

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 703
3410104

	BETWEEN	MARITIME UNION OF NEW ZEALAND INCORPORATED Applicant
	AND	NOVAALGOMA CEMENT CARRIERS LIMITED First Respondent
	AND	ALTON SHIPPING LIMITED Second Respondent
Member of Authority:		Rachel Larmer
Representatives:		Simon Mitchell KC and Angus Drumm, counsel for the Applicant Emma Peterson and Niranjanaa Ram, counsel for the First and Second Respondents
Investigation Meeting:		On the papers
Submissions and Other Information Received:		7, 8, 15, 21, 29 and 31 October 2025 from the Applicant 14, 29 and 31 October 2025 from the First Respondent 22, 28 and 30 October and 3 November 2025 from the First and Second Respondents
Determination:		3 November 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

Removal application

[1] This matter AEA 3410104 involved an application by the applicant, Maritime Union of New Zealand Incorporated (MUNZ) for removal to the Employment Court of its compliance order application against the respondents in matter AEA 3410024.

[2] MUNZ's grounds for removal are:

- (a) An important question of law arose other than incidentally;¹
- (b) The case was of such a nature and of such urgency that it was in the public interest to remove it.²

Grant of urgency

[3] MUNZ's removal application was granted urgency by the Duty Member, because it related to actions that were anticipated to occur in mid-November or December 2025 which could potentially result in the redundancy of approximately twenty MUNZ members.

[4] The grant of urgency has meant this matter has evolved rapidly as more information has come to light, subsequent to the Case Management Conference (CMC) held with counsel for MUNZ and the first respondent, NovaAlgoma Cement Carriers Limited (Nova), on 3 October 2025.

Respondents' position

[5] The respondents said:

- (a) The Authority lacked jurisdiction.
- (b) If jurisdiction was established, then MUNZ's compliance order application against them should be heard by the Authority in the first instance.
- (c) MUNZ's proceedings should be stayed pending the outcome of:
 - (i) Parallel proceedings that are being dealt with by another Authority Member; and
 - (ii) The respondents' flag waiver application (discussed later), which if granted would allow a foreign vessel, with foreign crew, to replace the cement carrier vessel the MV Buffalo (the Buffalo) that MUNZ's members are currently working on.
- (d) No grounds for removal had been established.

¹ Section 178(2)(a) of the Act.

² Section 178(2)(b) of the Act.

- (e) Even if a ground for removal was established, the Authority should exercise its discretion against removal.

Matters which are determined in this determination

[6] This matter involves determination of:

- (a) The respondents' stay application.
- (b) The Authority's jurisdiction over the parties involved in these proceedings.
- (c) The applicant's removal application, which relates to a compliance order application it has lodged against the respondents in matter AEA 3410024.

Bargaining notice

[7] On 26 August 2025, MUNZ issued a notice of bargaining pursuant to s 42 of the Employment Relations Act 2000 (the Act) that initiated bargaining for a collective agreement between MUNZ and "Holcim New Zealand Limited and Nagu Shipping S.A., Nova Marine, McCullum Bros Ltd".

[8] The bargaining notice also stated that:

The bargaining will be for a Collective Agreement to cover Seafarers (Chief Integrated Rating, Integrated Rating, Chief Steward, Chief Cook, or any other Rating/Able Seafarer) working on THE VESSELS MV Buffalo or any replacement vessel owned, operated or demise chartered by the named companies.

[9] This bargaining notice did not name the entities that are the respondents in MUNZ's compliance order application in AEA 3410024. The intended replacement for the MV Buffalo (the Buffalo) was the NACC Vega (the Vega), which was not owned, operated or demise chartered by any of the companies named in the bargaining notice.

[10] A "demise charter" is where the charterer of the vessel takes on all responsibilities of the owner of the vessel without owning it. A "time charter" is a shipping agreement where a shipowner leases (i.e. time charters) a vessel to a charterer for a specified period of time – ranging from a few months to several years. During that time the vessel is at the charterer's disposal and the charterer is able to direct where it sails and what cargo it carries, but the shipowner retains responsibility for the

employment of the vessel's crew, maintenance, seaworthiness and insurance of the vessel.

[11] The reference in the bargaining notice to:

- (a) "Nagu Shipping S.A." was to "Nagu Shipping Societa Anonima" (Nagu). When naming companies, "Societa Anonima" is abbreviated to "S.A", which is the abbreviation used in Swiss Italian to designate a public limited company in Switzerland, and other Italian, French and Portuguese speaking countries.
- (b) "Nova Marine" is unclear in terms of which legal entity it was referring to. "Nova Marine Holding S.A" (Nova Marine) is registered in Luxembourg. Nova Marine Carriers S.A (Marine Carriers) is registered in Switzerland.
- (c) "McCullum Bros Ltd" should have been to "McCallum Bros Limited" (McCallum).

Relevant entities

[12] Holcim New Zealand Limited (Holcim) currently employs approximately twenty MUNZ members to work on the Buffalo.

[13] Nagu is registered in Panama and is a wholly owned subsidiary of Nova.

[14] Nova is the commercial management company of "NACC Holding FZE", which changed its legal name on 22 October 2025 to "NACC Holding FZCO". NACC Holding FZCO is a Malta entity which is registered in the United Arab Emirates (the UAE).

[15] The abbreviation "FZE" stands for "Free Zone Establishment", which signifies a limited liability company that is registered in the UAE. "FZCO" is an abbreviation for "Free Zone Company", which is like FZE. The difference between FZE and FZCO arises from the shareholding structure. FZE represents a single shareholder, whereas FZCO represents two or more shareholders.

[16] Nova is registered in Bermuda, and it specialises in the ownership, operation and management of cement carriers around the globe. Nova has no presence in New Zealand. Nagu, which is registered in Panama, is a wholly owned subsidiary of Nova.

[17] Nova is a joint venture between Nova Marine (registered in Luxembourg) and Algoma Central Corporation (Algoma) which is registered in Canada. In addition to other activities and business interests, Algoma operates dry and liquid bulk carriers in Canada.

[18] Nova owns 49% of NACC Holding FZCO (NACC Holding), with the remaining 51% being owned by P&O Maritime FZE (P&O Maritime), which is registered in the UAE, and which is the full legal name of the entity trading as “P&O Maritime Logistics”. P&O Maritime is owned by DP World Limited, which is also registered in the UAE.

[19] The second respondent, Alton Shipping Limited (Alton), is owned by NACC Malta Shipping Limited (Malta Shipping), which is registered in Malta. Malta Shipping is owned by NACC Holding, which is registered in the UAE.

[20] NovaAlgoma Cement Carriers S.A (Cement Carriers), which is registered in Switzerland is a wholly owned subsidiary of NACC Holding. Nova Marine is Nova’s parent company. Nova Marine is a commercial management/shipping operating company headquartered in Lugano, Switzerland.

[21] Nova Marine Group (Nova Group) refers to the group of companies which are registered in various different jurisdictions. Nova Marine Carriers S.A (Marine Carriers), which is registered in Switzerland, is the commercial management company of the Nova Group. Marine Carriers is also headquartered in Lugano, Switzerland and it is a wholly owned subsidiary of Nova.

[22] McCallum is a New Zealand registered company which is unrelated to any of the other entities named in this determination. McCallum has not been formally engaged by the respondents or Nova Marine, but it has been assisting in providing local advice on maritime matters in New Zealand.

