citing, *inter alia*, *Hagg No 2*¹², *Draper v New Zealand Fire Service Commission*¹³, *New Zealand Professional Firefighters Union v Fire and Emergency New Zealand*¹⁴, *Larsen v Fire and Emergency New Zealand*¹⁵, *New Zealand Professional Firefighters Union Inc v Fire and Emergency New Zealand*¹⁶ and *Rackham*.¹⁷ FENZ summarised the case law as supporting a requirement to follow the appointment provisions in the FENZ Act, which it says cannot be contracted out of, waived or avoided. FENZ says appointments only become unconditional, following a review being requested, once the Chief Executive makes their decision on the review. FENZ also says the Authority cannot undertake a judicial review of the Chief Executive's decision on the review, which it considers KNN is asking for.

[35] Submissions in reply for KNN reiterated their view that as they had commenced employment, what happened following the review is governed by the Act. KNN

¹¹ *Burrows, Finn and Todd on the Law of Contract in New Zealand* (7th ed, LexisNexis, Wellington, 2022) at 8.1.1(a). FENZ cited an earlier edition, with the same text.

¹² Above n 10.

¹³ *Draper v New Zealand Fire Service Commission* [2001] ERNZ 277. This judgment followed *Draper v Timms*, above n 7.

¹⁴ *New Zealand Professional Firefighters Union v Fire and Emergency New Zealand* [2020] NZEmpC 197. This judgment was subject to the Court of Appeal's judgment cited above n 9, which declined leave to appeal.

¹⁵ *Larsen v Fire and Emergency New Zealand* [2025] NZEmpC 126.

¹⁶ Above n 9.

¹⁷ Above n 2.

referred to s 178 of the FENZ Act which requires FENZ develop a dispute resolution scheme but excludes employment disputes under the Act. KNN says this demonstrates the Act takes precedence over the FENZ Act.

[36] KNN says s 29 of the FENZ Act does not authorise the automatic cancellation of an existing relationship and the Act governs what FENZ may do as a result of a review under s 29 of the FENZ Act. While accepting the parties cannot contract out of the FENZ Act review process, KNN says there is no legislative right to terminate employment at the end of the review process. KNN says “best practice would require that the review occur prior to an employee commencing employment” and concludes as s 184 of the FENZ Act recognises employment disputes can result from review processes, the Authority has jurisdiction and remedies including reinstatement could apply.

Analysis

[37] I consider it regrettable the review of KNN’s appointment was not completed prior to him commencing employment. That scenario is, however, clearly envisaged by the Policy and KNN’s offer of employment, as described in paragraphs [20] to [25] above, which repeatedly refers to the offer of employment being conditional, including upon “[c]onfirmation that there has not been a successful application for review of your appointment”. The offer of employment is also express that “any successful review of appointment could result in ... your employment being terminated if you have already commenced work”.

[38] KNN does not appear to contest that the review occurred in accordance with the Policy. Affidavit evidence from FENZ included emails which initiated the review, which was formally requested on 21 April 2025, within 14 days of the notification of KNN’s appointment being published. I find this was sufficient to trigger the commencement of the review under the Policy.

[39] Affidavit evidence from FENZ asserts KNN was advised of the possibility of a formal review on either 10 or 11 April 2025. KNN acknowledged in their affidavit evidence of being told prior to commencing work that “someone internal to FENZ had indicated they may lodge a review of the appointment. I was told this was not uncommon and that it would not affect my ability to take up the role”. KNN says they

were then asked to agree to a revised date of employment and his start date was confirmed in writing, after which he commenced work as planned.

[40] At this time the affidavit evidence is untested, however, I consider it supports KNN being aware there was a possibility of a challenge to their employment and the possibility of a review. The affidavit evidence from KNN and the FENZ People Business Partner suggests there was no formal notification to KNN of the application for review when it was made.

[41] I also consider it regrettable there was not clearer communication with KNN at this time and that he was permitted to commence employment without being informed a formal review had been requested. Emails provided with the affidavit evidence show the FENZ People Business Partner advised a Senior People Advisor, who was supporting the review application process, “[w]e cannot confirm the appointment while the review is underway and ideally should not start someone in that role until the outcome of the review is known”. In addition, emails show the individual who had requested the review was advised on 9 April 2025, prior to formally requesting the review, that “the appointment process will be paused while this process takes its due course”. There is no evidence before me to show KNN was provided with any indication of the potential for the appointment process to be paused.

[42] Rather the evidence before me shows KNN commenced employment and was not informed until 21 May 2025¹⁸ that an application for formal review had been received under the Policy. This notification included advice that the Chief Executive of FENZ had confirmed the request for formal review would proceed to a review committee on 13 May 2025. No explanation has been provided for why it took one month from the request for formal review on 21 April 2025 for the Chief Executive’s decision to be made to appoint a review committee and that decision to be communicated to KNN.

[43] Arguably, this is inconsistent with the Public Service Commission’s guidance, which states:

Requirement to conduct a review

When conducting a review, the chief executive or their delegate should ensure:

...

¹⁸ An email from a FENZ Manager of this date to KNN refers to having previously discussed this issue with them but is not specific about what date those discussions occurred on.

- Both the provisional appointee and complainant are informed of the review's progress

[44] In addition, the review committee's report is dated 9 June 2025, which appears to be more than the 21 days provided under the Policy for the review to be completed and forwarded to the Chief Executive. Whether communications with KNN or the review timeline raises any issues is potentially a matter for future consideration, as discussed further at paragraphs [49] and [50] below.

