Attention is drawn to orders prohibiting publication of certain information in this determination

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

I TE RATONGA AHUMANA TAIMAHI TĀMAKI MAKAURAU ROHE

[2026] NZERA 253
3399764

BETWEEN	MARITIME UNION OF NEW ZEALAND INCORPORATED Applicant
AND	HOLCIM (NEW ZEALAND) LIMITED Respondent

Member of Authority:	Nicola Craig
Representatives:	Simon Mitchell KC and Angus Drumm, counsel for the applicant Sherridan Cook and Sianatu Lotoaso, counsel for the respondent
Investigation Meeting:	6, 13, 14 and 20 November 2025 in Auckland and by audio-visual link
Submissions (and other information) received:	17 November 2025 and up to and including 26 February 2026 and at investigation meeting from the applicant 17 November 2025 and up to and including 26 February 2026 and at investigation meeting from the respondent
Determination:	28 April 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Maritime Union of New Zealand Incorporated (MUNZ or the union) were party to a collective agreement with Holcim (New Zealand) Ltd (Holcim or the

employer) covering seafarers on the maritime vessel *MV Buffalo,* which transported Holcim's cement around the New Zealand coastline.

[2] MUNZ comes to the Authority regarding a process undergone by Holcim over several months of 2025 regarding a proposal to sell the *Buffalo.* It does not dispute challenges faced the business but says Holcim breached its obligations under the collective agreement and statutory good faith obligations. Holcim says it complied with its obligations as part of its decisions to sell the *Buffalo* and separately, time charter another vessel, the NACC *Vega*.

The Authority's investigation

[3] The investigation meeting commenced on 6 November 2025 and was then adjourned as the parties wished to have discussions between themselves.

[4] The meeting resumed to hear evidence on 13 and 14 November 2025. Witness statements and oral evidence were received from chief steward Wayne Bell, chief cook Manoj (Manny) Perera, MUNZ's Russell Mayn, Holcim's executive general manager and director Michael Miller, people manager New Zealand Michael Tuck and special projects manager and ship owner Paul Coleman MNZM.[1]

[5] Written submissions were then received with the parties returning on 20 November 2025 for the hearing of oral submissions.

[6] Initially MUNZ sought an early determination of the Part 6A issue, referred to below, if not all the issues. Holcim accepted the Part 6A question was a discrete issue amenable to separate decision. Events set out in determination *Maritime Union of New Zealand Inc & Ors v Holcim (New Zealand) Ltd* overtook matters somewhat, seeing an interim injunction restraining the dismissal of some of those covered by this proceeding.[2]

[7] Through case management conferences on related proceedings the Authority was informed that a determination may not be required on one or both of the main

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[1] 'Ship owner' is the term used to indicate the highest point of contact ashore should an emergency occur.

[2] *Maritime Union of New Zealand Inc & Ors v Holcim (New Zealand) Ltd* [2025] NZERA 848, issued 23 December 2025. See also *Maritime Union of New Zealand Inc v Novaalgoma Cement Carriers Ltd & Anor* [2025] NZERA 703.

issues at stake in this proceeding. Subsequently the parties agreed that a determination was required.

[8] The Authority received in relation to the investigations on those other matters, some information relevant to this determination.

[9] All material from the parties has been considered. However, as permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination has not recorded everything received from the parties but has stated findings of fact and law, expressed conclusions and specified orders made as a result.

Non-publication orders

[1] Interim orders were made protecting certain documents on the grounds of commercial sensitivity, on Holcim's application.[3] Holcim seeks permanent orders including an order limiting distribution of the documents. MUNZ is agreeable to the orders sought other than seeking to ensure it is able to inform its members regarding what Holcim has done.

[2] The Authority has a wide discretion to prohibit publication of evidence and other matters under cl 10(1) of Schedule 2 of the Act.

[3] However, the starting principle is open justice, with departure from that only warranted to the extent necessary to service the end of justice.[4] Reason to believe that specific adverse consequences could reasonably be expected to occur, in the event of publication, is generally required.[5]

[4] Protection of harm to litigants and others due to disclosure of commercially sensitive information may warrant non-publication orders.[6]

[5] Holcim argues that publication of particular commercially sensitive information could compromise its commercial position.

[6] There is adequate specific information involving a reasonable potential to harm Holcim if released. There has been media interest in the issues between the parties with

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[3] Employment Relations Act 2000 (the Act), Sch 2, cl 10.
[4] *Erceg v Erceg* [2016] NZSC 1335 SC.
[5] *MW v Spiga Ltd* [2024] NZEmpC 147.
[6] *Courage v Attorney General* [2022] NZEmpC 27.

information from a Holcim restructuring consultation included. MUNZ did not disagree with a limited non-publication order.