Bargaining has not occurred

[23] Bargaining has not occurred. The respondents said bargaining had not been validly initiated under s 42 of the Employment Relations Act 2000 (the Act), because Nagu and Nova Marine did not have a current or prospective employment relationship between the proposed employees/union members who would be covered by the bargaining.

[24] The respondents said a valid initiation of bargaining required an employment relationship between a union and an employer or prospective employer before bargaining commences. Nova and the second respondent, Alton Shipping Limited (Alton), said they had no connection to the Buffalo or to MUNZ's members, so were legally "strangers", not prospective employers.

[25] Nagu was the legal entity that had purchased the Buffalo, not Nova. Nagu had purchased the Buffalo as an asset only, and it was going to be sent offshore after the sale had been completed and upon Nagu taking delivery of the vessel. Nagu had no employees in New Zealand, and it had no plans to offer any MUNZ members employment.

[26] The respondents said the protections in Part 6A of the Act, that MUNZ relied on in its compliance order application, had not been triggered. No "restructure" as defined by s 69B of the Act had occurred. The two cooks and two stewards on the Buffalo did not perform the work specified in Schedule 1A of the Act, so were not protected employees who had a right to elect to transfer their employment on their existing terms and conditions to the new employer. Neither of the respondents agreed they were the "new employer".

[27] The respondents also said the four union members MUNZ claimed are covered by Part 6A of the Act did not provide "food catering services" to Holcim, as required by Schedule 1A(f) of the Act. They submitted that Holcim was not in the food catering business, so the cooks and stewards it employed were not employed in the preparation and delivery or serving of food to third parties, as occurs in a "food catering services" situation, which is one of the categories in Schedule 1A of the Act.

[28] MUNZ disagreed. MUNZ submitted there are two Chief Cooks and two Chief Stewards who are currently employed by Holcim to work on the Buffalo. MUNZ said these four union members fell within the categories of employees listed in Schedule 1A of the Act, and therefore had the protections conferred by subpart 1 of Part 6A of the Act.

[29] MUNZ's position was that these four protected union members were therefore entitled to transfer to "the other person" who was performing their work as a result of a "restructuring", in accordance with s 69A, s 69B and s 69C of the Act. MUNZ also

noted there was nothing preventing a new collective agreement from covering more employees than only those who were protected under Part 6A of the Act.

[30] Accordingly, MUNZ maintained that Nagu and Nova Marine had an obligation to bargain with it. However, the Authority noted that neither Nagu, or Nova Marine, are respondents in the compliance order application or in this removal application.

MUNZ's compliance order application

[31] On 29 September 2025 MUNZ lodged a compliance order application in matter AEA 3410024 against Nova requiring it to bargain pursuant to the provisions of Part 5 of the Act. MUNZ claimed four of its members had a right to elect to transfer to Nova on the existing terms and conditions they had under the Collective Agreement between MUNZ and Holcim, so it wanted Nova to be compelled by the Authority to bargain with the union about that.

[32] On 15 October 2025 MUNZ lodged an amended statement of problem (ASoP) that added Alton as the second respondent to its compliance order application. MUNZ relied on the same grounds against Alton as applied to Nova.

[33] Alton is registered in Malta, and it is a wholly owned subsidiary of NACC Malta Shipping Limited, which is also registered in Malta. Because the outcome of this removal application would directly affect Alton, it was given an opportunity to be heard before the removal application was determined.

The respondents' position

[34] Nova said it should not be a respondent in the proceedings MUNZ was pursuing, as it was not the purchaser of the Buffalo or the owner of the Buffalo's intended replacement vessel the NACC Vega (the Vega). This is discussed in more detail later in this determination.

[35] The respondents have:

- (a) Disputed the Authority's jurisdiction.
- (b) Applied for a stay of the removal application and the underlying compliance order application.

- (c) Opposed removal of MUNZ's compliance order application to the Employment Court in the first instance.

Nova's position on removal

[36] Notwithstanding Nova's main point was that it should not be a respondent in MUNZ's proceedings, it opposed this removal application on the following grounds:

- (a) The Authority has set down a parallel proceeding, in which MUNZ is the applicant and Holcim is the respondent (matter AEA 3399764) which it said had to be determined prior to consideration of MUNZ's claims against these respondents.
- (b) None of the grounds for removal in s 178(2) of the Act had been established.
- (c) Even if one of the s 178(2) grounds for removal was established, the Authority should exercise its residual discretion to decline to remove MUNZ's compliance order application to the Employment Court.

Alton's position on removal

[37] Alton adopted Nova's same position and submissions on this removal application. Alton also provided additional submissions on behalf of itself and Nova, that reiterated their view that the Authority did not have jurisdiction over the subject matter involving these respondents.

[38] The respondents said there was no "restructuring" as defined by s 69B under Part 6A of the Act, so the protections in Part 6A of the Act did not apply to the four members MUNZ was representing.

[39] Alton said it was not a prospective or intended employer because it had not offered MUNZ's members (who are currently Holcim's employees) employment. Alton also said that it did not intend to offer MUNZ's members employment, because the Vega was already crewed by an experienced foreign crew that, due to its peculiar handling system, needed to be retained. A flag waiver had been applied for to enable that to occur (this is discussed in more detail later in this determination).

[40] Alton said that if the flag waiver application did not succeed, that would preclude the Time Charter Holcim and Alton had entered into on 20 June 2025, (which is discussed later in this determination) from coming into effect.

Material background

[41] MUNZ is representing approximately twenty union members who are employed under a Collective Agreement (the CA) with Holcim and who work as a rotating crew, with 28 days on and then 28 days off, on the concrete carrier shipping vessel the Buffalo, which travels along the coast of New Zealand delivering concrete to different ports.

[42] Holcim owns the Buffalo but is selling it to Nagu. The respondents informed the Authority that Holcim had made it clear to them that it wanted to exit the ownership and operation of cement carrier shipping vessels and that it had no wish to continue to manage or otherwise operate the Buffalo.

[43] On 20 June 2025 Holcim entered into a Memorandum of Agreement (MoA) with Nagu for the sale of the Buffalo as an asset only. No terms on the MoA related to the crew of the Buffalo, as the MoA was limited to the purchase of the Buffalo vessel as an asset sale only.

[44] According to the sale agreement the Buffalo was sold free from any previous agreement, contract, obligations, claim, including crew claims. On completion of this sale, the Buffalo will be delivered to Nagu and moved outside New Zealand waters. At that point the Buffalo will cease to operate and MUNZ members who currently work on the Buffalo will be made redundant by Holcim. Matter AEA 3399754 involves claims arising from that scenario.

[45] Although there had initially been some negotiations about Nagu re-chartering the Buffalo back to Holcim for a fixed term time charter from July 2025 until 31 December 2025, that proposal fell away for other commercial reasons, so it is no longer a live option.

[46] At the same time the MoA was entered into, Holcim entered into a GENTIME Charter with Alton for the charter of the Vega for up to three years (the Time Charter). Pursuant to the Time Charter, Holcim will charter the Vega for a limited period to undertake cement carrier operations along the coast of New Zealand.

[47] The Time Charter states it is governed by English law, which will apply to any disputes between Holcim and Alton. However, the Vega is flagged in Panama, so its existing foreign crew is subject to Panamanian law.

[48] There is no provision in the Time Charter requiring Alton to employ the current crew of the Buffalo. Mr di Santillo in his affidavit said no offers of employment had been made to the Buffalo's existing crew and Alton did not intend to make any offers of employment to them. He also said that Holcim had not informed Alton that any of its employees were protected under Part 6A of the Act or had a right to elect transfer to the respondents, to the Vega or to any replacement vessel for the Buffalo.

