

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2026] NZERA 157
3396904

BETWEEN CARL MCNEIL
Applicant

AND SWIFT FLY FISHING LIMITED
Respondent

Member of Authority: David G Beck

Representatives: Ashley Jayne Lodge, counsel for the Applicant
Daniel Erickson, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 6 March 2026 from the Applicant
20 February 2026 from the Respondent

Date of Determination: 17 March 2026

PRELIMINARY DETERMINATION OF THE AUTHORITY

Preliminary issue

[1] Carl McNeil is currently pursuing an employment relationship problem with his current employer, Swift Fly Fishing Limited (Swift). Mr McNeil says his claims and the factual matrix involve matters in dispute in both his capacities as an employee, company director and minority shareholder. As part of his employment relation problem, Mr McNeil is claiming he has been unjustifiably disadvantaged by Swift excluding him from fairly participating in board meetings and he broadly asserts that the board endorsed a decision to alter his agreed role without his input or endorsement.

[2] Swift is contesting whether the Authority has any jurisdiction to consider disputed matters arising out of the deliberations of their board meetings involving Mr McNeil in his capacity as a director and says the Authority can only consider disputed issues pertaining to

the employment relationship. This preliminary determination is to resolve this narrow threshold issue and has been dealt with by submissions ahead of the investigation meeting to be held on 27 and 28 May 2026. Effectively, the issue is do Mr McNeil's concerns expressed about the operation of the board arise in the context of an employment relationship problem.

How the employment relationship problem emerged

[3] Mr McNeil was formerly the majority shareholder of Swift, a company he founded in August 2012, (trading as Epic Fly Rods). In August 2024, a Japanese based company, Snow Peak Incorporated (Snow Peak), acquired the majority of Swift's shares. On 9 August 2024, Mr McNeil signed a shareholders agreement naming him as one of four directors of Swift. In addition, on 9 August, Mr McNeil entered a five-year fixed term employment agreement with Swift as Head of Product and Experience. The intention of the parties reflected in the shareholders agreement (citing Swift as the company party), was Mr McNeil would, in a transitory capacity, lend his knowledge and experience to develop the business before progressively disposing of all his shares by the expiry of the five year term at agreed purchase prices conditional upon him remaining employed by the company and then fully exiting the business.

[4] Mr McNeil says it was agreed he would continue to lead product design, eCommerce website management and customer experience while providing a hi-level input on marketing strategy. For its part, Snow Peak assumed responsibility for corporate finance, budgeting and forecasting, and sales and marketing management. Despite this agreement, Mr McNeil contends he was required to perform duties outside his role, reassigned other duties without consultation and excluded from board governance functions. Despite efforts to resolve matters over a significant period, Mr McNeil perceives his concerns have been ignored or dismissed.

[5] Mr McNeil says he attends board meetings in both his capacity as director and an employee. Mr McNeil is the only New Zealand based director and attends board meetings by audio-visual link. Mr McNeil says his meaningful participation in board meetings is constrained by factors that include that:

- The meetings are conducted in Japanese with limited translation being provided.

- The translated briefings prior to board meetings, are inadequate.
- Until recently no agendas would be circulated in advance and now when they are, they lack specificity of topics to be discussed.
- Board minute approval/accurate recording of decisions is problematic and Mr McNeil is not provided an opportunity to amend board minutes.

[6] As a result of the above factors, Mr McNeil says he lacks the ability to partake in board deliberations and fears this may compromise his fiduciary duties as a director. In addition, Mr McNeil is concerned decisions may be made or are being made, about his employment responsibilities without his informed input. Mr McNeil has provided specific examples of where he considers his duties have been unilaterally altered and/or new duties allocated. I do not traverse these matters in detail at this preliminary stage as the issue to be resolved in the interim is whether the Authority has any jurisdiction over the operation of the board. This is narrowly the element of Mr McNeil's claim that he is being unjustifiably disadvantaged by being excluded from fairly participating in board meetings.

