

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2026] NZERA 126  
3301420

BETWEEN                      MICHAEL NABER  
   Applicant

AND                              CONNETICS LIMITED  
   Respondent

Member of Authority:              Antoinette Baker

Representatives:                      Erika Whittome of Number 8 Workers Union Of New  
   Zealand Incorporated, for Applicant  
   Ashley-Jane Lodge, for Respondent

Investigation Meeting:              On the papers

Submissions received:              1, 29 October 2025 from the Applicant  
   16 October 2025 from Respondent

Affidavits received:                      5 November 2025 from the Applicant  
   3 December 2025 from the Respondent

Determination:                          3 March 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     Mr Naber claims from Connetics Limited (CL) a wage increase. He received a pay review outcome giving him a 3% wage increase when he says CL should now back date him a further 2% increase with interest. He claims this is consistent with the 5% increase afforded colleagues in the same role but covered by two different collective agreements in the

workplace<sup>1</sup> neither of which he was a party to. Mr Naber's employment is covered by an individual employment agreement (IEA). He became a member of a union after he agreed to his remuneration increase but that union<sup>2</sup> does not have a collective agreement in place with Connetics.

[2] Mr Naber says the above claim is based on the respondent's breach of s 9(1)(b) of the Employment Relations Act 2000 (the Act) in that CL offended that provision's prohibition on 'preference'.

[3] Mr Naber further asks the Authority to order CL to pay a penalty for allegedly breaching s 9(1)(b) of the Act and that CL contribute to his costs and filing fee.

[4] In submissions Mr Naber through his representative Ms Whittome has included that a remedy is now sought for a compliance order under s 137(2) of the Act, something not previously referred to in the initiating documents.

[5] CL disputes the claims including that Mr Naber's interpretation of s 9(1)(b) of the Act is not correct. Its response states that s 9(2) of the Act includes that the section is not breached solely because an employee's terms and conditions are different. It further says that Mr Naber's pay rise was guided by the terms of his IEA in that no pay raise was automatic and was based on a number of factors including performance. CL also includes that under s 59B of the Act that to have 'passed on' agreed terms in a collective negotiated through collective bargaining with unions would breach CL's duty of good faith to parties to those collectives. Mr Naber through his representative disagrees with that reasoning and application.

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

[6] This matter has taken some time to be determined. Mr Naber through his union representative, lodged this claim in the Authority in June 2024. The Authority promptly referred the parties to mediation in June 2024 based on their agreement to attend. The parties had not previously been to mediation. Mediation occurred in September 2024 and was

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<sup>1</sup> The union parties to those two collectives are E tū Incorporated & New Zealand Public Service Association.

<sup>2</sup> Number 8 Workers Union Of New Zealand Incorporated.

unsuccessful. The Authority sought confirmation as to the applicant's representation and continuance from that time. For Mr Naber representation and continuance was confirmed on 24 February 2025. The matter was then queued for a Member to investigate and allocated to me on 2 July 2025. I held a phone conference call with the representatives on 8 August 2025 and after discussion directed a timetable for submissions that suited the representatives after which it was agreed I would confirm whether evidence required testing or whether the matter could be determined on the papers. After submissions were lodged in October 2025 an affidavit was lodged later than timetabled from the applicant and a subsequent opportunity was reasonably allowed to the respondent to reply. I concluded the matter could be dealt with on the papers and reserved my determination.

[7] Accordingly, I have before me the initiating documents, respective representative submissions, a sworn affidavit by Mr Naber and for the respondent, an affirmed affidavit by Mr Mark Lewis, 'Head of People and Culture' at CL.

[8] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has dealt with matters as necessary to dispose of the matter and make appropriate orders and does not include details of all material put before me.

### **The issues**

[9] The issues to determine are:

- a. Whether Connetics when completing Mr Naber's remuneration review and offering and agreeing to pay him a 3% salary increase under his individual employment agreement breached s 9 of the Act by not offering the 2% higher pay increase agreed to under Collective Agreements for members of two unions in the workplace?
- b. If a breach, what if any remedy is available including what Mr Naber claims as a backdated 2% salary increase from the date of the Collective Agreement pay increases together with 6% interest?
- c. If a breach, whether the Authority should consider a penalty against Connetics and if so to what amount considering factors under s 133A of the Act?
- d. Depending on the above what if any costs are to be awarded one to the other?

**Whether Connetics when completing Mr Naber’s remuneration review and offering and agreeing to pay him a 3% salary increase under his individual employment agreement breached s 9 of the Act by not offering the 2% higher pay increase agreed to under Collective Agreements for members of two unions in the workplace?**

[10] Mr Naber is employed as a ‘Project Manager’ for CL on an individual employment agreement. He accepted a pay rise after a pay review which resulted in a 3% increase. He subsequently discovered that other ‘Project Managers’ in the workplace employed under the two collective agreements in the workplace had, before he accepted his pay rise, been offered and accepted a 5% pay increase. Upon this discovery Mr Naber joined a union that did not have a collective in place in the workplace and claimed from CL that he should have been paid the additional 2% increase based on a breach by CL of s 9 of the Act which provides:

**Prohibition on preference**

(1) A contract, agreement, or other arrangement between persons must not confer on a person, because the person is or is not a member of a union or a particular union,—

- (a) any preference in obtaining or retaining employment;
- or
- (b) any preference in relation to terms or conditions of employment (including conditions relating to redundancy) or fringe benefits or opportunities for training, promotion, or transfer.

