

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 738  
3371464

BETWEEN	SHIV BHATIA First Applicant
AND	ROBIN DHILLON Second Applicant
AND	SAJAN SINGH Third Applicant
AND	ANIL KUMAR Fourth Applicant
AND	RITESH KHANNA First Respondent
AND	EMAD BIN SAIF Second Respondent
AND	KHANNA ENTERPRISES LIMITED (IN LIQUIDATION) Third Respondent

Member of Authority: Rachel Larmer

Representatives: David Flemming, counsel for the Applicant  
Lawrence Anderson, advocate for the First Respondent  
Chris Patterson, counsel for the Second Respondent  
No Appearance by the Third Respondent

Investigation Meeting: On the papers

Submissions and Other Information Received: 13, 16 and 21 October 2025 from the Applicants  
13 October 2025 from the First Respondent  
14 October 2025 from the Second Respondent

Determination: 17 November 2025

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**DETERMINATION OF THE AUTHORITY**

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## Employment Relationship Problem

### *Removal application*

[1] This matter AEA 3371464 involved an application by Shiv Bhatia, Sajan Singh, Robin Dhillon, and Anil Kumar (the applicants) to remove their claims in matter AEA 3369763 against the respondents, Ritesh Khanna, Emad Bin Saif and Khanna Enterprises Limited (in Liquidation) to the Employment Court in the first instance.

[2] The applicants relied on the following grounds for removal in s 178(2) of the Employment Relations Act 2000 (the Act):

- (a) An important question of law arose other than incidentally;<sup>1</sup>
- (b) The Authority is of the opinion that in all the circumstances the Court should determine the matter.<sup>2</sup>

### *Legal aid*

[3] The applicants are legally aided.

### *The Respondents' position*

[4] Mr Anderson on behalf of the First Respondent said:

- (a) The grounds for removal had not been established.
- (b) Removal “would be a sensible option” if this matter was heard by the Employment Court along with *A Labour Inspector v Top Produce Ltd and Ors*, which the Authority had removed to the Court on 22 September 2025.<sup>3</sup>
- (c) Mr Khanna took a neutral position regarding the removal application.

[5] The Second Respondent opposed removal. He said:

- (a) The matter did not involve an important question of law.

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<sup>1</sup> Section 178(2)(a) of the Act.

<sup>2</sup> Section 178(2)(d) of the Act.

<sup>3</sup> *Labour Inspector v Top Produce Ltd and Ors* [2025] NZERA 587.

- (b) The Court should not determine this matter while the Second Respondent remained a party to these proceedings, as he had not become involved until after the alleged premium had been paid.
- (c) Removing this matter to the Court would “increase and add unnecessary judicial intervention” to the matters involving the Second Respondent.
- (d) Declining removal would meet the s 3 object in the Act, by reducing the need for judicial intervention.
- (e) The Authority has removed the *Top Produce* matter, so there is no need to removal this matter.
- (f) The Authority should wait for the Court’s decision in the *Top Produce* matter.
- (g) The applicants could seek special leave to remove this matter to the Court under s 178(3) of the Act if the Authority declined removal.
- (h) He would take a neutral position if the Authority decided to only remove the employment premium issue to the Court while keeping the other claims before the Authority.

[6] The Third Respondent is in liquidation. The Liquidator gave the applicants permission to continue these proceedings, but said they did not wish to be heard and would abide by the Authority’s decision.

*The substantive claims*

[7] The applicants, who were all working in New Zealand on work visas, sought removal of their claims in AEA 3369763. The substantive matter included claims for:

- (a) Recovery of employment premiums, wage arrears and outstanding holiday pay.
- (b) Alleged breaches of their employment agreements;
- (c) Alleged breaches of the Minimum Wage Act 1983 (the MWA), the Wages Protection Act 1983 (the WPA) and the Holidays Act 2003 (the HA03).
- (d) Unjustified disadvantage and constructive dismissal personal grievance claims.

- (e) Findings that breaches of employment standards had occurred.
- (f) Findings that Mr Khanna and Mr Saif were persons involved in the breaches of employment standards that had occurred.
- (g) Leave to be given to them to personally recover from Mr Khanna and/or Mr Saif any wage arrears or other money that their employer owed them but was unable to pay them.

[8] The First Respondent, Ritesh Khanna, at the material time was the sole director and shareholder of Khanna Enterprises Limited (in Liquidation) (KEL). The Second Respondent, Emad Bin Saif, was the sole director and shareholder of SAS Recruitment Limited (SAS). From August 2023 to November 2024 he was also the sole shareholder in KEL.

[9] KEL went into liquidation on 20 March 2025. SAS was formed in July 2023, and it was removed from the Companies Register on 21 November 2024.

[10] The applicants were initially employed by KEL. After commencing their employment with KEL the applicants were all transferred to SAS. The applicants claim neither entity paid them correctly and they said they are still out of pocket more than two years after leaving their employment.