[7] A permanent non-publication order is made regarding the documents at tabs 5, 6, 9, 13, 17 - 27 (inclusive), 29, 31- 40 (inclusive), 43, 45 – 47 (inclusive), 50, 53, 56, 58 of the common bundle of documents, other than to the extent material from those documents is contained in this determination

[8] If MUNZ considers it needs an amendment to this order to sufficiently properly inform its members about events which are the subject of the determination, leave is granted for it to seek a variation of this order.

[9] Leave is also granted to the extent variations are sought regarding related proceedings concerning Holcim.

The issues

[10] The issues to be investigated were identified in a late September 2025 case management conference as:

- Has Holcim breached clause 39 of the collective agreement with MUNZ regarding the seafarers on the *Buffalo*?
- Has Holcim breached its good faith obligations?
- Are cooks and stewards on the *Buffalo* covered by Part 6A of the Act by providing food catering and/or cleaning services on the vessel?
- Should compliance orders be issued:
    - requiring Holcim to comply with clause 39 of the collective agreement;
    - comply with its good faith obligations; and
    - facilitate employees who are covered under Part 6A to transfer to Nova Marine as the purchaser of the *Buffalo*, as employees on the same terms and conditions as those in the collective agreement?

[11] At the investigation meetings in this and related matters it was apparent that not all of the orders initially sought may still be relevant.

Holcim starts investigating other options

[10] MUNZ and Holcim were parties to the collective agreement with a term of 1 January 2024 to 31 December 2025.[7]

[11] The agreement contains a coverage provision for several occupational groups including covering work on "any other replacement vessel owned, operated, or demise chartered" by Holcim.[8]

[12] In 2024 Holcim starts to look at alternative options to transport its cement around New Zealand ports due, in summary, to a reduction in shipping tasks, a competitor entering the market undercutting Holcim's business, the *Buffalo* having large operating costs and being an aging vessel.

[13] Preliminary discussions are held with potential purchasers of the vessel and third party shipping providers about standard bulk carriers. Enquiries are made about a replacement vessel, likely to have a two-year build time.

[14] In about late 2024 Holcim enters into discussions with Swiss companies Nova Marine Carriers SA and its subsidiary NovaAlgoma Cement Carriers SA (referred to here broadly as Nova Marine) about the sale of the MV *Buffalo* and subsequent arrangements. Several possible plans are explored including types of charter back to Holcim or replacement with a smaller vessel.

[15] By at least January 2025 Australian Holcim personnel are involved. Internationally Holcim and Nova Marine have commercial connections.

Consultation begins

[16] In February 2025 Holcim provides consultation documents to the union and *Buffalo* crew. A 19 February 2025 consultation pack outlines challenges facing the business and puts up potential options:

- Right sized (ie smaller) pneumatic cement carrier

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[7] Extended under s 53 of the Employment Relations Act 2000 (the Act).

[8] Collective agreement, clause 4.

- Standard bulk carrier with mounted unloader
- Standard bulk carrier with shore-based mobile unloaders
- Continue with MV *Buffalo.*

[17] A third party shipping provider is raised as a possibility. The pack shows the third option as Holcim's preference. The HR manager's notes to himself, regarding consultation, records Holcim is committed to coastal shipping and this message is passed on to unions. MUNZ prefers a new or replacement suitable vessel. Meetings are held with MUNZ and other unions, along with seafarers and other crew.

[18] In an internal Holcim email from 11 March 2025 Mr Miller expresses his view that its counter to Nova Marine should be that Holcim requires the purchaser to offer employment to the crew on the same terms and conditions and treat service as continuous. This is during discussions about on a different vessel than that signed up on. Mr Miller notes that "our collective obliges us to push wherever possible for the above outcome". Collective agreements are provided to Nova Marine. Communications between Holcim and Nova Marine refer to possible "novation" with Nova Marine related companies becoming a party to the collective agreement with Holcim stepping out.

[19] On 26 March 2025 Holcim's Revised Key Terms to Nova Marine have a requirement that the buyers of the vessel will offer employment to the *Buffalo* crew on the same terms and conditions and treat service as continuous.

[20] The response on 1 April 2025 declines novation on the same terms and conditions, instead there being the potential for Holcim to make the crew redundant and Nova rehiring them. An Australian Holcim representative describes this as a "pivot from the original plan" with no comment offered (by Nova Marine).

Preliminary decision announced

[21] Holcim considers and discusses matters further with third parties. Then Holcim's 15 April 2025 pack to unions and crew announces a preliminary decision to pursue a new preferred option – a right-sized (ie smaller) pneumatic cement carrier solution but using the *Buffalo,* possibly under time charter, for the remainder of the year. Broadly speaking, a time charter involves the ship owner being responsible for the crew, rather than the charterer, whose goods are being transported. MUNZ's feedback

includes that it wants its members to have on-going employment on the terms and conditions of the collective agreement.