(2) Subsection (1) is not breached simply because an employee’s employment agreement or terms and conditions of employment are different from those of another employee employed by the same employer.

(3) To avoid doubt, this Act does not prevent a collective agreement containing a term or condition that is intended to recognise the benefits—

- (a) of a collective agreement;
- (b) arising out of the relationship on which a collective agreement is based.

[11] For Mr Naber it is submitted that there is evidence that CL preferred the union members under the two collectives over Mr Naber and that CL’s early response to this provides evidence of this. I do not agree. That evidence (as referenced) included that CL to pass on the full 5% to Mr Naber would undermine the ‘bargaining efforts’ of the parties to the respective union bargaining efforts.

[12] As a starting point, I accept the submission for CL that s 9 of the Act includes that the section is not breached ‘simply because an employee’s employment agreement or terms and conditions of employment are different from those of another employee employed by the same employer.’

[13] For CL it is further submitted that section 9(1) of the Act refers to a preference that confers a *benefit* on someone for *not being* a member of a union. Mr Naber’s claim is based on a reverse situation, that the preference has been conferred on those who *are* members of a union. It appears that s 9(1) is not applicable here. I find further support for this under s 7 of the Act under ‘Part 3 Freedom of Association’ which is where s 9 is found. The ‘object’ of Part 3 recognises freedom for an employee to join a union ‘for the purpose of advancing their collective interests’ and that ‘no person may, in relation to employment issues, confer any preference or apply any undue influence, directly or indirectly, on another person because the other person is or is not a member of a union.’ In other words, the purpose of this is to prevent encouragement to employees to *not join* a union by conferring a benefit which is contrary to the established right of ‘Freedom of Association’ to join a union which I note is also well established in international convention<sup>3</sup>.

[14] It is further submitted that Mr Naber is employed on an individual employment agreement (IEA). He has chosen to join a union without a collective agreement in place in the workplace. There is nothing before me to show he did not have the option of joining a union that did have a collective agreement in place. It is submitted for him that the clauses in his IEA that relate to how his pay is reviewed should be ‘severed’ from the issue of preference. I do not agree and remain unclear why this would sensibly be so.

[15] For CL it is submitted that the terms of Mr Naber’s IEA set out how his pay would be reviewed, that there was no guarantee of a pay increase, that his pay increase (the one occurring as relevant in this matter) ‘was determined fairly in accordance with his [IEA] and the Respondent’s Remuneration Policy.’

[16] Mr Naber’s IEA sets out under ‘Remuneration’ that:

All parties recognise the need to pay fair remuneration and share the rewards of the business performance. All employees whose position are covered by this

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<sup>3</sup> International Labour Convention 87.

agreement will be remunerated under individual agreements. The procedure for establishing fair remuneration is as detailed under this section.

[17] The further details set out under the above in the IEA include a process of ‘job sizing’ for all salaried positions which occur ‘at least’ every five years; that a ‘total remuneration package will be determined for each position ... [and] will take into account an assessment of the market and other factors impacting on remuneration’; that ‘Remuneration Reviews’ ‘shall be carried out in respect of each employee in terms of that employee’s individual agreement ... establishing his/her remuneration within the range agreed for the position.’ There is an agreed review date with timing to have the review within 60 days of that date unless otherwise agreed.

[18] In line with the submissions for CL the IEA continues under the above section to state that ‘Increases are not automatic’ and ‘Upon request the employer shall discuss with employees having their remuneration reviewed, information the company relied on in determining a remuneration offer.’ It is submitted here that Mr Naber has chosen not to have the outcome of his pay review reassessed in this way. A communication to him shows that this was offered when he raised such a challenge. To this extent, I find Mr Naber more sensibly could have exercised his rights under his IEA.

[19] Standing back from the above, I do not find that CL has breached s 9 of the Act. Mr Naber’s IEA sets out a specified way that pay can be reviewed against measures. Mr Naber went through the pay review process under his IEA and received a resulting pay increase based on that process, one he has agreed to under his IEA. He did not then seek to have that process reassessed but has sought an automatic passing on of a higher overall pay increase negotiated by two collective negotiating rounds in the workplace. While not submitted, I note that such an automatic increase would be inconsistent with the IEA that he agreed to which includes that any pay increase is not ‘automatic.’ I also decline to order such a passing on to Mr Naber because I am not satisfied CL has breached s 9 of the Act.

[20] For the sake of completion I have been asked to consider CL’s position that to have passed on the pay increase to Mr Naber would have put CL in contravention of its obligations under s 59B of the Act as CL claims. Deciding whether or not this could have been the case is not necessary to decide Mr Naber’s claim.

### **Summary of outcome**

[21] I do not find s 9 of the Employment Relations Act 2026 was breached by CL and as a consequence have not considered and made any orders as sought related to the breach.

[22] The application is unsuccessful.

### **Costs**

[23] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[24] If the parties are unable to resolve costs, and an Authority determination on costs is needed, CL may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Mr Naber will then have 14 days to lodge any reply to memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

Antoinette Baker  
Member of the Employment Relations Authority