

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 587  
3327840 and 3328220

BETWEEN A LABOUR INSPECTOR OF  
THE MINISTRY OF BUSINESS,  
INNOVATION &  
EMPLOYMENT  
Applicant

AND TOP PRODUCE LIMITED  
First Respondent

AND JAGDIP SINGH BAINS  
Second Respondent

AND AMANDEEP SINGH  
Third Respondent

Member of Authority: Geoff O'Sullivan

Representatives: Tim Grey, counsel for the Applicant  
Arunjeev Singh, counsel for the Respondent

Investigation Meeting: On the papers

Determination: 22 September 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The applicant has filed proceedings in the Employment Relations Authority (the Authority) alleging breaches of the Wages Protection Act 1983 (the WPA), the Employment Relations Act 2000 (the ERA), the Minimum Wage Act 1983 (the MWA) and the Holidays Act 2003 (the HA) by the first respondent. It is alleged that the second respondent and the third respondent have aided, abetted, counselled or procured the breaches.

[2] A significant portion of the arrears claimed by the applicant relates to the allegation by two complainant employees who received accredited employer work visas

(AEWVS) entitling them to travel to and remain in New Zealand to work for the first respondent. The complainants claim that they were required to pay premiums in connection with their prospective employment amounting to approximately \$34,261.11 and \$17,755.90 respectively.

[3] In each case these payments were made through a series of transfers from bank accounts in India to financial institutions in India. There is some evidence of the onward remittance of those funds to bank accounts in New Zealand, including one held in the name of the second respondent.

[4] The respondents deny all wrongdoing.

### **Question of law**

[5] The applicant says that there appears to be divergent approaches taken to the question of premiums paid overseas and refer to the comment by the Court submitting it is suggested that the consequences of *Mehta v Elliott*<sup>1</sup> were being misunderstood and that the matter may be appropriate to be heard before a full bench of the Court with comprehensive legal argument.<sup>2</sup>

[6] The applicant is asking the Authority to submit the following question to the Court for answer:

Does s 12A of the WPA apply in respect of a premium sought or received by an employer (prospective or otherwise), or a person engaged on behalf of an employer (prospective or otherwise), for the employment of a person in New Zealand, if all or any part of that transaction is made outside of New Zealand?

[7] The respondents oppose a referral to the Court of this question of law. They argue that although the Authority is bound by *Mehta* and has no power to consider the claim for a premium paid offshore, that until the evidence has been tested in an investigation meeting there is no justification for removing that part of the claim to the Employment Court. The respondents are concerned that the partial removal of the premiums questions could cause the same issues to be litigated in two different forums at the same time.

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<sup>1</sup> *Mehta v Elliott* [2003] 1 ERNZ 451.

<sup>2</sup> *A Labour Inspector v New Zealand Fusion (International) Limited* [2019] NZEmpC 181 at paragraph [60].

[8] In support of the applicant's position the Labour Inspector says that s 178 of the ERA makes provision for a party to apply for the partial removal of a matter and this is the basis on which the Labour Inspector has relied on in its application. However, the Labour Inspector also notes that the Authority could exercise its power under s 177 of the ERA on its own motion.

### **S 177 of the ERA – referral of question of law**

[9] S 177(1) provides:

- (1) The Authority may, where a question of law arises during an investigation,—
  - (a) refer that question of law to the court for its opinion; and
  - (b) delay the investigation until it receives the court's opinion on that question.

[10] The Labour Inspector submits that although the term “investigation” is undefined, the Authority is an investigative body and “investigation” should be given a broader construction in the context of s 177(1). I consider the Authority has commenced investigation of the matter and accordingly consider that a question of law posed by the applicant has arisen during an investigation.

[11] The question posed by the applicant is one which seems to be coming before the Authority with increasing regularity in claims brought by the Labour Inspector in cases such as this. I accept it could be said there is an inconsistent approach being taken and there is significant merit in having the matter clarified by a Court decision providing precedent for future cases.

### **S 178 of the ERA – removal to court generally**

[12] S 178(2) of the ERA provides:

- (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.

## **Analysis**

[13] The intended question of law referenced in the Labour Inspector's application is an important question of law. In order to deal with the Labour Inspector's claims, the Authority would need to form a view on the question as it is a specific claim and will arise other than incidentally. Section 178 of the Act gives the Authority the discretion to remove the matter to the Employment Court if one or more of the four specified removal grounds set out in s 178(2) apply.

[14] If a question of law was sent to the Court for answer under s 177 of the Act, without the ability to decide the questions of fact, and apply the application of s 12A of the WPA to those facts, the Court may face an unnecessary restriction.

[15] Accordingly, in order for the Court to properly answer the question posed, it seems preferable that the whole matter be removed to the Court. The Court would then be able to make factual findings on any of the matters before it. It would be problematic if the Court were to be only seized of part of the proceedings, namely those relating to the payment of the premium which could result in unintended consequences when there would be factual findings made in the Court in one area of the case and potentially factual findings in another area made by the Authority.

[16] Further, I consider that any perception of prejudice the respondents may have, would be resolved with the Court being seized of the entire matter. This would preclude any difficulties arising in dealing with credibility, noting all respondents deny the claims. Potentially there may be some advantages in making findings of fact through an adversarial process before the Court, as opposed to an investigative one, in this case.

[17] Removal to the Court also mitigates any duplication and/or secondary cost issues arising for the respondents.

[18] As indicated above, I can see difficulties with the Court being seized of only part of the matter and even more so should the Court be asked only to answer a question of law. The Authority considers that this is an appropriate matter for the Employment Court to determine given the issues of premiums paid overseas and the increasing number of these sorts of cases coming to the attention of the Labour Inspectorate. The

Employment Court's decision will set a precedent for the Authority in respect of jurisdiction relating to the payment of premiums outside New Zealand.

### **Outcome**

[19] The Authority is satisfied that a ground for removal has been made out, namely an important question of law is likely to arise in the matter other than incidentally. Further, the Authority is of the opinion that in all the circumstances the Court should determine the matter.

[20] The Authority therefore exercises its discretion under s 178(2) of the Act to order that matters 3327840 and 3328520 are removed to the Employment Court.

### **Costs**

[21] Costs are reserved.

Geoff O'Sullivan  
Member of the Employment Relations Authority