

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 113
3355483

BETWEEN	SHINOY ABRAHAM Applicant
AND	CHIEF EXECUTIVE OF ORANGA TAMARIKI – MINISTRY FOR CHILDREN First Respondent
AND	SOCIAL WORKERS REGISTRATION BOARD Second Respondent

Member of Authority: Peter Fuiava

Representatives: Allan Halse, advocate for the Applicant
Renee Butler & Isabella Cronin-Stone, counsel for the Second Respondent

Investigation Meeting: 27 November 2025 in Auckland by audio-visual link

Submissions received: 8 September 2025 from the Applicant
25 July and 24 September 2025 from the Second Respondent

Determination: 27 February 2026

PRELIMINARY DETERMINATION OF THE AUTHORITY

What is the employment problem?

[1] The Social Workers Registration Board (the Board) has applied under s 221 of the Employment Relations Act 2000 (the Act) to be removed as a respondent in this proceeding. The application is opposed by Shinoy Abraham whose employment relationship problem consists of claims unjustified disadvantage and unjustified dismissal against his now former employer, the Chief Executive of Oranga Tamariki (OT).

How was the preliminary issue investigated?

[2] Following a case management conference on 30 June 2025, timetabling directions were made for the filing of written submissions from the Board and Mr Abraham. Given the nature of the application, it was not necessary for me to hear from OT. On 27 November 2025, a submissions' hearing via audio-visual was held and I heard oral submissions by Mr Abraham's employment advocate, Mr Halse, and the Board's counsel, Ms Butler. The Board's in-house counsel, Lucas Davies, was also present.

What is the relevant background?

[3] Mr Abraham migrated to New Zealand from India where he had previously worked as a social worker. Upon arrival to New Zealand, he was granted temporary social worker registration under s 11 of the Social Workers Registration Act 2003 (the SWRA). He commenced working for OT as a social worker on 1 November 2021.

[4] Section 3 of the SWRA sets out its purpose which includes protecting the safety of members of the public by prescribing or providing for mechanisms that ensures that social workers are both competent to practise; and accountable for the way in which they practise.

[5] In May 2023, Mr Abraham applied for full registration under s 7 of the SWRA which is the mechanism by which an overseas-qualified applicant, who does not have the prescribed qualification for a scope of practice, may be registered within their scope of practice. In considering such applications, the Board must be satisfied of a number of criteria including s 7(f) which relates to the person's competence to practise as a social worker is satisfactory under Part 3 of the SWRA; the competence and fitness requirements.

[6] On 5 October 2023, the Board considered Mr Abraham's application for full registration and found that he did not meet 7 out of the 10 required competencies. He was given feedback so that he could reapply which he did, and met a further four competencies in his latest assessment (rising to 7 out of 10 of the required competencies).

[7] However, on 13 November 2023, the Board received a mandatory report from OT that it had carried out a disciplinary process against Mr Abraham and concluded that his conduct amounted to serious misconduct. This resulted in Mr Abraham receiving a final written warning from his employer, valid until 13 November 2024.

[8] It is understood from Mr Abraham that he attempted to withdraw his application for full registration with the Board, but his request was denied.

[9] The Board's Complaints and Notifications Subcommittee (the Subcommittee) considered OT's mandatory report of Mr Abraham and sought further information from the agency which was provided. In May 2024, the Subcommittee instructed the Board Registrar to suspend Mr Abraham's registration subject to a review every 10 working days. The interim suspension was extended a number of times.

[10] On 6 December 2024, the Board met to reconsider Mr Abraham's application for full registration as a social worker. However, it declined the application on the basis that Mr Abraham did not meet the criteria for registration under the overseas qualification pathway.

[11] On 13 December 2024, Mr Abraham's employment at OT ended because he did not have current SWRB registration or a practicing certificate to work as a registered social worker.

Should the Board be removed as a party to this proceeding?

[12] In his written submissions to the Authority opposing the Board's removal as a party to this proceeding, Mr Halse submitted that the Board is a controlling third party (CTP) as defined by s 5(b) of the Act in that its control and direction of Mr Abraham is similar to that of an employer. Mr Halse pointed to the Board's power of interim suspension under s 57A of the SWRA which is tantamount to exercising control or discretion similar to that of an employer.

