NOTE: This determination contains an order prohibiting publication of certain information

IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON

I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE

[2025] NZERA 795
3413884

	BETWEEN	FIRE AND EMERGENCY NEW ZEALAND Applicant
	AND	YQL Respondent

Member of Authority:	Alyn Higgins
Representatives:	Paul McBride, counsel for the Applicant Ashleigh Fechney, advocate for the Respondent
Investigation Meeting:	On the papers
Submissions received:	5, 19 and 25 November 2025 from the Applicant 14 and 25 November 2025 from the Respondent
Determination:	8 December 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] YQL[1] is an employee of Fire and Emergency New Zealand (FENZ).

[1] referred to by randomly chosen letters in accordance with an interim non-publication order granted in *YQL v Fire and Emergency New Zealand* [2025] NZERA 526

[2] By way of brief background, following a successful recruitment process YQL (who was an existing FENZ employee) was offered a new role as Group Manager, which YQL accepted on 13 January 2025 and commenced on 10 February 2025.

[3] On 27 January YQL was informed that FENZ had received two review of appointment requests. A review then commenced on 12 February 2025. On 29 April 2025 YQL was advised by FENZ that the review was complete, and the review complaints were not upheld but the new Group Manager role had not been formally established.

[4] YQL received a letter from the FENZ Chief Executive dated 2 May 2025 stating that, while the recruitment process had been completed correctly, YQL would not be confirmed in the role and a new business case for the role would need to be presented and, if approved, the role would then be advertised. YQL was also advised that they would transition back to the role YQL held prior to the Group Manager role.

[5] YQL claims that FENZ's actions constitute an unjustifiable disadvantage and seeks reinstatement to the Group Manager role.

[6] In a determination dated 27 August 2025[2], the Authority issued a preliminary determination that YQL's employment relationship problem is a personal grievance under s 103(1)(b) of the Employment Relations Act 2000 ("the Act") and not a dispute (as FENZ had claimed). As a result, the Authority held that the matter is not excluded under s103(3) of the Act. YQL also sought (and was granted in the same determination) interim reinstatement under s 127 of the Act. That determination was not challenged to the Court. The parties were subsequently directed to mediation but to date have been unable to resolve the problem.

[7] By application dated 9 October 2025, FENZ made an application to the Authority that the substantive matter be removed to the Employment Court for determination pursuant to s 178 (2) of the Act. This determination only deals with whether the substantive personal grievance matter should be removed to the Court for determination.

[8] FENZ's grounds for removal are:

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[2] *YQL v Fire and Emergency New Zealand* [2025] NZERA 526

(a) Important questions of law are likely to arise in the matter other than incidentally, namely the effect of the Fire and Emergency New Zealand Act 2017 ("FENZ Act") on employment including:

(i) The effect of failure of preconditions to employment, as required by the FENZ Act;

(ii) The effect of purported actions under the FENZ Act, absent the required delegated authority of the Board, under the FENZ Act, to act in that way;

(iii) Whether compliance with the FENZ Act in forming employment is simply a technical flaw, or rendered purported appointment invalid;

(iv) The proper decision making ambit of the Chief Executive of FENZ, under s 29 of the FENZ Act, when a matter comes before him including whether it was open to him to consider that the purported vacancy and purported appointment were void ab initio;

(v) The effects of ongoing employment and dispute about the applicant's employment rights, relative to s 103(3) of the Employment Relations Act.

(b) Determination of the matters in their proper public law context under the FENZ Act is in the public interest; and

(c) Urgent disposal is required given the expenditure of public funds absent a statutory basis and YQL's liability for damages continues to accrue.

[9] YQL objects to the removal and the grounds of that objection are as follows:

(a) There are no important questions of law that are likely to arise other than incidentally; and

(b) The case is not of such a nature and of such urgency that it is in the public interest that it be removed immediately to the Court.

Issues

[10] The following issues are to be determined:

(a) Is an important question of law likely to arise in the matter other than incidentally? or

(b) Is the case of such a nature and of such urgency that it is in the public interest that it be removed immediately to the Court; and

(c) If so, should the Authority exercise its discretion not to remove this matter to the Court?

The Authority's investigation

[11] By agreement, this removal application was determined 'on the papers' following a sequential exchange of submissions that was agreed by the parties and advised to the Authority on 31 October 2025.

Relevant law

[12] Section 178 of the Act provides for 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; or

(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; or

(c) The Court already has proceedings before it between the same parties which involve the same or similar or related issues; or

(d) The Authority believes that in all the circumstances the Court should determine the matter.

[13] As set out in that section, the removal of a matter to the Court is a matter of discretion. This discretion may be exercised if the Authority is satisfied that any of the grounds in s 178 exist. The grounds for removal under s 178(2)(c) and (d) of the Act are not relevant in this case. There are no current proceedings before the Court between the same parties that involve the same or similar or related issues. In respect of s 178(2)(d), this removal application was initiated by the applicant, not the Authority.