[49] The Vega is seeking to arrive in New Zealand waters to commence service in mid-November 2025. The Vega is intended to be a transitional vessel for Holcim to use for up to a maximum of three years (two years initially, plus possible renewal for one year).

Flag waiver application

[50] The Time Charter agreement is the subject of a flag waiver application for the Vega made by Nova, on behalf of Alton, under s 198(2) of the of the Maritime Transport Act 1994 (the MTA) to allow it as a non-New Zealand flagged vessel to carry coastal cargo around the New Zealand coast.

[51] The Vega has a peculiar handling system which requires a specialised crew to operate. A temporary flag waiver has been sought for the Vega to avoid the need for it to reflag in New Zealand, and so it can continue to use its existing foreign crew, who are familiar with the handling and operation of the vessel. However, MUNZ's position was that this foreign crew on the Vega would be performing the same work its members currently do on the Buffalo.

[52] If granted on the requested terms, the flag waiver would permit the Vega to operate around New Zealand's coast under the Time Charter to Holcim as a foreign owned and foreign flagged vessel, crewed by foreign nationals, who are subject to seafarer employment agreements with the foreign owner, which were governed under foreign laws. In such circumstances the foreign crew are not subject to New Zealand employment laws, so the Authority would not have jurisdiction over the operation, management, or crewing of the Vega.

[53] It is up to the Minister for Transport to make the decision on the flag waiver application. If the flag waiver is not granted, the Vega will need to comply with the MTA, in which case the current Time Charter would not be able to proceed.

[54] The outcome of the flag waiver application will not affect the sale of the Buffalo, which the Authority was told will proceed anyway, and the vessel will be removed from service, and from New Zealand. Therefore, if a flag waiver is not granted, that decision will only affect the Time Charter agreement that Holcim and Alton have entered into.

Parallel proceedings

[55] MUNZ is the applicant in parallel proceedings (matter AEA 3399764) in which Holcim is the only respondent. This matter involves (among other things) a dispute about whether the two Chief Cooks and two Chief Stewards employed by Holcim to work on the Buffalo are covered by Schedule 1A of the Act.

[56] In that matter MUNZ has sought (among other things):

- (a) A finding the protections of Part 6A of the Act applied to the Chief Cooks and the Chief Stewards who are currently employed by Holcim to work on the Buffalo; and
- (b) A compliance order allowing these four employees a right to elect to transfer to Nova Marine as employees on the same terms and conditions of employment as their existing collective agreement between MUNZ and Holcim.

[57] The respondents in this matter AEA 3410104 are not involved in these parallel proceedings AEA 3399764, so no orders have been sought against them in the matter which is being investigated by another Authority Member.

[58] These parallel proceedings that are being dealt with by another Authority Member have been set down for a substantive investigation meeting on 6 and 7 November 2025.

The Authority's investigation

[59] By agreement, this removal application was determined 'on the papers', in accordance with a timetable that was agreed by the parties during a Case Management Conference (CMC) held on 3 October 2025.

[60] Subsequent to the CMC, MUNZ lodged an ASoP on 15 October 2025 for AEA 3410024, which is the compliance order application, that joined Alton as the second respondent.

[61] Because Alton is registered in Malta it could not be served by the Authority in the normal way. On 17 October 2025 Russell McVeagh advised it was authorised by Alton to accept service of these proceedings on it by email. Service of the ASoP occurred via email to Alton's counsel on 20 October 2025.

[62] On 21 October 2025 the Authority abridged time for Alton to lodge a statement in reply (SiR) to 24 October 2025. Alton was also given until 28 October 2025 to lodge affidavit(s) and submissions on the removal and stay applications and on jurisdiction issues.

[63] Mr Grant Williams, Union Secretary of MUNZ, lodged an affidavit for MUNZ.

[64] Mr Salvatore Pugliese, Nova Marine's Chief Operating Officer, was authorised by Nova and Nova Marine to lodge an affidavit in support of Nova.

[65] Mr Antonio Romeo di Santillo, Nova's Chartering Manager lodged an affidavit on behalf of Alton. Mr di Santillo agreed with the contents of Mr Pugliese's affidavit.

[66] All parties lodged written submissions. Alton said it relied on the submissions Nova lodged on 14 October 2025 as well as the supplementary submissions it lodged on behalf of both respondents on 28 October 2025.

[67] The Authority posed a number of questions that arose from the parties' affidavits and submissions to the parties who responded over the period 28 to 31 October 2025.

Relevant law

[68] Section 178 of the Act deals with removal of matters from the Authority to the Employment Court to hear and determine without the Authority first investigating the claims. Section 178(2) of the Act sets out four possible grounds for removal, namely:

- (a) An important question of law is likely to arise other than incidentally;³
- (b) The case is of such nature and of such urgency that it is in the public interest that it be removed immediately to the Court;⁴
- (c) The Court already has proceedings before it between the same parties which involve the same or similar or related issues;⁵
- (d) The Authority believes that in all the circumstances the Court should determine the matter.⁶

[69] The Court of Appeal in *A Labour Inspector v Gill Pizza Ltd & Others* recognised that removal under s 178(1) of the Act is “contemplated in relatively limited circumstances, with particular caution expected in cases that have not been fully investigated by the Authority”.⁷ However, that statement did not apply an additional gloss to s 178 of the Act, which expressly recognised that removal to the Employment Court in the first instance would be appropriate for some cases.⁸

[70] The Employment Court in *Jackson v The Aorere College Board of Trustees* recognised that the Act “generally requires proceedings to be filed in the Authority, and for matters to be dealt with in that forum with rights of challenge to the Court”.⁹ However, the Act recognises there will be some limited circumstances where matters may be appropriately removed to the Court in the first instance. Those circumstances are identified in s 178(2) of the Act.

[71] At least one of the four possible grounds of removal must be met before the Authority may remove a matter to the Court. Once the removal criteria have been met,

³ Section 178(2)(a) of the Act.

⁴ Section 178(2)(b) of the Act.

⁵ Section 178(2)(c) of the Act.

⁶ Section 178(2)(d) of the Act.

⁷ *A Labour Inspector v Gill Pizza Ltd & Ors* [2021] NZCA 192.

⁸ *Pilgrim v Overseeing Shepherd* [2024] NZEmpC 146.

⁹ *Jackson v The Aorere College Board of Trustees* [2021] NZEmpC 109.

the Authority must exercise its residual discretion by considering whether there may be good and sufficient reason not to remove the particular matter, despite the establishment of one or more of the grounds for removal in s 178(2) of the Act.¹⁰

[72] There is no presumption either way for or against removal once a ground for removal has been established.¹¹ The Authority therefore retains a residual discretion to decline removal, even if one or more of the s 178(2) grounds for removal have been established.

Issues

[73] The following issues are to be determined:

- (a) Should the removal application be stayed?
- (b) Does the Authority have jurisdiction over the parties in these proceedings?
- (c) Is an important question of law likely to arise in the matter other than incidentally?
- (d) Is this case of such a nature and of such urgency that it is in the public interest that it be removed immediately to the court?
- (e) If any of the grounds for removal in s 178(2) of the Act been established, should the Authority exercise its discretion not to remove this matter to the Court?
- (f) What costs should be awarded?

Should the removal application be stayed?