[22] Discussions are underway with Nova Marine about a Nova Marine related company buying the *Buffalo* and time chartering it back to Holcim until a different pneumatic carrier could be deployed in late 2025. Thus ownership and operation of the *Buffalo* would transfer to Nova Marine. Discussions are noted to be continuing.

[23] On 18 April Nova Marine emails that individual employment agreements would be able to be offered for a short term, four to six months. An alternative of Holcim retaining crew management, on current employment terms, and charging Nova Marine for crew costs is raised. This is noted to be a triangular employment relationship and possibly the "simplest way since the crew would maintain its relationship with the original employer".

'Curve ball'

[24] On 8 May 2025 Holcim meets with Nova Marine to sign off "key commercial terms and discuss next steps for engagement with Buffalo crew on their future". What Mr Miller describes as a "last minute curve ball" is encountered – Nova Marine's management committee are worried, worst case scenario, if the crew do not agree to transfer over for the charter back until the new vessel arrives. They want a condition that if they cannot arrange for the crew to transfer they can delay taking delivery of the *Buffalo* until the *Vega* arrives.

[25] Mr Miller responds that he thinks they both need to work together at speed regarding the crew, with wording allowing Nova Marine to consider all possible forms of employment agreement.

[26] By 20 May 2025 email Holcim advises the union that principal commercial terms have been agreed with Nova Marine, with an overseas company assuming ownership of the *Buffalo* in mid to late July 2025 and continuing to operate that vessel until the arrival of the new pneumatic cement carrier, currently scheduled for the end of the year. Once the final decision is made Holcim would issue redundancy notices to staff, pay redundancy and associated entitlements with Nova Marine indicating it would offer fixed term agreements until the end of the year.

[27] The email from Mr Tuck attaches for review a template fixed term agreement and describes that the offers:

> … would be on terms and conditions that closely reflect current arrangements.

[28] The offer is with Nagu Shipping SA (Nagu), based in Panama. The template does not identify pay rates, nor does the email. There are also differences to the collective agreement terms, particularly such as the collective agreement allowing for equal time on (the vessel) as off (in practice 28 days) whereas the Nagu agreement gave no entitlement to time off the vessel in the period between the estimated start date (14 to 30 July 2025) and the completion of the fixed term on 31 December 2025.

[29] The union was very concerned about the change to time on and off.

[30] A meeting is held on 26 May 2025 between Holcim, MUNZ, a lawyer representing Nova Marine and a New Zealand ship agent. Holcim says "to consult on the high-level proposal and NM's offer of fixed employment". Submissions for Holcim refer to the union on behalf of its members "aggressively and uncompromisingly" rejecting Nova Marine's offer of the fixed term individual employment agreement, being not a collective agreement, and its terms and conditions being less advantageous than those under the collective agreement. There is a substantial drop in the superannuation entitlements between the collective agreement and the proposed fixed term agreement.

[31] On 5 June 2025, to Holcim's surprise according to Mr Miller, Nova Marine advises the company that:

> Unfortunately, but not unexpectedly, there seem to be no room for any different terms for crew employment than those already offered.
>
> In the circumstances and considering the reluctance of the unions/crew, the Buffalo shall be acquired with no charter back and shall then sail out of NZ.
>
> We have made all possible efforts but there seem to me no other way, I am afraid. Trust you understand.

[32] On 11 June 2025 Holcim informs MUNZ that it was now unlikely there will be a time chartering interim solution so Nova will not be offering fixed-term agreements to the crew.

[33] Offers of employment to *Buffalo* crew do not proceed – Nova Marine notifies Holcim it wishes to buy the *Buffalo* but not charter it back to Holcim, rather taking it away from New Zealand.

[34] On around 23 June 2025 Holcim and Nagu enter into a Memorandum of Agreement (MOA) for the sale of the *Buffalo*. Around the same time Holcim enters into a General Time Charter Party with Maltese company Alton Shipping Ltd, with its performance guaranteed by NovaAlgoma Cement Carriers SA. Alton is to supply the MV NACC *Vega* and crew to transport Holcim's concrete. The *Vega* is to come from overseas, with the earliest delivery date being between 1 September and 19 December 2025.

[35] After the deposit for the *Buffalo* is paid, Nova Marine emails Holcim on 29 June 2025 including:

> …notwithstanding the big issues related to the hire of HNZ crew to let Buffalo remain on charter for a while – both Parties worked hard to find the best solution for an agreement.
>
> Mike and Amanda made a great job, spending a lot of time in video calls out of working hours – but I must highlight the strong and firm commitment that our shareholders maintained during the entire negotiation period – accepting terms that only to HNZ have been provided so far. Reason is that they wish – as I do – establishing a long term business relationship with HNZ.