[14] In this case I need to be satisfied that either there is an important question of law likely to arise other than incidentally, and or that the case is such a nature and such an urgency that it is in the public interest that it be removed.

[15] 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"[3]. The Authority's 'first stop' role as an adjudicative body and exclusive jurisdiction for employment relationship problems has also been affirmed by the Supreme Court in *FMV v TZB*.[4] Despite this, the Court has still recognised that removal to the Employment Court in the first instance is appropriate for some cases[5].

[16] At least one of the four possible grounds of removal under s 178(2) of the Act must be met before the Authority may remove a matter to the Court. Once the removal criteria have been met, the Authority must still exercise its residual discretion by considering whether there is 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.[6]

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?

[17] FENZ submits that the case raises substantial public law issues, not just for FENZ, but for other public sector employers. FENZ further submits that the FENZ Act:

(a) Makes the Board of FENZ the employer;
(b) Enables the Board to make decisions to employ including creating a new role (vacancy);
(c) Allows the Board to delegate certain powers/functions to specified employees in writing;

[3] *A Labour Inspector v Gill Pizza Ltd & Ors* [2021] NZCA 192
[4] *FMV v TZB* [2021] 1 NZLR 466.
[5] See *Pilgrim v Overseeing Shepherd* [2024] NZEmpC 146
[6] *Auckland District Health Board v X (No 2)* [2005] ERNZ 551, at [29]-[31].

(d) Allows appointment by the Board (or a specified delegate) to a specific existing vacancy, or one created by the Board;

(e) Requires Appointment (employment) on merit (best suited applicant) into any such "vacancy" s 26 of the FENZ Act;

(f) Requires notification of any such appointment/employment s 28 of the FENZ Act; and

(g) Allows for any applicant for appointment to seek Review of any such appointment, on process and substance.

[18] Applying these provisions from the FENZ Act to the present case FENZ further submits that the Board has materially delegated the ability to create a new role to two people (or positions) only; the Chief Executive, and the Deputy Chief Executive (People).

[19] FENZ further says that the role to which YQL was purportedly appointed had never been created under the statutorily required process pursuant to the FENZ Act. That is, no-one with any legal authority (expressly or by delegation) had created the role (or approved its creation).

[20] There is no dispute that the role YQL was offered was subject to statutory review under s 29 of the FENZ Act. Following the statutory review, the Chief Executive decided that the role had not been validly created. The review of appointment was concluded on the basis that there was no vacancy into which YQL could properly have been appointed into.

[21] Finally, FENZ submits that the statutory appointment process is a matter of public interest as is the expenditure of public funds on YQL whilst reinstated to the Group Manager role, which FENZ also considers is a matter of public interest.

[22] YQL says that all of FENZ's questions of law arise only incidentally from factual matters that have already been determined by the Authority on a preliminary basis. YQL says that the central issue in this case is whether YQL's appointment was lawfully made under the FENZ Act and, if so, whether FENZ's subsequent actions were justified under s 103A of the Act. YQL further says that these are not new or unsettled legal questions and involve the application of settled law to factual findings, which is precisely the Authority's role.

[23] YQL says that the Deputy Chief Executive People had the delegated authority to create the role at the centre of the problem, and in fact did approve establishment of the role. Following that approval, the appointment of YQL to the role was made under delegated authority by the District Manager who held delegation to appoint under section 25(1) of the FENZ Act. YQL says that against this background, any 'questions of law' said to arise from these facts falls away. In other words, what remains are factual matters about how those delegations were exercised and whether the subsequent decision of the Chief Executive was fair and reasonable under s 103A of the Act, which is squarely within the Authority's jurisdiction.

Analysis

[24] There are two limbs to the test in s 178(2)(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?

[25] 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.[7]

[26] The Employment Court has made the following further observation about the 'important question of law' ground for removal:

> 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.[8]

[27] YQL is an existing employee of FENZ and accordingly has rights to raise a personal grievance, on both a procedural and substantive basis, with respect to any decisions FENZ makes regarding YQL's employment.

[7] *LDF v EZC* [2024] NZEmpC 109 at [13].
[8] *NZ Amalgamated Printing and Manufacturing Union Inc v Carter Holt Harvey* [2002] 1 ERNZ 74

[28] FENZ submits that YQL appears to suggest that YQL has rights to a contract of employment in a role that does not exist under law, and that any such employment of YQL in the role was explicitly subject to the review process.

[29] Whether YQL's role was non-existent or not is not the issue here. The issue here is whether any grounds exist for which determination of the substantive matter should be removed to the Court for determination instead of the Authority as the specialist first instance institution charged with resolving employment relationship problems. As the Employment Court in *Jackson v The Aorere College Board of Trustees* recognised, 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] Conversely, where matters are removed to the Court in the first instance, the de-novo right of challenge to the Court (from the Authority) is removed.