The stay application

[74] Nova and Alton sought a stay of MUNZ's removal and compliance order applications on the basis that:

- (a) The parallel proceedings in AEA 3399764 had to be determined before these proceedings are progressed.

¹⁰ *Auckland District Health Board v X (No 2)* [2005] ERNZ 551, at [29]-[31].

¹¹ *Johnston v Fletcher Construction Company Ltd* [2017] NZCA 192.

- (b) If the Authority's substantive determination in AEA 3399764 concluded Part 6A did not apply to MUNZ's four members, then that finding would be determinative of MUNZ's compliance order application in AEA 3410024.
- (c) If granted on the requested terms, the outcome of the flag waiver application under s 198(2) of the of the MTA would exclude the Authority's and Employment Court's jurisdiction over the respondents.

MUNZ's position

[75] MUNZ opposed the respondents' stay application.

[76] MUNZ has been granted urgency, so it wanted to get this matter in front of the Employment Court before its members were made redundant. MUNZ was concerned that if that did not occur, then its members' challenge rights would effectively be rendered nugatory.

[77] MUNZ said that because its compliance order application was urgent, this removal application had to be determined as soon as possible so the underlying matter could be progressed.

Outcome of the stay application

[78] Normally in such circumstances this matter would have been stayed. However, the grant of urgency made a stay inappropriate for this particular case.

[79] Because this removal application had been granted urgency the Authority has an obligation to move it forward in an efficient manner, making it inappropriate to impose a stay of uncertain duration.

[80] That substantive investigation meeting (IM) for AEA 3399764 is on 6 and 7 November 2025. Assuming submissions are presented during the IM the determination could be issued up to three months after that, i.e. by 8 February 2026. If submissions are presented after the IM, then the determination could be issued up to three months after the last information or submissions was received by the Authority. The date that the substantive determination in AEA 3399764 will be released was therefore unknown.

[81] The Christmas closedown, annual holidays and other potentially as yet unknown factors, could also potentially delay the issuing of the *MUNZ v Holcim*

substantive determination in the parallel proceedings. Issuing a stay of both of MUNZ's matters involving these respondents, pending the determination of AEA 3399764, was therefore considered undesirable.

[82] The respondents were unable to advise the Authority when the outcome of the flag waiver application will be known. There was no statutory timeframe for a decision on it to be made and the Minister for Transport (the Minister) has not indicated when the outcome of the application will be available. It was not appropriate to issue a stay when the duration of a stay linked to the outcome of the flag waiver was so uncertain.

[83] However, if the Minister provides a specific date by when the outcome of the flag waiver application will be known, then the Authority is prepared to revisit the issue of whether MUNZ's compliance order application should be stayed.

[84] Having been granted urgency, MUNZ is entitled to have a removal determination issued without delay. Accordingly, the respondents' stay application did not succeed.

Does the Authority have jurisdiction over the parties in these proceedings?

[85] Nova is registered in Bermuda. Alton is registered in Malta. Neither of the respondents are currently operating in New Zealand or around the coast of New Zealand. Nova has no plans to do so. Alton may do so by way of its ownership and operation of the Vega, if the flag waiver application is granted by the Minister on the requested terms, provided the Vega remained the replacement vessel for the Buffalo.

[86] Alton told the Authority that if the flag waiver application succeeded as requested, the Vega would not be subject to the jurisdiction of the Authority or Employment Court regarding the operation, management and crewing of the Vega, because it would remain flagged in Panama, which meant Panamanian law applied to the vessel and its crew.

[87] The respondents submitted that the imposition by the Authority or Court of the Act on a foreign flagged vessel would conflict with New Zealand's obligations under international law. Unlike the Fisheries Act 1996, the MTA did not incorporate certain minimum standards or confer jurisdiction on the Authority or Employment Court.

Maritime law

[88] New Zealand is a signatory to the United Nations Convention on the Law of the Sea (UNCLOS), which is given effect in New Zealand by The United Nations Convention on the Law of the Sea 1996. Under Article 94 of UNCLOS, a Flag State has exclusive jurisdiction over ships flying its flag, including matters related to labour conditions, crewing, and social issues.¹²

[89] The respondents therefore said that the Flag State's exclusive jurisdiction will apply to all aspects of the vessel's operation, whether the vessel is operating on the high seas, or operating within a country's Exclusive Economic Zone (EEZ), which is the coastal area 200 nautical miles from the Coastal State.

[90] Like New Zealand is, Panama is also a signatory to the Maritime Labour Convention which came into force on 9 March 2016 (the MLC).¹³ The minimum employment standards in the MLC therefore applied to the employment of the Vega's crew. The respondents therefore said that New Zealand is only able to exercise operational control over foreign flagged vessels within its EEZ that sought access to the marine resources in the EEZ, or that sought to carry coastal cargo under the provisions of s 198 of the MTA.

[91] Accordingly, the respondents said that the Coastal State's jurisdiction is limited to only how foreign flagged vessels can access marine resources in the EEZ, and did not extend to the management or operation of the vessel itself. That lack of jurisdiction therefore applied to the employment agreements of foreign crew, unless specifically provided for in legislation, such as the Fisheries (Foreign Charter Vessels and Other matters) Amendments Act 2014.

[92] The Authority was informed by the respondents that it is well established that this exclusive jurisdiction extends to the employment of seafarers, meaning that the Flag State's laws govern the terms of employment, discipline, and welfare of seafarers on board its vessels, including when those vessels operate in international waters (i.e. beyond 200 nm) or in the waters of a Coastal State.

¹² Article 94(1) states: "Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag".

¹³ Maritime Labour Convention, 2006 2955 UNTS 499 (opened for signature 23 February 2006, entered into force 20 August 2013).

[93] Section 198(1) of the MTA makes it clear that where a foreign owned and flagged vessel wants to carry coastal cargo, it may do so under a demise charter to a New Zealand based operator that employs the crew under an employment agreement that is governed by New Zealand law.

[94] Section 198(1)(b) of the MTA would therefore apply to the Vega if it had a demise charter with Holcim, but it does not.

[95] Section 198(2) of the MTA provides that a foreign-flagged vessel (such as the Vega), may operate in New Zealand's coastal waters with a foreign crew who are not subject to New Zealand employment agreements if the Minister has granted a flag waiver that permits that to occur. In which case, the foreign crew would remain subject to the employment law that applies in the State the vessel is flagged to.

[96] Alton owns the Vega, so Alton is the legal entity that employs the Vega's current foreign crew. The respondents said that the current Vega crew are employees, not independent contractors. The current foreign crew's employment agreements are governed by Panamanian law, because that the law of the Vega's Flag State, which is Panama.

[97] Under s 198(2) of the MTA, the Minister has a wide discretion to authorise a foreign flagged vessel (such as the Vega) to operate around the New Zealand coast on any conditions the Minister considers appropriate.

[98] The flag waiver application the respondents have made requested authorisation from the Minister for the foreign-flagged Vega to operate around New Zealand's coast with its current foreign crew, who would remain on their Panamanian employment agreements, and therefore continue to be governed by Panamanian employment law, not New Zealand employment law.

[99] Because the Minister has such a broad discretion under s 198(2) of the MTA the flag waiver application could potentially be granted, but not on the requested terms. Any flag waiver that was granted could also be made subject to any conditions, including those that are as yet unknown.

[100] Therefore, whether the Vega and/or its current or future crew are subject to, or exempt from, the Act could potentially be affected by the outcome of the flag waiver application pursuant to s 198(2) in the MTA. Because the Minister has such a wide

discretion under s 198(2) of the MTA, what if any conditions may be associated with any flag waiver that was granted is an as yet unknown variable that will materially affect MUNZ's compliance order application.

