

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2025] NZERA 578
3401264

	BETWEEN	JANET DU FALL Applicant
	AND	THE MOKOIA INTERMEDIATE SCHOOL BOARD Respondent
Member of Authority:	Eleanor Robinson	
Representatives:	David Fleming, counsel for the Applicant Joseph Williams and Briana Millier, counsel for the Respondent	
Investigation Meeting:	On the papers	
Submissions	9 September 2025 from the Applicant 16 September 2025 from the Respondent	
Determination:	18 September 2025	

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Janet Du Fall, seeks an order for removal to the Employment Court pursuant to s 178(2)(c) and (d) of the Employment Relations Act 2000 (the Act), on the grounds that:

(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.

[2] The Respondent, The Mokoia Intermediate School Board (MISB), is neutral on the issue of removal since it sees reasons in favour of both removal and the Authority retaining the matter.

The Authority's Investigation

[3] The Authority has determined this matter on the papers by agreement with the parties, that is based upon the application and submission therein received from counsel on behalf of Ms Du Fall, and submissions from counsel on behalf of MISB.

[4] Whilst I have not referred to all the submissions made by the parties in this determination, I have fully considered them.

Brief Background Facts

[5] MISB is a small intermediate school based in Rotorua. Ms Du Fall was employed as Executive Officer in July 1999.

[6] In September 2024 the Authority held a four-day investigation meeting into a number of personal grievances raised by Ms Du Fall against MISB, issuing its determination on 1 July 2025 ([2025] NZERA 381).

[7] Ms Du Fall has challenged that determination, and the challenge is currently before the Employment Court on a de novo basis.

[8] Although Ms Du Fall remained in her role after July 2024, there were ongoing difficulties in the relationship between her and MISB and Ms Du Fall raised a further number of personal grievances.

[9] Ms Du Fall continued to assert that the workplace was an unsafe and toxic environment and that MISB and the Principal were acting in bad faith towards her.

[10] MISB decided that the relationship had reached a point of irreconcilable breakdown and terminated Ms Du Fall's employment on 20 April 2025.

[11] Ms Du Fall lodged a Statement of Problem in the Authority on 27 May 2025 claiming unjustifiable dismissal together with an urgent application for interim reinstatement.

[12] Following the Authority's investigation on 18 July 2025 Ms Du Fall was not granted interim reinstatement by the Authority ([2025] NZERA 450).

[13] Ms Du Fall has challenged that determination also, and the challenge is currently before the Employment Court with a hearing date in October 2025.

Submissions by the Applicant

[14] Counsel for Ms Du Fall submits that the circumstances giving rise to the claims addressed in Determination ([2025] NZERA 381) are closely related to the matters which remain before the Authority because of the Applicant's view that her pay claims raised in 2022 have not been addressed as she considers acceptable by MISB; and that her dismissal on the grounds that the relationship between the parties had broken down is a continuation of that same conflict.

[15] The Applicant submits that the issues involve the same people as the matters that are already before the Court, and if these proceedings are not removed the same witnesses would need to give evidence, including about the same facts, in both forums.

[16] It is submitted that Ms Du Fall's primary reason for seeking removal is to enable all the substantive issues between her and MISB to be addressed at the same time and in a single hearing.

[17] It is accepted by Ms Du Fall that the challenge on the substantive and the interim determinations will not be heard at the same time by the Court, however it is submitted the Court will have already heard evidence about dismissal and will have looked into the issues with at least sufficient closeness to determine whether the applicant has an arguable case.

[18] It is further submitted that the respondent has filed costs submissions for the Authority proceedings in July 2024 which outline significant costs incurred in the first proceedings, and that the applicant has also incurred significant emotional and financial cost.

[19] It is submitted that even where no statutory ground for removal is met, removal can be ordered on the general ground that the Authority considers it should be in all the circumstances.

[20] It is submitted that while claims about the likelihood of a challenge are generally treated with caution, in this case it is not mere conjecture that the Authority's substantive determination could be challenged: there are already two determinations of the Authority in respect of the same events that have already been challenged, and it is highly probable that Ms Du Fall would challenge any further determination that she did not consider fully addressed her issues.

[21] It is further submitted that the Court in a recent case conference has indicated to the parties that the substantive issues between the parties would likely be heard in early 2026 and that it is unlikely the significant issues would be investigated significantly sooner by the Authority.

[22] Even if they were to be, it is submitted that would not bring forward the date when all issues between the parties had been determined, and it is highly unlikely that a determination

of the Authority would be received in time for any challenge to it to be dealt with together with the other substantive proceedings that are already before the Court.

Respondent's submissions

[23] The Respondent, whilst neutral on the issue of removal, submits that should the matter be removed, it also would lose the right of challenge.

Should the Removal Application be granted?

General Principles of Removal

[24] The Authority is constrained in its ability to remove proceedings before it to the Court by s 178(2) of the Act which sets out the tests upon which the Authority must be satisfied prior to removal.

[25] As observed by the Court of Appeal in *A Labour Inspector v Gill Pizza Limited & Ors*:

... removal under s 178 is contemplated in relatively limited circumstances, with particular caution expected in cases that have not been fully investigated by the Authority.¹

[26] The challenge into the wage claims made by Ms Du Fall is before the Court as is the challenge to the determination on the interim reinstatement application. The substantive hearing on the unjustifiable dismissal claim is yet to be scheduled for an investigation by the Authority due to the question of the removal application requiring determination prior to scheduling for the substantive matter.

[27] Should the matter be heard and determined by the Authority as was initially the intention, both parties would have a right of challenge to the Court.

[28] This is an important right which would be unavailable should this matter be removed to the Court for a first hearing of the substantive claims by Ms Du Fall.

[29] In the majority of cases which have yet to be determined, it is not necessarily the case that the Authority's determination would be challenged by either party. However, in the circumstances of this case, I accept that it is almost inevitable that Ms Du Fall would challenge the Authority's substantive determination irrespective of the findings in it unless these were wholly in her favour.

¹ *A Labour Inspector (Ministry of Business, Innovation and Employment) v Gill Pizza Ltd and Ors* [2020] NZCA 192.

[30] The inevitability of a challenge is not a deciding, though persuasive, factor in the decision whether or not to remove. However, I am aware that there are already two challenges before the Court involving virtually the same issues and the same parties, and I am mindful of the costs implications for this matter should removal not be granted.

[31] I am satisfied that the grounds set out in s 178(2)(c) are established in this case. Further that in accordance with s 178(2)(d) I am of the opinion that the Court should determine the matter.

Costs

[32] The removal of the remaining part of the proceedings means that the matter has ceased to be before the Authority.

[33] Authority usually sets its own costs. Whilst realistically I accept that a costs determination may be joined in due course to the matters already under challenge, I nonetheless consider that costs should be determined by the Authority, the matter having completed in the Authority's process.

[34] Accordingly, the Applicant is to file costs submissions within 28 days of the date of this determination. The Respondent will have 14 days after that date in which to file submissions.

Eleanor Robinson
Member of the Employment Relations Authority