[13] The Authority's ability to join or remove a party to a proceeding derives from s 221 of the Act which states, among other things, that in order to enable the Court or the Authority to more effectually dispose of any matter before it according to the substantial merits and equities of the case, it may, at any stage of the proceedings, or its

own motion or on the application of any of the parties, order or direct that parties be joined or struck out.

[14] Although Mr Abraham does not appear to have given formal notice to the Board in terms of s 115A of the Act that he considers its actions as a CTP to have caused or contributed to his personal grievance, I do not consider that shortcoming to be fatal. However, the primary difficulty with his argument that the Board is a CTP is the absence of contractual relationship between the Board and OT. Under s 5 of the Act, a CTP is defined as a person—

- (a) who has a contract or other arrangement with an employer under which an employee of the employer performs work for the benefit of the person; and
- (b) who exercises, or is entitled to exercise, control or direction over the employee that is similar or substantially similar to the control or direction that an employer exercises, or is entitled to exercise, in relation to the employee

[15] Having regard to the information before me, it cannot be said that there was a contract or other arrangement between OT and the Board. The relationship between the two are not typically that of a triangular employment relationship where an individual is working for a business or host organisation, but is employed by another who arranges the worker's placement. Neither is there evidence of some 'other arrangement' between OT and the Board. OT is statutorily required to make mandatory reports to the Board and one of the issues for investigation in the Authority is whether OT's actions in doing so in this case satisfies the test of justification at s 103A of the Act.

[16] Like other regulatory agencies such as the Teachers Council, the Board is statutorily charged with investigating mandatory reports. Although it was suggested that this does not occur and that mandatory reports are simply received without validation, Mr Davies advised that there have been mandatory reports received which the Board have not upheld.

[17] While the Board can suspend a social worker's ability to practice under s 57A of the SWRA, as was the case here with Mr Abraham, the Board does so in accord with its statutory function and not as a means to control a social worker as an employer or CTP could. Decisions of the Board are not absolute as there are checks and balances

in the SWRA that allow for an affected social worker to appeal to the District Court under s 88. It is understood that Mr Abraham has not appealed any of the Board's decisions with respect to his suspension and extensions of the same. Neither has he appealed the Board's decision to decline his application for full registration. While he may not have done so because of cost, that is an access-for-justice issue that sits with another forum.

[18] It was further submitted that the Board should not be removed as a respondent in this proceeding because it is in the public interest that it remains. It was submitted that the facts will show collusion between OT and the Board in which registration is used as a mechanism to bully applicants such as Mr Abraham.

[19] Section 221 of the Act does not expressly reference public interest but in the broader context of the Act, the public interest is a relevant consideration particularly with respect to non-publication orders, mediation confidentiality, minimum employment standards, and in the penalty-setting exercise when these standards are breached. While I acknowledge Mr Abraham's status as a migrant to New Zealand, it is too early to tell whether he is right or not about collusion between two independent organisations. That is a matter for the substantive investigation, and the Board have not shied away from being called as a witness as part of that process which is sufficient to satisfy the public interest in my view.

[20] The Board submitted that its application to be removed as a party to this proceeding should be granted because there was never an 'employment relationship' between it and Mr Abraham as defined under s 4(2) of the Act. This section comprises a finite list of employment relationships which includes a union and an employer for example.

[21] However, to construe s 221 in terms of s 4(2) would be to narrow the scope of potential parties to an employment relationship problem unnecessarily when it may, in order to more effectually dispose of the case, be necessary for the net of respondents to be cast wider particularly in restraint of trade cases, breaches of post-employment obligations, and where the identity of the actual employer may not be known. However, none of these scenarios changes the present analysis.

Conclusion

[22] The absence of a contractual relationship or other arrangement between OT and the Board leads me to find that the Board should be removed as a second respondent in this proceeding. Be that as it may, the Board is likely to be required to give evidence in the substantive hearing which I find is sufficient to meet the public interest insofar as this can be reasonably discerned at this early stage.

Costs

[23] Costs are reserved.

Peter Fuiava
Member of the Employment Relations Authority