[101] In 2016 New Zealand ratified the International Labour Organisation's Merchant Shipping (Minimum Standards) Convention which came into force on 20 August 2013 (the Convention). The Convention is an international treaty that sets out minimum standards for health, safety and welfare of seafarers in areas that include (but are not limited to) conditions of employment, accommodation and crewing levels.¹⁴

[102] The respondents said that these provisions are now universally incorporated within the MLC.¹⁵ Article 5 of the MLC provides that the Flag State of a ship has exclusive jurisdiction over the recruitment of seafarers, and the governance of their employment standards. The only authority other members, including the Port State have, is to ensure that the minimum labour standards are met.

[103] As a signatory to the MLC and the Tokyo Memorandum of Understanding (the Tokyo MoU) on Port State control, New Zealand through Maritime New Zealand has authority to inspect foreign commercial ships that enter New Zealand ports to verify compliance with MLC standards.

[104] The respondents said that New Zealand's jurisdiction is limited to the inspection of vessels that enter its ports to ensure international minimum employment standards are met on foreign flagged ships. The Flag State of the ship (which in the Vega's case is Panama) has almost exclusive jurisdiction over internal shipboard discipline and labour conditions.

[105] The respondents said that these obligations are reflected in Part 52 of the Maritime Rules of New Zealand, which are made by the Minister for Transport pursuant to section 36 of the Maritime Transport Act.¹⁶ Under Rule 52.20, the only exclusion to the application of the Convention is to that of fishing vessels. Therefore, the respondents said the MLC applies to the Vega, because it is not a fishing vessel.

¹⁴ Maritime New Zealand, "Maritime Labour Convention", n.d.

¹⁵ Maritime Labour Convention, 2006 2955 UNTS 499 (opened for signature 23 February 2006, entered into force 20 August 2013).

¹⁶ Maritime Rules, "Part 52: Maritime Labour Convention", 31 March 2021.

Jurisdiction over Nova

[106] Nova said it was not the correct entity in MUNZ's proceedings. The Buffalo is being sold to Nagu, and Alton owns the intended replacement vessel, the Vega.

[107] The Time Charter and MoA for the sale of the Buffalo are stated to be governed by English law, not New Zealand law. The Act does not apply to the Vega because it is a foreign flagged vessel which is currently outside New Zealand waters.

[108] Mr Williams in his affidavit said Nova had purchased the Buffalo. That was incorrect. He also said that Nova would be providing a replacement vessel for the Buffalo, which was also incorrect. Mr Williams said that Nova would be taking the Buffalo overseas, but that was not factually correct, as Nagu would be doing that.

[109] MUNZ submitted both respondents had a contract with Holcim to perform the coastal shipping route that is currently operated by the Buffalo. However, that submission was contrary to the evidence provided to the Authority. No contract with Nova has been produced. Mr Pugliese in his affidavit said that it was Nagu that had a contract with Holcim to purchase the Buffalo, not Nova and that it was Alton, not Nova), that would charter the Vega to Holcim as a replacement vessel for the Buffalo.

[110] Although Nova made the flag waiver application, it was clear in the application documentation that it had been made by Nova on behalf of its subsidiary Alton. The application recorded that Alton (not Nova) would be operating the Vega along the New Zealand coast, if the flag waiver was granted on the requested terms, to replace the Buffalo.

[111] The Authority does not have jurisdiction over the Nova, so it should not be a respondent in MUNZ's proceedings.

[112] Nova was not named in the bargaining notice. Nova is not the entity that purchased the Buffalo. Nova is not providing a replacement vessel for the Buffalo. Nova has no contractual arrangement with Holcim or with MUNZ's members. Nova had no prior, or mutually intended future, employment relationship with MUNZ's members. Nova is therefore, in contractual and statutory terms, legally a stranger to MUNZ and its members.

[113] Section 40(1)(a) of the Act provides that bargaining can be initiated between one or more unions and an employer. Section 41 of the Act provides that bargaining can be initiated where there is no applicable collective agreement in force between a union and employer.

[114] Collective bargaining only requires two employees to be members of the union that seeks to bargain. MUNZ said it met that requirement because four of its members fell within the categories of employees listed in Schedule 1A of the Act, so those four employees had a right under Part 6A of the Act to elect to transfer to the new employer on their existing terms and conditions.

[115] MUNZ's position was that even though the respondents had not offered MUNZ's members employment and did not intend to do so, Part 6A of the Act had nevertheless created the required 'intended employer' status for these two respondents, for the purposes of initiating a valid bargaining notice under s 42 of the Act.

[116] MUNZ's submission about that was not accepted in so far as Nova was concerned. Nova is not an employer within the extended definition of "employer" that applies under s 42 of the Act. Regardless of whether Part 6A was found to have applied to MUNZ members in matter AEA 3399764, Nova will not be doing any of the work these MUNZ members are currently performing on the Buffalo, because Nova does not own or operate the Buffalo's intended replacement vessel, which is currently the Vega.

[117] The Authority therefore does not have jurisdiction over the claims MUNZ has made against Nova in AEA 3410024 or in this matter AEA 3410104.

[118] Nova cannot be ordered to comply with the bargaining notice dated 26 August 2025 (which is what MUNZ has claimed in AEA 3410024) because it is not named in it. The bargaining notice in so far as it relates to Nova was also invalid, because Nova was not an intended party to the new collective agreement, as required by s 42(1)(b) of the Act.

[119] Even if Nova had been named in the bargaining notice dated 26 August 2025, the facts currently before the Authority established that Nova was still not "an employer" within the extended definition of employer applied by the full Employment Court in the *High Performance Sport New Zealand Ltd v The Athletes' Cooperative Inc*

and the Employment Court *MUNZ v Vete & Ors and China Navigation Company PTE Ltd* cases.¹⁷

[120] The evidence that has been produced to the Authority to date established that Nova does not own, and is not operating, any vessel that MUNZ's members could potentially have had a right to elect to transfer to work on.

[121] Accordingly, the Nova should not be a respondent in these proceedings.

Jurisdiction over Alton

[122] The respondents said the Authority may not have jurisdiction over Alton, depending on the determination of the Part 6A claim in AEA 3399764 and the outcome of the flag waiver application. MUNZ disputed that, and maintained the Authority had jurisdiction because the protections in Part 6A of the Act applied regardless, of any exemption that was provided by the Minister for Transport pursuant to s 198(2) of the MTA.

[123] The Authority has insufficient evidence available at this stage in its investigation of this 'on the papers' removal application to be able to determine whether Alton is a prospective employer of any of MUNZ's members. Because Alton was not named in the bargaining notice, and the Vega is not the subject of a demise charter, jurisdiction looked questionable.

[124] However, this removal application requires an urgent determination which has to be based on the currently available evidence and information. To enable that to occur, the Authority will assume for the purposes of this removal application only that it has jurisdiction over Alton, but notes that issue remains unclear and cannot be finally determined at this time, due to the absence of relevant material evidence and information on that point, which is unlikely to be available until the Minister has made a decision on the flag waiver application.