[11] The applicants claimed they had been required to pay employment premiums of approximately \$40,000.00 each in cash in return for employment by KEL. The applicants claimed that these payments were requested by Mr Khanna and were paid in cash to his parents who lived outside New Zealand.

[12] Mr Khanna and Mr Saif denied all of the applicants' claims. Mr Khanna said the claims involved matters that were KEL's sole responsibility. Mr Saif said the applicants' claims against him were frivolous and vexatious so should be dismissed and he sought costs from the applicants.

[13] The applicants said they were informed on 26 August 2023 of the transfer of their employment from KEL to SAS on their same terms and conditions of employment. However, they were not consulted about the change in employer, nor was their consent to this change in their employer sought or obtained.

[14] The applicants said that when they raised their concerns with Mr Saif, that SAS was not paying them their minimum contracted hours per week or for any hours they

had worked in excess of 30 hours a week, he referred them back to KEL. The applicants said they were then told their employment would be transferred back to KEL.

[15] On 24-25 November 2023 the applicants obtained migrant exploitation work visas, enabling them to leave their employment with the respondents.

### **The Authority's investigation**

[16] By agreement with the parties this removal application was determined 'on the papers'.

[17] The applicants, Mr Khanna and Mr Saif lodged submissions. KEL did not.

### **Relevant law**

[18] 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;<sup>4</sup>
- (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;<sup>5</sup>
- (c) The Court already has proceedings before it between the same parties which involve the same or similar or related issues;<sup>6</sup>
- (d) The Authority believes that in all the circumstances the Court should determine the matter.<sup>7</sup>

[19] 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".<sup>8</sup> However, that statement did not apply an additional

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<sup>4</sup> Section 178(2)(a) of the Act.

<sup>5</sup> Section 178(2)(b) of the Act.

<sup>6</sup> Section 178(2)(c) of the Act.

<sup>7</sup> Section 178(2)(d) of the Act.

<sup>8</sup> *A Labour Inspector v Gill Pizza Ltd & Ors* [2021] NZCA 192.

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.<sup>9</sup>

[20] 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”.<sup>10</sup> 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.

[21] 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, 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.<sup>11</sup>

[22] There is no presumption either way for or against removal once a ground for removal has been established.<sup>12</sup> 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**

[23] The following issues are to be determined:

- (a) Is an important question of law likely to arise in the matter other than incidentally?
- (b) If so, should the Authority exercise its discretion not to remove this matter to the Court?
- (c) What costs and disbursements should be awarded?

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<sup>9</sup> *Pilgrim v Overseeing Shepherd* [2024] NZEmpC 146.

<sup>10</sup> *Jackson v The Aorere College Board of Trustees* [2021] NZEmpC 109.

<sup>11</sup> *Auckland District Health Board v X (No 2)* [2005] ERNZ 551, at [29]-[31].

<sup>12</sup> *Johnston v Fletcher Construction Company Ltd* [2017] NZCA 192.

[24] The ground for removal in s 178(2)(d) of the Act ground is not relevant, so did not need to be considered as an issue to be determined. Section 178(2)(d) in the Act is a ground the Authority may use if it considered removal was appropriate. On its own initiative. This removal application was initiated by the applicants, not the Authority.

**Is an important question of law likely to arise in the matter other than incidentally?**

[25] The removal application said the important question of law that arose in this matter other than incidentally:

Whether a premium for employment, paid outside of New Zealand, but in respect of a role with a specific New Zealand employer, can be recovered through the New Zealand employment institutions.

[26] 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?

[27] 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.”<sup>13</sup>

[28] 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 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.

[29] 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.<sup>14</sup>

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<sup>13</sup> *Johnston v The Fletcher Construction Company Limited*, above n12.

<sup>14</sup> *LDF v EZC* [2024] NZEmpC 109 at [13].

[30] 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*:<sup>15</sup>

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.

[31] 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.<sup>16</sup> 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.<sup>17</sup>

[32] In *Mehta v Elliott (Labour Inspector)* the Employment Court found that the New Zealand employment institutions lacked jurisdiction to deal with claims relating to a premium for employment that was paid overseas.<sup>18</sup> The Court considered it was unsatisfactory that s 12A of the WPA was unenforceable for payments paid overseas, but considered that was a matter for Parliament to address.

[33] In *A Labour Inspector v New Zealand Fusion International Limited* the Labour Inspectorate did not seek penalties for, or recovery of, premiums paid in China. The Chief Judge of the Employment Court questioned whether the *Mehta* decision should still be seen as creating an impediment to recovery of premiums paid overseas in light of subsequent developments in the law, and said:<sup>19</sup>

[*Mehta*] was viewed as preventing recovery action for a bond paid out of the jurisdiction. I am not sure that it is the impediment the Labour Inspector perceives.

[34] The Chief Judge also commented that it would be desirable for this issue to be considered “likely before a full Court and against the background of comprehensive legal argument.”<sup>20</sup> That has not yet occurred.