Announcement by Holcim

[36] Under a 5 July 2025 announcement pack Holcim informs crew that it would continue to operate the *Buffalo* until the end of the year when it will be sold and a replacement vessel arrives, managed by Nova Marine.

[37] Further details are provided to individual employees on 16 July.

[38] On 23 July 2025 MUNZ's lawyer writes to Holcim identifying the union's concern that the company has not complied with its obligations under clause 39 of the collective agreement to consult about preventing employees from being disadvantaged. The union asserts the intention of clause 39 was to be an employment protection provision in the agreement. Reference is also made to Holcim not attending to how the position of the "vulnerable employees will be addressed."

[39] Holcim's lawyers respond on 7 August 2025 outlining the consultation with staff and noting its recommendation that Nova Marine take on Holcim's employees.

[40] The employer's lawyers also write on 26 August to the New Zealand lawyers acting for Nova Marine asking, as part of Nova Marine's consideration of "its options and next steps" to consider "making offers of employment (and ideally on existing terms and conditions of employment)" to the *Buffalo* crew.

[41] Nova Marine's lawyers write to Holcim on 12 September 2025 noting Nova Marine does not now intend to time-charter the *Buffalo*, which has been sold and will be moved out of New Zealand waters and reflagged. The *Vega* is said to have different machinery and handling system, requiring specialised and experienced crew, so offers of employment will not be made to the *Buffalo* crew.

[42] At the time of the investigation meeting in this proceeding MUNZ members were still employed by Holcim. Further developments are set out in the December 2025 Authority decision and were the subject of evidence and submissions in related proceedings' investigation meetings in 2026.

[43] As at the time of writing, the *Buffalo* sale was implemented and Holcim moved, at least as a temporary solution, to transporting its cement by road and rail with other maritime prospects to be examined more in subsequent determinations.

Interpretation principles

[44] The first issue concerns the application of clause 39 of the collective agreement.

[45] There is little dispute between the parties as to the principles of interpretation to be applied:

- The proper approach is an objective one.
- The aim is to ascertain what the document would convey to a reasonable person, having all the background knowledge that would reasonably have been available to the partes at the time of the contract.
- The background knowledge is what a reasonable person would regard as relevant.

- Contractual language should be interpreted within its overall context, using a purposive or contextual interpretation, with the text remaining centrally important.

- Unique features of collective agreements, including their relational nature, representing the progression of an employment relationship over a lengthy period of time, being a creature of statute and developed not by practising lawyers.[9]

[46] MUNZ promoted the interpretation process considering the objects of the Act, including inequality of power in employment relationships and the good faith obligations between the parties.

Clause 39 of the collective agreement

[47] Clause 39 provides as follows:

> **39 PROTECTION FROM DISADVANTAGE**
>
> In the event that the work of any of the Employees/Seafarers bound by this Agreement is to be contracted out or the business of the Company is to be sold or transferred, the parties to this Agreement will consult in good faith to deal with the rights and obligations of the Employees/Seafarers and the Company with a view to protecting Employees/Seafarers bound by the Agreement from being disadvantaged.

[48] As the parties agree, the wording reflects a former section of the Act, s 54(3)(a)(ii), which was repealed in 2004 by the Employment Relations Amendment Act (No 2) 2004. That section required every collective agreement to have a clause dealing with the rights and obligations of the parties if work was contracted out or the business or part of it was transferred or sold.

[49] Also of relevance from Holcim's perspective it clause 40(h) which is part of the redundancy provision:

> **(h) Employee/Seafarer Protection Provision**
>
> In the event that the Company restructures the business, as defined in the Employment Relations Amendment Act (No 2) 2004, being the sale,

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[9] *New Zealand Airline Pilots' Association Inc v Air New Zealand Ltd* [2017] NZSC 111 and *Bathurst Resources v L & M Coal Holdings Ltd* ;2021] NZSC 85.

transfer, or contracting out of all or part of our business that may affect future employment, the Company will:

1. As soon as possible, taking into account the commercial requirements of the business in such situations, commence negotiations with the potential employer concerning the impact of the restructuring on the Employee/s/Seafarer/s positions and agree on how those negotiations will be conducted.

2. Negotiate with the potential new employer regarding:

   - Whether or not it proposes to offer employment to the Employee/Seafarer; and
   - If so, the terms and conditions on which it proposes to offer employment to the Employee/Seafarer; and
   - The proposed date for commencement of employment with eh potential new employer.