[45] Based on the Court and Court of Appeal judgments cited by the parties, referred to at paragraphs [29], [31] and [34] above, it is clear FENZ cannot contract out of the statutory provisions which require it to have a review of appointment process. For example, the Court of Appeal in *Hagg No 2* in relation to state sector review provisions under the State Sector Act 1988 stated "The requirements cannot be waived by employer or employee. They cannot contract out."¹⁹

[46] KNN's employment agreement was clearly conditional and, analogous to the Court's judgment in *New Zealand Professional Firefighters Union v New Zealand Fire Service Commission*, the appointment process is not complete until a review has been completed. The Court stated (albeit in the context of an interim reinstatement application seeking to prevent appointments which had been unsuccessfully reviewed from proceeding):²⁰

The appointment process is complete. In his submissions, Mr Cranney sought to persuade me that the appointments were in some way incomplete because the process of making them was defective. I do not accept that submission. The evidence is clear that the process is complete as between the parties to the individual employment agreements involved. There exist now unconditional agreements between them which are enforceable.

[47] I consider, consistent with the Authority's determination in *Rackham*²¹, that it was substantively open to FENZ to rescind or cancel KNN's appointment, relying on the explicit contractual statement of the offer of employment being conditional, including the express statement that "any successful review of appointment could result in ... your employment being terminated if you have already commenced work".

[48] I consider this significantly limits KNN's ability to proceed with his unjustified dismissal claim. FENZ says judicial review of the Chief Executive's decision on the review committee recommendation is available, albeit in the High Court. I accept this

¹⁹ Above n 10, [1997] ERNZ 116 at [125].

²⁰ Above n 6 at [11].

²¹ Above n 2.

position, so far as it relates to the subjective justification for FENZ's actions. In doing so I endorse the observation of the Authority in *Rackham* that:²²

Since the decision-making process is founded in statute, although developed in detail in the employment agreement, there is a limit to how far the Authority can look into the matter.

[49] I do not consider this is a complete ouster of the Act's provisions in deference to the FENZ Act or the contractual provisions related to the conditionality of KNN's appointment. KNN submitted, based on the Court's judgment in *Ramkissoon v Commissioner of Police*²³ that "even where an internal or statutory review is valid in form, the way it is conducted may still breach the employer's duty of good faith". I consider this proposition to be correct, with the Court clearly stating:²⁴

relevant provisions of the [Act] also applied to the appointment review process. These include what are generally termed the good faith requirements contained in s 4 of that Act. These include that the employer and employee were to deal with each other in good faith and, in particular, not to mislead or deceive the other or to do anything that was likely to mislead or deceive the other, whether directly or indirectly. Section 4(1A) provides that the parties are to be "active and constructive in establishing and maintaining a productive employment relationship" in which they are, among other things, "responsive and communicative".

If the employer's proposed decision would, or was likely to, have an adverse effect on the continuation of the affected employee's employment, the Commissioner was to provide to the plaintiff access to the information relevant to the continuation of this employment about the decision and an opportunity to comment on the information to the Commissioner before the decision was made.

[50] As a consequence, I consider KNN is not prevented from proceeding with a claim in relation to FENZ's compliance with the duty of good faith under s 4 of the Act or in relation to the procedural requirements under s 103A in making a decision on the review. Given the limits on challenging the substantive justification for the decision to cancel KNN's appointment, any claim would either be for unjustified disadvantage or in relation to dismissal being procedurally unfair.

Outcome

[51] For the reasons set out above, I make the following findings of fact or in relation to the impact that the FENZ Act has on KNN's rights under the Act and his employment agreement:

- a. KNN's offer of employment was conditional and, as a review of his

²² Above n 2, at [34].

²³ *Ramkissoon v Commissioner of Police* [2017] NZEmpC 85.

²⁴ *Ibid*, at [195] and [196], footnotes omitted.

appointment was validly initiated under the Policy, a completed review in KNN's favour is necessary for his employment to become unconditional;

- b. The request for review of KNN's appointment was made within the timeframe required under the Policy. There is no evidence KNN was formally advised a review had been sought prior to his commencing work. While regrettable, this does not override the condition in the offer of employment;
- c. FENZ cannot waive or contract out of review process, and did not expressly do so by permitting KNN to commence work;
- d. The Chief Executive's decision under the Policy on the request to review KNN's appointment provides substantive justification for the decision to cancel KNN's appointment. This significantly limits KNN's ability to proceed with his unjustified dismissal claim, although judicial review of the Chief Executive's decision on the review committee recommendation is available; and
- e. FENZ is still required to comply with the duty of good faith under s 4 of the Act and with the procedural requirements under s 103A in making a decision on the review. Given the limits on challenging the substantive justification for the decision to cancel KNN's appointment, any claim would either be for unjustified disadvantage or in relation to his dismissal being procedurally unfair.

Next steps

[52] The investigation process for this preliminary determination proceeded on the basis I would make findings of fact or in relation to the impact that the FENZ Act has on KNN's rights under the Act and his employment agreement. In light of the above findings, the parties are invited to discuss next steps between themselves and may request a follow-up case management conference by contacting the Authority Officer. If a further direction to mediation is considered appropriate this can be requested.

Orders

[53] Given the approach to the investigation process, no substantive orders are made.

[54] An interim non-publication order in relation to KNN's name and any identifying details is made under cl 10(1) of sch 2 of the Act, until further order of the Authority.

Costs

[55] Costs are reserved, pending discussions between the parties on next steps.

Shane Kinley
Member of the Employment Relations Authority