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<sup>15</sup> *NZ Amalgamated Printing and Manufacturing Union Inc v Carter Holt Harvey* [2002] 1 ERNZ 74.

<sup>16</sup> *Auckland District Health Board v X (No 2)*, above n11.

<sup>17</sup> *Johnston v The Fletcher Construction Company Ltd*, above n12.

<sup>18</sup> *Mehta v Elliott* [2003] 1 ERNZ 451.

<sup>19</sup> *LI v Fusion International Ltd* [[2019] NZEmpC 181 at [59].

<sup>20</sup> *Fusion*, above n18 at [60].

[35] In a determination dated 9 January 2025, the Authority in *Singh v Dharma Services Limited & Ors* declined to refer a question of law under s 177 of the Act to the Court for its opinion, on the grounds s 177 of the Act did not apply to that application.<sup>21</sup> The proposed question to be referred was stated as follows:

Whether s 12A of the Wages Protection Act 1983 apply to premiums requested ad/or paid outside New Zealand, where the premium is paid in respect of employment to be performed in New Zealand.

[36] The Authority in *Singh* considered whether removal should occur under s 178(2) of the Act should occur, but was not persuaded an important question of law arose in that matter, as the applicant could distinguish his case from the facts in *Mehta*.

[37] In a determination dated 22 September 2025, the Authority removed *A Labour Inspector v Top Produce Limited & Ors* to the Court on the grounds the following question of law met the s178(2) test for removal in the Act:<sup>22</sup>

Does s12A of the WPA apply in respect of a premium sought or received by an employer (prospective or otherwise), or a personal 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?

[38] Even though the respondents in *Top Produce* opposed removal, the Authority was satisfied that an important question of law arose other than incidentally in that matter and that the matter should be heard by the Court in the first instance.

[39] The Authority was satisfied that question posed by the applicants in this matter is an important question of law which is of general public importance, and which will likely be decisive of the applicants' premium recovery claims.

[40] The outcome will affect not just these applicants but other migrant workers who have been required to pay premiums before coming to New Zealand. It also affects the Labour Inspectorate who investigates premium claims, Immigration New Zealand which receives complaints about migrant exploitation arising from (among other things) the payment of premiums and the employment institutions generally.

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<sup>21</sup> *Singh v Dharma Services Ltd & Ors* [2025] NZERA 5.

<sup>22</sup> *Top Produce*, above n3.

[41] The applicants' employment problems and associated claims arose in 2023, so they said they have been deprived of money they should have been paid or refunded since then. They are entitled to a final determination of their employment relationship problems in a timely and efficient manner, which is best achieved by removing this matter to the Court.

[42] Further delaying this matter pending the outcome of the *Top Produce* matter was not considered appropriate. Removing this matter will give the Court the opportunity to consider whether it wanted to hear both matters together or consecutively.

[43] The *Top Produce* matter could settle, be withdrawn or it could end up being put on hold delayed for as yet unknown reasons. Removing this matter will therefore allow these applicants to be confident their specific issues will be dealt with by the Court regardless of what happens with the *Top Produce* case.

[44] A referral of a question of law under s177 of the Act was not appropriate, as the Court will be best served by having all relevant information available to it.

[45] The Authority is receiving an increasing number of claims which allege an employment premium has been paid outside of New Zealand for employment in New Zealand. The important question of law posed by the applicants in this matter is arising with increasing regularity, so there is considerable merit in the Employment Court being able to provide its view of the legal position post its *Mehta* decision.

[46] Accordingly, the criteria in s 178(2)(a) of the Act for removal has been met.

### **Should the Authority exercise its discretion against removal?**

[47] 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.<sup>23</sup>

[48] There were no good or sufficient reasons to decline removal.

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<sup>23</sup> *Auckland District Health Board v X (No 2)*, above n 11.

## **Outcome**

[49] The applicants' removal application succeeded. Accordingly, matter AEA 3369763 is to be removed to the Employment Court in the first instance.

### **What costs should be awarded?**

[50] The applicants as the successful parties are entitled to a contribution towards their actual legal costs and to reimbursement of their removal application filing fee.

[51] 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. Those tariff costs are then to be apportioned equally between each applicant.

[52] The applicants are also entitled to each recover a quarter of the removal filing fee of \$153.33.

[53] The award of tariff costs of \$2,250.00 is to be apportioned equally between the two respondents who opposed removal. Accordingly, within 28 days of the date of this determination:

- (a) Mr Khanna is ordered to pay each of the applicants \$319.58, consisting of \$281.25 towards their legal fees plus \$38.33 to reimburse their share of the removal filing fee.
- (b) Mr Saif is ordered to pay each of the applicants \$319.58, consisting of \$281.25 towards their legal fees plus \$38.33 to reimburse their share of the removal filing fee.

Rachel Larmer  
Member of the Employment Relations Authority