Submissions

[7] Counsel for Swift assert the matter has been conclusively resolved in the Supreme Court's decision *FMV v TZB* that extensively traverses the extent of the Authority's jurisdiction under s 161 of the Act. ¹ *FMV* established an approach to jurisdiction in the form of a two part test – the first component being whether a claim fell within or could be framed as falling within examples detailed in s 161 (1)(a) to (qd) of the Act and secondly, if not, does it arise out of an “employment relationship problem” as defined broadly by the Supreme Court's interpretation of this term. Although the Supreme Court in *FMV* set out some examples potentially falling outside the latter cited statutory provision² the decision also contemplated distinct “dual capacity disputes” involving a situation as is here, where an individual is both an employee and director of the employer company. The decision notes some elements of a dispute may relate to a “person's capacity as an employee” but others fall within their capacity as “director in terms of duties under the Companies Act 1993” but no

¹ *FMV v TZB* [2021] NZSC 102, [2021] ERNZ 740.

² Above n 1 at {96} – [101].

single matter “can relate to both at the same time” (being a question of fact) and therefore this could give rise to “split proceedings” if multiple allegations are at issue.³

[8] The Employment Court, Travis J, has previously commented in the context of a complex dispute involving dual capacity director/employee issues, that “it is not for this Court to comment on any allegations of oppression of a minority shareholder or the rights of shareholders under the articles of association of a company”.⁴

[9] Counsel for Swift assert as Mr McNeil did not attend board meetings in his capacity as an employee the disputed matters referred to above do not arise out of an employment relationship; they relate to the governance process of the board. Swift’s counsel in support of this stance noted Mr McNeil’s individual employment agreement and position description has no reference to him acting as a director or any requirement to attend board meetings in any reporting capacity.

[10] In contrast, counsel for Mr McNeil contended that board meetings often deal directly with day-to-day operational matters pertaining to and intruding upon Mr McNeil’s role. In essence, Mr McNeil says the operation of the board does not recognise there should be a governance and management split and the board is not operating in accord with requirements set out in Schedule 3 of the Companies Act 1993. Impliedly, Mr McNeil is contending as the most senior employee in New Zealand he is effectively the general manager of operations and is responsible for the running all aspects of the business, but the board allegedly do not recognise this delegated role. Applying the approach of *FMV* to the categorisation of whether an the dispute arose during the “course of an employment relationship and in the work context”, counsel is submitting the board meetings by their operation, become the work context for Mr McNeil as they discuss “operational matters allocate work and question the Applicant on his performance” of duties.

Assessment

[11] This matter has some unique features, but I consider that framing of the employment relationship problem to include questions of how the Board operates is outside the Authority’s

³ Above n 1 at [102].

⁴ *Smith v Practical Plastics Ltd* {1998} 1 ERNZ 323.

jurisdiction in the sense that any remedial orders cannot be directed at how the board should conduct their business. I note while Schedule 3 of the Companies Act 1993 is alluded to, this does not provide guidance on governance and management 'best practice'; being concerned with procedural matters on the conduct of board meetings (such as notice, quorum, voting etc) rather than board operational matters. In addition, the Authority has no capacity to adjudicate on defining or parsing what fiduciary duties may be at issue in the context of a board's operations.

[12] However, I accept that where board decisions, actions or omissions impact on an employment relationship they fall within the category of an employment relationship problem and can rightly be framed as unjustified disadvantage claims.

Finding

[13] I find that the Authority has no jurisdiction to direct Swift Fly Fishing Limited to ensure Mr McNeil can fairly participate in their board meetings but the Authority has jurisdiction to consider whether board decisions impact negatively or otherwise on the ongoing employment relationship, and whether any remedies are appropriate should the Authority find that any actions or omissions of Swift Fly Fishing Limited have caused Mr McNeil to be unjustifiably disadvantaged in his employment relationship.

Costs

[14] Costs are reserved pending the substantive investigation of the residual elements of the employment relationship problem.

David G Beck
Member of the Employment Relations Authority