[125] Because this is a developing matter, the Authority is mindful that some of the material facts that currently apply may have changed by the time a substantive investigation meeting is held on MUNZ's compliance order application in AEA 3410024. The Authority will therefore have to determine whether it has jurisdiction

¹⁷ *High Performance Sport NZ Ltd v The Athletes' Cooperative Inc* [2024] NZEmpC 250; and *MUNZ v Vete & Ors and China Navigation PTE Company Ltd* [2016] NZEmpC 111.

over Alton when MUNZ's compliance order application is investigated, although it was anticipated MUNZ's current claims in that application may have changed by then.

[126] It was therefore prudent for the purposes of being able to issue this removal determination, to proceed as if the Authority has jurisdiction over Alton, with the caveat that whether that is the case has not yet been properly tested or determined, and a decision on that issue will be affected by the outcome of the flag waiver application.

[127] It would therefore be of assistance to all involved in these proceedings if the outcome of the s 198(2) of the MTA application was made known as soon as possible, as that is likely to materially affect MUNZ's compliance order application.

Have any of the s 178(2) grounds for removal been established?

Section 178(2)(a) of the Act – is an important question of law likely to arise in this matter other than incidentally?

[128] The notice of removal application MUNZ lodged on 29 September 2025 identified the following question of law:

Whether an employer is obliged to bargain under Part 5 of the Act when there are employees who are entitled to elect to transfer to the new employer.

[129] MUNZ's submissions recorded the important questions of law as:

Whether the obligation to bargain under s 40 of the Act arises when there are employees entitled to transfer to a new employer under Part 6A of the Act.

[130] There are two limbs to the test in s 178(a) of the Act:

- (a) Is an important question of law likely to arise in the matter?
- (b) If so, will the important question of law arise other than incidentally?

[131] Section 178(2) of the Act is couched in speculative terms. It is focused on important questions of law, but "is not restricted to cases which are devoid of factual dispute."¹⁸

[132] The second limb of the test for removal under s 178(2) of the Act does not require there to be an absence of precedential guidance for the determination of the question of law, so there did not need to be an absence of previous authority on the

¹⁸ *Johnston v The Fletcher Construction Company Limited*, above n 11.

question identified. The focus was on whether the question of law arose “other than incidentally”, in the sense of it not being a minor or chance connection.

[133] A question of law will be important if it would be decisive of the case, or an important aspect of it, or it would be strongly influential in terms of the determination of the case, or a material part of it.¹⁹

[134] The Employment Court made the following observation about the ‘important question of law’ ground for removal in *New Zealand Amalgamated Engineering, Printing and Manufacturing Union Inc v Carter Holt Harvey Ltd*:²⁰

The statutory test is not whether there is an unsettled, controversial, or novel point of law. Rather, an important question of law must be shown to be likely to arise in the proceedings other than incidentally. A question of law will be an important question of law if it will be decisive of the case.

[135] A question of law under s 178(2)(a) of the Act did not need to be complex, tricky or novel to warrant being an important question of law.²¹ A question of law would be sufficiently important if the answer to it was likely to be of broad effect or could assume significance in employment law generally. However, the question of law was not required to have an impact beyond the particular parties.²²

[136] The important question of law MUNZ posed assumed that:

- (a) Bargaining with the respondents had been validly initiated by its bargaining notice dated 26 August 2025, when it had not;
- (b) The bargaining notice named the respondents, when it did not;
- (c) It had an employment relationship with Nova, when the currently available evidence established it did not;
- (d) It had an employment relationship with Alton, when that was disputed;
- (e) Its members will be employees of the respondents, when the respondents said no offers of employment had been made and no offers of employment were going to be made;

¹⁹ *LDF v EZC* [2024] NZEmpC 109 at [13].

²⁰ *NZ Amalgamated Printing and Manufacturing Union Inc v Carter Holt Harvey* [2002] 1 ERNZ 74.

²¹ *Auckland District Health Board v X (No 2)*, above n 10.

²² *Johnston v The Fletcher Construction Company Ltd*, above n11.

- (f) There was a sufficient connection between the four members who said Part 6A applied to them and Nova, when the evidence established there was not;
- (g) Four of its members performed work that fell within the services in the specified sectors, facilities or places of work listed in Schedule 1A of the Act, when that was disputed by the respondents;
- (h) The work four members is performing had been “restructured” (by being contracted out), when the respondents and Holcim denied that a contracting out had occurred;
- (i) The respondents were the new employers as defined by s 69D of the Act, when they denied that. No offers of employment had been made or were going to be made by the respondents to MUNZ’s members;
- (j) The definition of “restructuring” in s 69B in the Act included the sale of an asset only, when the asset was not going to be used in New Zealand, which appeared to be incorrect;
- (k) The respondents already employed employees who fell within the coverage clause in the bargaining notice, when the currently available evidence did not establish that;
- (l) Members could elect to transfer their employment to the respondents as the new owner(s) of the Buffalo, when neither respondent had purchased, or owned, that vessel;
- (m) Members could elect to transfer their employment to the new owner of the Buffalo, when that entity was not going to be undertaking any of the work the members were performing for Holcim, because the vessel was going to be taken out of service and removed from New Zealand;
- (n) The charter of the Vega was a demise charter, when it was not. It was a time charter, which has different legal implications;
- (o) The Vega was covered by the bargaining notice dated 26 August 2025, when it was not because it was not a demise charter;
- (p) The members’ work is going to be performed by the owner of the Vega, when that was disputed;

- (q) The requested flag waiver application would be declined by the Minister;
- (r) Holcim is not going to have to enter into a demise charter, as provided for by s 198(1)(b) of the MTA if the flag waiver application did not succeed;
- (s) Even if the flag waiver application was unsuccessful, the Time Charter of the Vega would proceed as currently agreed, when Alton's evidence was that it would not;
- (t) Its Part 6A claim in AEA 3399764 would succeed, when that is not yet known;
- (u) Part 6A of the Act takes precedence over the MLC and MTA, when the respondents disputed that; and
- (v) The Act applied to the respondents and the Vega, when that was disputed.

[137] This list of assumptions inherent in MUNZ's important question of law illustrated that there are a number of disputed material factual matters that arise from MUNZ's compliance order application. It is the assessment of these material facts that will be decisive of the compliance order application.

[138] Accordingly, MUNZ's question of law will not in itself be decisive of the compliance order application. Before considering MUNZ's question of law all of MUNZ's assumptions would have to have been assessed and found to have been correct, and all of the disputed material facts would also have to have been resolved in MUNZ's favour.

[139] To that extent, the compliance order application will turn on the required factual findings rather than on the question of law MUNZ identified. The full Employment Court's decision in *High Performance Sport New Zealand Limited v The Athletes' Co-operative Incorporated* and the Employment Court's decision in *MUNZ v Vete & Ors and The China Navigation Company PTE Ltd* appeared to have answered MUNZ's question of law.

[140] MUNZ's submission that the full Court's decision in *High Performance Sport New Zealand* and the Court's decision in *MUNZ v Vete & Ors and The China*

Navigation Company PTE Ltd appeared to be at odds with one another was not accepted.²³

[141] In *China Navigation*, China Navigation, which is a New Zealand registered Branch of a Singaporean domicile company, had entered into an agreement to purchase the cement carrier MV Golden Bay from Golden Bay Cement (Golden Bay), a division of Fletcher Concrete and Infrastructure Limited.

[142] The MV Golden Bay was then to be retired from service and moved out of New Zealand waters, and China Navigation would bring in another cement carrier, the MV Aotearoa Chief, to operate in New Zealand. The MV Aotearoa Chief would then be chartered back to Golden Bay by China Navigation pursuant to a time charter.