[30] The parties were given an opportunity to comment on the application or otherwise of the Employment Court's recent decision in *KNN v Fire and Emergency New Zealand.*[10] While the *KNN* case was not an application for removal, it did relate to a termination following a review process and concern the interplay between the FENZ Act and the Employment Relations Act 2000 and provided some guidance that has some application to the present case. Specifically, where an employee (or former employee) brings a personal grievance, in respect of a termination following a review of appointment (e.g. under the FENZ Act), the issue under s 103A of the Act is whether FENZ has acted as a fair and reasonable employer in the circumstances. It would also be open to the Authority or the Court to enquire into and possibly find the decision to withdraw the appointment and terminate the employee's employment was not one that was open to a fair and reasonable employer in the circumstances.[11] The opposite could also be found. Those circumstances also include the context and purpose of the review process.[12] I do not therefore consider that this present case concerns an unresolved important question of law.

[31] FENZ has not established an important question of law likely to arise in this case other than incidentally. I do not consider that this case has wide implications

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[9] *Jackson v The Aorere College Board of Trustees* [2021] NZEmpC 109
[10] *KNN v Fire and Emergency New Zealand* [2025] NZEmpC 247
[11] Above n10 at [44]
[12] Above n10 at [46]

across the public sector such that it should be removed to the Court to determine. Instead, the case is an unjustified disadvantage case[13], which is a matter commonly before the Authority and is routinely considered by it. FENZ has not established an important question of law likely to arise in this case other than incidentally.

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

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?

[33] Under s 178(2)(b) of the Act the Authority may also remove a matter if it is of such a nature and urgency that it is in the public interest for it to be removed to the Court. There are two elements to this ground which must both be met, namely:

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

[34] 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.[14]

[35] Whether the urgency criteria have been met requires assessment of the particular circumstances of the matter and a mere delay does not in itself give rise to urgency.[15]

[36] FENZ submits that there is legitimate interest in the matter far wider than the parties. FENZ says that the matter relates to application of the FENZ Act generally, affecting employees as well as the wider public sector and that determination of the matters under the FENZ Act (and of application to other similar Acts) is itself in the public interest.

[37] FENZ further submits that the nature of the issues means that referral to the Court is likely in any event and doing so at first instance will substantially speed the process, and limit or avoid duplication of costs. FENZ submits that the matter is also

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[13] See above n2
[14] *Vice-Chancellor of Lincoln University v Stewart* [2008] 8 NZELC 99, at [34] – [35].
[15] *Santamaria v Television New Zealand Limited* [2025] NZERA 256, at [44].

urgent due to the ongoing expenditure of public funds (in the form of salary differential for YQL's disputed role and interim reinstatement) and YQL's liability for damages (based on such expenditure in the non-existent ordered role) continues to accrue.

[38] YQL submits that the matter is not of such a nature or urgency that it is in the public interest to remove it to the Court. Neither are there any other relevant circumstances that suggest that the Court should determine this matter. YQL further submits that there is an inherent degree of urgency in any matter involving interim reinstatement and this case is no more urgent than any other interim reinstatement matter and the Authority is well equipped to manage such urgent proceedings. I agree. YQL has also provided, in the application for interim reinstatement, an undertaking as to damages.

[39] In a determination dated 27 August 2025,[16] the Authority held that the matter was a personal grievance for unjustified disadvantage and granted YQL interim reinstatement. This determination was not challenged to the Court. As Ms Fechney has submitted, if FENZ were genuinely concerned as to urgency, speed and cost, YQL's interim reinstatement or any other part of that determination, could have been challenged to the Court under s 179 of the Act. FENZ did not do so. The ongoing expenditure of funds by FENZ is a consequence of FENZ's actions but is not any more urgent that an interim reinstatement matter generally.

[40] I do not accept that the application of the FENZ Act to the present case is sufficient to make referral to the Court a matter of public interest especially considering the Court's recent decision in *KNN v Fire and Emergency New Zealand*[17] and the limited impact of the FENZ Act given the correct characterisation of the matter is one where the considerations are whether the employer acted lawfully and whether its actions were justified.

[41] In conclusion, I do not consider that the case is of such a nature and of such urgency that it is in the public interest that it be removed to the Court. The s 178(2)(b) ground for removal has not been met, and the ground for removal under s 178(2)(b) of the Act has not been established

[16] Above n2
[17] Above n10

Outcome

[42] FENZ's removal application does not succeed. The substantive matter between the parties should be determined by the Authority in the first instance and is not to be removed to the Employment Court.

Costs

[43] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If they are unable to resolve costs, YQL may lodge, and serve, a memorandum on costs within 28 days of the date of this determination. FENZ will then have 14 days to lodge any reply memorandum.

Alyn Higgins
Member of the Employment Relations Authority