…

In the event that the Company cannot secure from the other party a commitment to offer employment on the same terms and conditions of employment in the same capacity and treat the service as continuous to all or any Employees/Seafarers then affected permanent Employee/s/Seafarer/s will, after consultation with the Union, be declared redundant.

Redundancy compensation shall be payable, under the terms of this agreement unless otherwise agreed.

Notwithstanding that redundancy is paid, this shall not prevent Employees/Seafarers, where the Union has reached agreement, form accepting employment on the terms offered by the other party.

The parties' positions

MUNZ's interpretation

[50] The union says:

- Holcim must establish it took sufficient steps to protect workers from disadvantage in a sale or transfer of the business situation.

- Holcim must have consulted with the union in good faith so that the workers could in fact be protected from disadvantage.

[51] MUNZ accepts that consultation does not mean negotiation or agreement.[10] But information must be provided to ensure the party being consulted is adequately informed such as to make intelligent and useful responses, along with providing sufficient time – a reality, not a charade.[11]

Holcim's interpretation

[52] Holcim's interpretation is that the consultation process needs to establish what disadvantage MUNZ members want to be protected from, but subject to what is commercially achievable in the particular context. The starting point is that the employment is going to end, with the scenarios in clause being contracting out, selling the business or transferring the business.

[53] Clause 40(h) sets out the process Holcim says, which does not require them to go back and forth to the union.

[54] During these events, Holcim acknowledged between New Zealand and Australian representatives that the collective agreement required them to "push wherever possible" for an outcome of the crew being offer the same terms and conditions with service being treated as continuous.

[55] Holcim argues that how the consultation is addressed is to be informed by clause 40(h) – the employee/seafarer protection provision.

Conclusion

[56] At least by the time submissions were made, both parties agreed that clause 39 does not impose an absolute requirement to achieve an outcome of the union's members being protected from disadvantage.

[57] I have difficulty with the concept of clause 39 effectively being redundant, or imposing no higher obligations as Holcim describes it, than clause 40(h). Provisions should not generally be interpreted as being superfluous. The heading of clause 39 is "Protection from Disadvantage", rather than something more indicative of a 'one and done' consultation requirement. In addition as Holcim accepts, the obligation in clause 39 imposes consultatory obligation on it from the commencement of the negotiations

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[10] *Lyttelton Port Company Ltd v Maritime Union of New Zealand* [2025] NZEmpC 167 at [80].

[11] As above.

(with a purchaser), whereas clause 40(h) can potentially be seen as only requiring it from a much later point.

[58] Clause 40(h) can and should be read alongside clause 39, where applicable. Also, there is likely some overlap between the obligations here and statutory good faith obligations.

[59] The consultation under clause 39 needs to establish what disadvantage MUNZ members want to be protected from. Submissions from Holcim describe this as an "aspirational aim" but that seems to set the obligation somewhat lower than envisaged. It is accepted that as there is no absolute obligation to achieve the outcome MUNZ members want but having determined via consultation what the union members want, the company should make reasonable endeavours to attempt to achieve it. The employer's commercial interests are a factor in determining what is reasonable.

[60] Consultation requires the party being consulted to be adequately informed as well as sufficient time, with genuine effort involved.[12] Consultation should not be seen as a sole event where relevant circumstances are changing, as was the case here.

[61] MUNZ argues that Holcim failed to provide information about the difficulties it was having with negotiating with Nova Marine, being information that was required to be disclosed to protect from disadvantage. It says that in order for the union to protect its members from disadvantage it must have the necessary information to do so and this consultation must happen in real time.

[62] The clause anticipates the employer and the union working together to avoid disadvantage arising for employees. In this instance, other than in the meeting between MUNZ and Nova Marine's representatives, Holcim was the only party in a position to provide information to the union that it needed to protect its members.

Holcim's efforts under clause 39

[63] Holcim did consult with the union and its members in February 2025 about options it was looking at. Its preferred option involved a replacement vessel run by a third party provider.

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[12] Above at [80].

[64] The company also made several efforts to get Nova Marine to agree to continued employment of Holcim's seafarers on the same terms and conditions on which they were currently employed in the collective agreement. This was particularly in March 2025 communications. Mr Miller identifies in his internal 11 March 2025 email that "our collective obliges us to push wherever possible for" that outcome, with continuous service. Did it do enough and/or at the right times?

[65] MUNZ argues that Holcim fell down as follows:

- It never engaged in discussions with other buyers for the *Buffalo* when it became clear that the crew would not be transferring.
- Members were not consulted with when it became clear that Nova Marine would not be taking the existing crew at all.
- It withheld essential information related to salaries, bonuses and non-equal time on and off from the union.
- It failed to advise Nova Marine of the obligations to transfer employees under Part 6A of the Act.