[143] Golden Bay's agreement with China Navigation included a term that China Navigation was required to offer employment on the MV Aotearoa Chief to the employees (involved in those proceedings) who had the required skills and competencies to perform seafarer roles on that vessel.

[144] China Navigation made the required offers of employment conditional on acceptance in writing of the offered individual employment agreements. The employees rejected those offers of individual agreements based on MUNZ's advice. China Navigation then withdrew the individuals offers of employment.

[145] Following this, MUNZ issued a notice initiating collective bargaining with China Navigation for the crew of the MV Golden Bay, in relation to the operation of the MV Aotearoa Chief. China Navigation disputed the validity of the bargaining initiation, arguing that it did not employ any relevant employees at the time.

[146] However, China Navigation had agreed to treat four of Golden Bay's employees undertaking catering work on the MV Golden Bay as if they are so-called vulnerable employees under Part 6A of the Act, even though the Court noted it was arguable whether they strictly qualified for the protections arising from transfers of undertakings under Part 6A of the Act.

²³ *High Performance Sport New Zealand Ltd*; and *The China Navigation Company PTE Ltd*, above n 17.

[147] The Employment Court found that in certain circumstances the definition of employee could be expanded to include a person who "will be" employed by the employer. Bargaining had therefore been validly initiated because:

- (a) The time charter agreement between the parties required China Navigation to make written offers of employment to each of the employees of Golden Bay;²⁴
- (b) China Navigation proceeded to make conditional offers of employment to the crew members;²⁵
- (c) A prospective employment relationship existed because China Navigation, by making offers of employment, and by the obligation to offer employment under the time-charter, intended to employ the employees;²⁶ and
- (d) China Navigation had pre-approved the crew of the MV Golden Bay for employment without the need for them to undertake the assessments required of other applicants.²⁷

[148] It is clear from the Court's decision how decisive the facts were in the *China Navigation* case, even though that case had focused on whether China Navigation's 'take-it-or-leave-it' offer of conditional employment amounted to an unlawful lockout of the Golden Bay employees.

[149] The Court in *China Navigation* applied an extended definition to the words "employee" and "employer" in s 82 of the Act, to which include "a prospective employee and a prospective employee". It is that same extended definition of "employer" that was applied by the Court in *China Navigation* is relied on by MUNZ for its compliance order application.

[150] The fact scenario in *China Navigation* materially differs from that associated with the respondents in this matter.

²⁴ *China Navigation*, above n 17 at [4].

²⁵ *China Navigation*, above n 17 at [5] and [76].

²⁶ *China Navigation*, above n 17 at [46] to [49].

²⁷ *China Navigation*, above n 76 at [70].

[151] The Court in *China Navigation* concluded that MUNZ had lawfully initiated bargaining and that the parties were currently in collective bargaining. The Court also confirmed that the extended definition of employee and employer applied to statutory provisions affecting the initiation and conduct of collective bargaining.²⁸

[152] Section 40(1)(a) of the Act included allowed for collective bargaining to be initiated by one union with one employer provided the entity that was the intended employer met the definition of “employer”, which included a “prospective employer”.

[153] Section 6(2) of the Act requires the Authority and Court to determine the real nature of the relationship between the parties to determine whether “a person is employed by another person under a contract of service...”. That requires an intensely factual inquiry, whilst recognising that the categories of employee are broader for the purposes of s 40 in the Act than for s 6 in the Act.

[154] In the case of *High Performance Sport*, the full Employment Court found that an employment relationship must exist for collective bargaining to be initiated and that there can only be such a relationship when union members are employed or are seeking employment by the intended employer.

[155] While engaged in some form of relationship with High Performance Sport, the Court found that The Athletes’ Cooperative Inc (TAC) union members were not sufficiently connected to High Performance Sport NZ Ltd to make it a prospective or intended employer. The Court held that persons seeking employment could be capable of being considered employees where those people were not, in contractual terms, strangers to the employer.²⁹

[156] That contrasted with the position in in *China Navigation*, in which the Employment Court found that a prospective employment relationship had existed as "the new business was replacing an existing business and had indicated that it wished to employ at least some of the previous business' staff".³⁰ In this case, Alton’s evidence was that it will not offer employment to the crew of the Buffalo. It also had no obligation to do so under the Time Charter.

²⁸ *China Navigation*, above n 17 at [182], [129].

²⁹ *High Performance Sport*, above n 17 at [86]

³⁰ *High Performance Sport*, above n 17 at [82].

[157] The Court's decisions in *China Navigation* and *High Performance Sport* do not appear to be conflicting. In *China Navigation*, the Employment Court held that "prospective employers" fall within Part 5 of Act. In that case, then Chief Judge Colgan found that there was a prospective employment relationship between the parties as:³¹

- (a) China Navigation had offered fixed term employment to the present crew for employment on the new vessel; and
- (b) There was a term in the Time Charter which obliged China Navigation to employ the current crew of the old vessel.

[158] In *High Performance Sport*, the Court held that collective bargaining can only be initiated where the employees are not, in contractual terms, strangers to the employer. In that case the full Court said there was no nexus as there was "no prior or mutually intended future employment relationship" between the union and the employer who it had initiated bargaining with, which meant the bargaining had not been validly initiated.³²

[159] In both cases, it was accepted that a prospective employee and a prospective employer can be subject to bargaining obligations. However, whether such a relationship existed involved a factual enquiry.

[160] The Authority was not satisfied that MUNZ's question "Whether the obligation to bargain under s 40 of the Act arises when there are employees entitled to transfer to a new employer under Part 6A of the Act" would be decisive of MUNZ's compliance order application or an important part of it.

[161] MUNZ's compliance order application is going to turn on an assessment of the facts and on whether the respondents are prospective employers, in accordance with the extended definition of employer the Court has said applies to collective bargaining.

[162] Accordingly, the s 178(2)(a) criteria for removal have not been met, so the ground for removal in s 178(2)(a) of the Act has not been established.

³¹ *China Navigation*, above n 17, at [76].

³² *High Performance Sport*, above n 17, at [86].

Section 178(2)(b) of the Act – whether the case was of such a nature and of such urgency that it was in the public interest that it be removed to the Court?

[163] Under s 178(2)(b) of the Act the Authority may remove a matter if it is of such a nature and urgency that it was in the public interest for it to be removed to the Court. Establishing only one element of this test is insufficient, so would not meet this removal criteria. There are two elements to this ground which must both be met, namely:

- (a) The nature of the claims; and
- (b) Urgency.

[164] The nature of a case is in the public interest where it affects the public's rights, and not where the public is merely curious or interested regarding the matter.³³ Mere interest from the public and/or media coverage do not mean that the "public interest" test is necessarily satisfied.³⁴

[165] Whether the urgency criteria had been met required assessment of the particular circumstances of this matter, because a mere delay did not in itself give rise to urgency.³⁵

[166] MUNZ said the four members who believe they are entitled to the protections in Part 6A of the Act want to transfer their employment to Nova on the same terms and conditions they have under the current CA between MUNZ and Holcim.

[167] However, that would be impossible, because Nova has not purchased the Buffalo, and it has not chartered another vessel back to Holcim. Accordingly, Nova cannot be a prospective employer in terms of s 40(1)(a) of the Act, even if it had been named in the bargaining notice (which it had not).

[168] MUNZ said that although these proceedings only directly related to four of MUNZ's members, it expected any bargaining would have coverage comparable to the existing CA with Holcim, and if so, then it would affect approximately twenty MUNZ members.

