

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 145
3332920

BETWEEN	JASEM AL MACHAEL Applicant
AND	SOUTH WAIKATO PROPERTY RENOVATORS LIMITED Respondent

Member of Authority:	Matthew Piper
Representatives:	Mikail Steens, counsel for the Applicant Christie McGregor, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions received:	12 September 2025 and 11 December 2025 from the Applicant 1 December 2025 from the Respondent
Determination:	9 March 2026

DETERMINATION OF THE AUTHORITY

[1] On 23 October 2024 Jasem Al Machael lodged a statement of problem seeking a declaration that he was employed by South Waikato Property Renovators Limited (SWPR) in April of 2017.

[2] Mr Al Machael sought no remedy beyond this declaration. Mr Al Machael wishes to use any declaration that may be issued by the Authority as part of a defence to a finding of the Disputes Tribunal that he is liable for defective building work.

The essential facts

[3] Mr Al Machael undertook tiling work for Maree Prouting, sole director and shareholder of SWPR in April 2017 as part of renovations at a property said to be owned by SWPR. Ms Prouting said the work was performed for a fixed price and paid for in cash, with her providing the tiles in order for Mr Al Machael to undertake the tiling labour.

[4] In May 2017 SWPR was approved as sponsor of Mr Al Machael's visa and he was employed by it pursuant to an individual employment agreement, which recorded that the employment relationship would commence on 3 May 2017.

[5] In 2018 and 2019 after being advised of waterproofing issues from his April 2017 work, Mr Al Machael undertook remediation work. After a further leak in 2021, Mr Al Machael did not return to undertake further remediation work.

[6] In early 2024 SWPR lodged a claim in the Disputes Tribunal seeking to recover damages from Mr Al Machael in respect of defective works. In its decision dated 17 July 2024, the Disputes Tribunal ordered Mr Al Machael pay damages to SWPR flowing from defective tiling work.

[7] On 15 August 2024 Mr Al Machael applied for a rehearing in the Disputes Tribunal on the basis he alleged that in April 2017 he was in fact an employee of SWPR. The Disputes Tribunal granted the rehearing and set aside its 17 July 2024 decision, then on 27 November 2024 issued an order striking out SWPR's claims.

[8] SWPR successfully appealed this strike out decision in the District Court, and on 17 March 2025 orders were made staying its claims against Mr Al Machael until the Authority had the opportunity to determine whether it would assume jurisdiction.

[9] The matter was therefore remitted to the Disputes Tribunal and stayed until such time as the Authority issued a determination in respect of the matter.

The Authority's investigation

[10] For the Authority's investigation affidavits were lodged from Mr Al Machael, Anne Groos, Jan Magee and Ms Prouting. Counsel provided written submissions.

[11] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Can the Authority investigate Mr Al Machael's claims?

[12] Section 161 of the Act says that the Authority has jurisdiction to make determinations about employment relationship problems generally, including matters about whether a person is an employee.¹

[13] Accordingly, unless there is some other reason preventing the investigation of Mr Al Machael's claim that he was an employed by SWPR in April 2017, the Authority has jurisdiction to do so.

Are Mr Al Machael's claims out of time?

[14] The Act sets a firm six-year limit on the Authority's ability to investigate employment relationship problems that are not personal grievances. In particular, s 142 of the Act says:

142 Limitation period for actions other than personal grievances

No action may be commenced in the Authority or the court in relation to an employment relationship problem that is not a personal grievance more than 6 years after the date on which the cause of action arose.

[15] In *FMV v TZB* the Supreme Court examined the Authority's exclusive jurisdiction and provided extensive commentary on its function and nature as an institution.² The Supreme Court found that s 161 of the Act's use of the word "problem" was to ensure the decision maker was not distracted from focusing on the substance of the difficulty confronting the parties. The Court went on to find that whether a controversy constituted a "problem" for the purposes of s 161 was simply one of fact.³

[16] Whether or not a person is or was an employee is clearly capable of being an "employment relationship problem" and the inquiry into what constitutes an

¹ Employment Relations Act s 161(1)(c)

² [2021] NZSC 102

³ Above, n2, at [93]

employment relationship problem focuses on factual matters arising from a working relationship.

[17] As set out in *FMV* whether something constitutes an employment relationship problem is a factual issue. In this case, the relevant facts unfolded in April of 2017.

[18] Unlike other limitation provisions in the Act, s 142 of the Act does not take account of the applicant's knowledge of the state of affairs in fixing when the limitation period starts to run. As explained by the Employment Court in *Haig v Edgewater Developers Limited* when interpreting s 142 of the Act, causes of action are treated as having accrued when the elements necessary for prosecuting them came into existence.⁴ There is then a six-year period to issue proceedings in relation to those causes of action in the Authority.

[19] Any action in relation to an alleged employment relationship problem from April 2017 had to be raised within 6 years of that date by dint of s 142 of the Act. Mr Al Machael's claims were not.

[20] Counsel for Mr Al Machael submitted that the relevant cause of action only accrued as a matter of fact in 2024 when he had a "reason or need" to assert he was an employee in relation to the Disputes Tribunal's process. This is not correct. The elements necessary for prosecuting Mr Al Machael's claims accrued in April of 2017. It is from this time that the six years runs.

[21] Counsel for Mr Al Machael further submitted that s 142 operates to restrict the availability of remedies but does not limit the Authority's jurisdiction to make status findings, as was sought here. I do not accept this argument. Section 142 is a bar to proceedings being brought in respect of employment relationship problems that factually occurred more than six years prior. That the bar created by s 142 is absolute has been reflected in the Authority's approach to the provision⁵.

[22] I therefore find that s 142 of the Act prevents the Authority from investigating Mr Al Machael's claim that he was employed by SWPR in April 2017.

⁴ [2012] NZEmpC 189

⁵ See, for example, *FMV v TZB* [2024] NZERA 584 at [98] – [100]

[23] During the Authority's case management conference, it was agreed that whether the matter was frivolous or vexatious and whether there were any other reasons preventing the Authority from investigating and determining Mr Al Machael's would be considered.

[24] Given my findings above, it has not been necessary to deal with these issues.

Outcome and other matters

[25] For the reasons set out above, Mr Al Machael's application for a declaration that he was employed by SWPR in April 2017 is declined.

[26] My findings deal only with the jurisdiction of the Authority. How matters proceed in the Disputes Tribunal is a matter for it.

Costs

[27] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If they are not able to do so and an Authority determination on costs is needed SWPR may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of the written determination in this matter.

[28] From the date of service of that memorandum Mr Al Machael would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[29] The parties could expect the Authority to determine costs, if asked to do so, at half is usual notional daily rate (being the rate applicable for matters determined on the papers) unless particular circumstances or factors required an upward or downward adjustment of that tariff.⁶

Matthew Piper
Member of the Employment Relations Authority

⁶ See www.era.govt.nz/determinations/awarding-costs-remedies.