[66] These are all said to be reasonable steps that should have been taken in protecting employees from disadvantage. The union's view is that instead, Holcim worked with Nova Marine to protect its own interests, ahead of the interests of the crew.

Other buyers

[67] Mr Miller gave evidence of the attempt to reach out for a buyer for the *Buffalo* through Holcom Group's Global Shipping division to assess whether another vessel could be sourced. The only identified candidate was Nova Marine, with whom which Holcim internationally already had existing relationships.

[68] Ms Sinclair sets out by 16 January 2025 email that they would reach out to a "small number of coastal vessel operators to test their potential shipping options".

[69] Mr Miller's evidence was of some early conversations with other providers, with one operator in 2024 having some interest but the price for the *Buffalo* would have been too low and a new vessel would have taken two years to build.

[70] MUNZ is critical of this information not being provided to the union. Only now in the Authority has MUNZ become aware of other attempts Holcim made. It is also unclear whether Holcim went back to those other providers when the deal with Nova Marine started heading towards a position that did not involve the crew being kept on.

[71] The union's submissions in this area seem to sway between suggesting Holcim should have gone back to other buyers and focusing on expressing dissatisfaction with Holcim's failure to provide information regarding other buyers at an earlier stage.

[72] Earlier discussions were not clearly covered by clause 39 as they did not get to the point of likely being impactful upon the seafarers' employment to warrant clause 39 coming into play. A finding effectively requiring Holcim to have gone back to other buyers later goes too far in the commercial reality of a situation where discussions were a long way down the track with Nova Marine. MUNZ is on stronger ground below regarding actions with Nova Marine.

Consultation on refusal to take the crew

[73] The union argues that it and its members were in effect being led along a path for a long time believing they would be transferred on the same or similar terms as those in the collective agreement.

[74] In January 2025 initial email exchanges occurred between Holcim and Nova Marine. This included on 16 January a Holcim Australia representative indicating to Nova Marine that Mr Miller asking that engagement "is kept <u>highly</u> confidential, due to a number of sensitivities including the NZ maritime union."

[75] In February 2025 Holcim consults including indicating:

> We are, however, committed to working with any Third Party shipping provider who may be used in future to see if they are able to employ those impacted Holcim employees who wish to continue working, where possible on identical terms.

[76] Following communications over the next few months, Holcim advises on 20 May 2025 that offers by Nova Marine "would be on terms and conditions that closely reflect current arrangements."

[77] On 5 June 2025 Nova Marine's overseas based in house counsel advising Holcim that "… there seems to be no room for any different terms for crew

arrangements". Several days later on 11 June, Holcim advises the union that Nova Marine would not be offering fixed term agreements.

[78] MUNZ argues the key point is that there was no opportunity to consult over this – it was presented as an unchallengeable fact of the agreement. And from then on there was no opportunity to "consult in good faith to deal with the rights and obligations of the employee/seafarers" under clause 39.

[79] Holcim's letter to seafarers of 16 July 2025, spells out its view that the only consultation was that earlier in the year, leading to a preliminary decision communicated on 14 April 2025. That could be seen as the one-off consultation identified in the company's submissions being all that was required.

[80] There were substantial changes in the February to April 2025 period. There was an absence of consultation on the prospect of there being no transfer on the same terms and conditions as in the collective agreement, before it was formally advised on 16 July 2025, amounting to a breach of clause 39.

[81] Holcim should have approached its workers, explaining the negotiations were at a stage where the fixed term agreements were not going to go ahead and seeking views from them.

[82] Holcim describes itself being in a difficult situation after Nova Marine communicated on 5 June 2025 that there was no room for other terms than what were offered.

[83] MUNZ argues Holcim had prevented its members from being adequately informed so as to be able to make intelligent and useful responses, before changes to the plan were made.

Withholding essential information

[84] Mr Tuck confirmed during the Authority's meeting that he was aware prior to the May meeting between MUNZ and Nova Marine's representatives, of the salaries which were proposed to be offered to MUNZ members. However, this information was not provided to the union or its members at the time.

[85] This was significant information the union needed to protect its members from disadvantage. This information could have given the union more of an impression that Nova Marine was indeed in a position to negotiate.

[86] Holcim was aware before the MUNZ and Nova Marine meeting that Nova Marine was not intending to offer roles to all of the MUNZ crew members. It knew Nova Marine was not intending to offer equal time on/ and off, instead requiring a single crew to remain on board for the entire fixed term period. In addition no chef steward role was envisaged.

[87] The failure to pass on this information can be seen as the flip side of Holcim's statement to MUNZ that Nova Marine's offers "closely reflect current arrangements", which is discussed in more detail below. There was no warning to the union of potential difficulties which likely impacted on how it dealt with the meeting with Nova Marine.