³³ *Vice-Chancellor of Lincoln University v Stewart* [2008] 8 NZELC 99, at [34] – [35].

³⁴ *Santamaria v Television New Zealand Limited* [2025] NZERA 256, at [44].

³⁵ *Jackson v The Fletcher Construction Company Ltd*, above n9.

[169] Therefore, MUNZ said that while the legal obligation on the respondents to bargain arose from the protection four of its members have, the obligation to bargain was larger than just them, so would end up including more seafarers once the replacement vessel for the Buffalo was in operation.

[170] Mr Williams in his affidavit said MUNZ was concerned its members may be made redundant before they could elect to transfer to the new employer. MUNZ said its members would be prejudiced if they were made redundant before they had an opportunity to be heard, so their claim about having the right to transfer would be ineffective if the compliance order application was not heard urgently.

[171] MUNZ said that the public interest requirement was satisfied, because having New Zealanders being made redundant so a foreign crew could do their work was a matter of public interest. MUNZ submitted it would be contrary to the public interest if the Court was not able to determine the obligation to bargain for an entity that is going to operate on the New Zealand coast.

[172] This case involves two discrete fact scenarios. The first is the asset sale of the Buffalo, which will be removed from New Zealand waters. The second is the Time Charter of a foreign flagged and foreign crewed vessel. While the sale of the Buffalo did not meet the public interest element of this ground of removal, the replacement of the Buffalo with the foreign owned and foreign crewed vessel the Vega (if that is what occurs) would meet the public interest test.

[173] The urgency requirement of this ground for removal was also met. The Buffalo is expected to leave New Zealand in November or December 2025. The current replacement vessel the Vega is due in New Zealand waters in mid-November 2025. The date on which the change in vessels will occur is not yet known but is anticipated to occur within the next month or so. Although no redundancy notices have been issued yet, MUNZ members will only get four weeks' notice of redundancy.

[174] The Authority was satisfied MUNZ's compliance order application was of such a nature and of such urgency that it was in the public interest to remove it to the Employment Court.

[175] Accordingly, the ground for removal in s 178(2)(b) of the Act has been established.

Should the Authority exercise its discretion against removal?

[176] Having concluded that one of the grounds for removal in s 178(2) of the Act had been met, the Authority still had to consider whether to exercise its discretion against removing this matter to the Court. The relevant test was whether there was any good and sufficient reason not to remove this matter to the Court.³⁶

[177] There were good reasons to decline removal of MUNZ's compliance order application, at this time, which have caused the Authority to exercise its discretion against removal. These included:

- (a) The outcome of MUNZ's compliance order application will turn on disputed facts, namely whether there was a prospective employment relationship between the respondents and MUNZ's members. The law to be applied to an assessment of those facts was clear, due to the Employment Court's decisions in *High Performance* and *China Shipping*.
- (b) The sale agreement for the Buffalo established that Holcim has not sold any of its business to the purchaser of that vessel, which is Nagu. The sale of the Buffalo was an asset sale only and the vessel will be removed from New Zealand waters once the sale has been completed. Therefore, Nagu will not be performing any of the work MUNZ members are currently doing on the Buffalo. Nagu is not a respondent in any of MUNZ's Authority proceedings which are related to the Buffalo.
- (c) The s 69C(2)(a) definition of "contracting out" in the Act did not apply to this matter because, after the Buffalo had been sold, Nagu was not going to be performing any work for Holcim.
- (d) The Part 6A protections in the Act did not cover an asset sale only where the purchaser of the asset would not be performing any work protected employees were doing or had been doing for their original employer.
- (e) The respondents were not named in the bargaining notice dated 26 August 2025. Therefore, based on the current bargaining notice,

³⁶ *Auckland District Health Board v X (No 2)*, above n10.

MUNZ's underlying compliance order application against the respondents could not succeed.

- (f) The Authority could not order the respondents to comply with the bargaining notice dated 26 August 2025 as it did not name them, meaning these respondents were not identified in the bargaining notice as "intended parties", as required by s 42(2)(b) of the Act.
- (g) The disputed application of Part 6A in the Act to four of MUNZ's members is under investigation by another Authority Member in parallel proceedings, and that matter has not been subject to a removal application.
- (h) Even if MUNZ succeeded in the parallel proceedings AEA 3399764, and Part 6A was found to apply to four union members, that would not affect the compliance order application in AEA 3410024, because the orders MUNZ sought in AEA 3399764 were against Nova Marine, not the respondents in this matter.
- (i) The outcome of the flag waiver application is not yet known, but if it was granted on the requested terms then the Authority and Court would not have jurisdiction over the operation and crewing of the Vega, which is intended to be the Buffalo's replacement vessel. Because the Vega is flagged in Panama, if a flag waiver is granted on the requested terms, then then Vega's existing crew will remain subject to Panamanian law.
- (j) This removal application appears to have been premature, as jurisdiction will likely be affected by the outcome of the flag waiver and the bargaining notice does not align with the orders requested in the compliance order application.
- (k) It was preferable for the Authority to retain AEA 3410024 until the outcome of MUNZ's Part 6A claims in AEA 3399764 and of the respondent's flag waiver application were known as both these matters appeared to still be in a state of developing material facts.
- (l) If the flag waiver is declined, the Time Charter will not proceed as it currently stands, and new contractual arrangements would need to be made. Accordingly, the factual basis for the compliance order application is still not yet known and could possibly change over the next

few weeks. It was undesirable to remove the matter to the Court in such circumstances, as the Authority has unique investigative powers that could be of assistance to the parties in a rapidly evolving situation.

- (m) Because MUNZ objected to the stay application, it has been necessary to determine this removal application before the additional relevant information that will affect the compliance order application has become available. It was therefore preferable for the Authority to keep the compliance order application while those issues were still being worked through.
- (n) The Authority considered it undesirable to remove this matter to the Court while so many material facts, including those affecting jurisdiction, were unknown, given the Authority's intended role as a primary fact-finding institution. At this stage, MUNZ's compliance order application appears to be best suited to the Authority's investigative processes rather than the Court's more adversarial process.
- (o) MUNZ has not formulated its claims in AEA 3410024 in a way that would facilitate removal to the Court as, based on the currently available information and how the compliance order application is drafted, the requested compliance order could not currently succeed against these respondents. It would therefore be inappropriate to remove it to the Court in such circumstances.

[178] Having exercised its discretion to decline removal, the Authority intends to offer MUNZ a substantive in-person investigation meeting in November 2025 on its compliance order application, with a view to providing the parties with a prompt substantive determination of the matter it had sought removal of.

Outcome

[179] MUNZ's removal application did not succeed. MUNZ's compliance order application in matter AEA 3410024 should, at this stage in the proceedings, be determined by the Authority in the first instance.

[180] Accordingly, matter AEA 3410024 is not to be removed to the Employment Court.

What costs should be awarded?

[181] The parties confirmed to the Authority that the notional daily tariff for a half day investigation meeting should apply to this matter.

[182] The respondents as the successful parties are entitled to a contribution towards their legal costs. Because the matter effectively involved half a day of investigation meeting time, the notional starting point for assessing costs was \$2,250.00, being half of the current notional one-day tariff of \$4,500.00.

[183] The award of tariff costs of \$2,250.00 is to be apportioned equally between the two respondents. Accordingly, within 28 days of the date of this determination MUNZ is ordered to pay each respondent \$1,125.00 towards their actual legal costs.

Rachel Larmer
Member of the Employment Relations Authority