[88] I conclude Holcim did not provide appropriate information and genuinely consult with MUNZ to enable it to properly engage in the process. The union did not have enough information to take steps to protect its members from being disadvantaged.

Transfer of Part 6A employees

[89] This is dependent on the finding below regarding Part 6A.

Conclusion

[90] I accept the submissions that clause 39 requires Holcim to take sufficient steps to protect works from disadvantage. This is not a guarantee that no disadvantage will befall them. As outlined above Holcim did not meet the obligations imposed on it by clause 39 of the agreement, failing to provide the union with all the relevant information to enable it to properly participate in the process.

Good faith obligations

[91] Elements of good faith obligations between the employer and the union and between the employer and the employee are set out explicitly in s 4 of the Act – being active, constructive, responsive and communicative.

[92] Under s 4(1A)(c), an employer has duties regarding the provision of information where it is proposing to make a decision that:

> … will, or is likely to have an adverse effect on the continuation of employment of 1 or more of his or her employees.

[93] In *Birthing Centre Ltd v Matsas* Corkill J recognised that the "proposing" concept in s 4 may mean a situation where a concluded contract has not been reached with:

> … the whole point of consultation is to hear what the affected employees may wish to advance by way of comment before a concluded view as to the way forward is reached. In short, something that is proposed may involve content that is yet to reach finality.[13]

[94] There was a proposal that the midwives would become employees of the local district health board under the model which had been developed.

[95] Here no information was provided to the union or its members by Holcim during its negotiations about why the "high level proposal [of protection of terms and conditions] was not going ahead".

[96] Reasons for a redundancy or restructuring should be provided by a fair and reasonable employer. Here "an obvious reason for the redundancy" relates to the employer's actions in their commercial negotiations. If Holcim was did not negotiate to keep the jobs, then that is a reason for the redundancy and should have been provided.

[97] During the Authority's meeting it was clear that Holcim was aware over a period that Nova Marine was looking increasingly unlikely to support the crew being transferred on terms similar to the collective agreement.

[98] But the picture provided by Holcim's communications was different with:

- 19 February 2025 - the consultation pack indicating commitment to working with any third party shipping provider "where possible on identical terms".

- 21 February – Mr Tuck advising the other unions by email that Holcim was "keen to support NZ coastal shipping", consistent with his note of his meeting with MUNZ.

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[13] *Birthing Centre Ltd v Matsas* [2023] NZEmpC 162 at [67].

- 9 May – Holcim advising internally that Nova Marine may not agree to transfer the crew over.

- 20 May – Mr Tuck advising the unions that there was agreement on principal commercial terms with Nova Marine.

- 11 June – Holcim advising that the time charter would not go ahead.

[99] During this period Nova Marine indicated its shareholders did not want any arrangement that differed from the fixed term agreements. On that basis there was no room for MUNZ to negotiate for terms that were equivalent to those in its collective agreement with Holcim.

[100] By contrast the 20 May 2025 message which Holcim was sending to MUNZ was:

> These offers would be on terms and conditions that closely reflected current arrangements.

[101] The offer was a fixed term arrangement on an individual basis. No salary was identified. The fixed term agreement effectively permitted the employer to require the employee to remain on board for up to a six month period, compared to the current one month period. Superannuation was substantially decreased.

[102] Holcim's submissions were that there was no evidence that Mr Tuck did not genuinely hold that belief, knowing that terms other than the on/off benefit and superannuation were to be the same albeit in an individual employment agreement, rather than a collective. It is also noted that Mr Mayn and other union representatives were vastly experienced advocates who could, and did, make their own assessment quickly.

[103] The identification in the 20 May 2025 letter of an arrangement closely reflecting the current one was misleading.[14]

[104] Holcim, whether or not the prime driver, helped set up a situation where the union went from a lengthy period where it looked like identical terms were to be offered,

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[14] The Act, s 4(1)(b).

to a sudden awareness, which was seemingly being obscured by Holcim in its 20 May communication, that in fact key terms were not going to be the same.

[105] This seemingly sudden change did not set up the situation well for the 26 May 2026, the first between Nova Marine (legal) representatives and the union. Had MUNZ been aware of Nova's resistance, the feedback given by the union may have been different.

[106] Holcim may well not have had authority from Nova Marine to share the reduced number of crew it was potentially going to take on. But in that case it should have been more careful in its communication that Nova Marine "intended to offer fixed term employment agreements to existing Buffalo crew", reflecting "current arrangements'.

[107] Under s 4(1A)(c)(i) and (ii) of the Act Holcim should have informed the union of the circumstances (potentially under an embargo) and work with it on a way forward before finalising the sale. Feedback could have included members wanted their employer to push harder to keep their jobs or to make it a bottom line. Although they had no guarantee of achieving that outcome, they lost a chance to provide this feedback before Holcim and Nova Marine concluded the sale.

[108] Under s 4(1A)(c)(i) information relevant to the continuation of the employees' employment should be provided as well as an opportunity to comment on that information. Timely and ample access to information supports successful employment relationships and reduces the incidences of employment relationship problems.[15]

[109] The fact Nova Marine had indicated it was not intending to proceed with an arrangement of a similar nature to that in the collective agreement, is clearly captured by that requirement. This is very significant to the continuation of the crew's employment.

[110] At the point the union learnt the sale was finalised, it also learnt that its members would be made redundant. There was no opportunity to then comment on proposed redundancies – the deal was done.

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[15] *Vice-Chancellor of Massey University v Wright* [2011] NZEmpC 37 and [47], Full Court.

[111] In conclusion Holcim breached its good faith obligations to MUNZ and its employees.

Part 6A of the Act

[112] Subpart 1 of Part 6A provides enhanced protections to specified categories of employees if, as result of a proposed restructuring, their work is to be performed by another person.[16]

[113] It applies, under s 69F of the Act, if:

(a) the employee is in a category specified in Schedule 1A; and

(b) as a result of a proposed restructuring –

(i) the employee will no longer be required by their employer to perform the work; and

(ii) the work performed by the employee, or substantially similar work, is to be performed by or on behalf of another person.[17]

[114] The fact the performance of the work by or for the other person does not begin immediately after an employee ceases to perform the work for their employer, does not mean the subpart does not apply.[18]

[115] Those to whom the subpart applies are entitled to elect to transfer to the new employer on the same terms and conditions in a redundancy situation.[19]

[116] To summarise submissions at the time of the investigation meeting in November 2025, MUNZ's position is that both the chief cooks and the chief stewards are covered by Part 6A and this is a restructuring situation also covered by that part, so they were entitled to transfer. Holcim does not consider the chief cooks are covered as food catering services nor the chief stewards as providing cleaning services. Plus it argues no restructuring has occurred as covered by Part 6A.

Schedule 1A of the Act

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[16] *Matsuoka v LSG Sky Chefs New Zealand Ltd* [2011] NZEmpC 44 at [49].
[17] The Act, s 69F(1)(a) and (b).
[18] The Act, s 69F(2).
[19] The Act, s 69I.

[117] Schedule 1A includes coverage of:

> Employees who provide the following services in the specified sectors, facilities, or places of work:
>
> (c) cleaning services, food catering services, caretaking, or laundry services for the education sector … ;
>
> (d) cleaning services, food catering services, orderly services or laundry services for the health sector …;
>
> (e) cleaning services, food catering services, orderly services or laundry services in the age-related residential care sector;
>
> …
>
> (e) cleaning services or food catering services on relation to any airport facility or for the aviation sector;
>
> (f) cleaning services or food catering services in relations to any other workplace. …

[118] The Act does not provide a definition of food catering or cleaning services.

Cases dealing with Part 6A of the Act

[119] Several cases have examined the application of the food catering services and cleaning services categories and the question of a vulnerability element.

[120] *Hughes v Upper Hutt Cosmopolitan Club* – clause (f) of Schedule 1A was found to cover food catering services provided in a cosmopolitan club. No limit to vulnerable people.[20]

[121] *Matsuoka v LSG Sky Chefs New Zealand Ltd* [21] - although there is reference to vulnerability in the explanatory note to the introduction of the 2003 Employment Relations Law reform Bill (No 2), the Court decided that in the absence of those words anywhere in the relevant parts of the Act, the sections cannot be limited to vulnerable persons.[22]

[122] Mr Matsuoka had a wide range of responsibilities and was the "eyes and ears" of the managing director, who was based overseas. He retained an involvement in the maintenance of equipment, had an employment agreement describing him as a senior

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[20] *Hughes v Upper Hutt Cosmopolitan Club* WA 120/08, 17 September 2008.
[21] *Matsuoka v LSG Sky Chefs New Zealand Ltd* [2011] NZEmpC 44.
[22] Above at [52].

ground steward but was paid over twice what other such ground stewards were paid. He did undertake the main duties of ground stewards, placing necessary equipment like cutlery and glasses on the metal food carts, loading and driving the trucks, unloading the carts and off-loading empty carts. He also spent about two to three hours a day working on stores and organising beverages.

[123] The delivery of food, as well as its preparation, was contemplated to be included in the description, along with the provision of "drink" as well as "food" and the necessary implements for passengers in that case to be able to consume the items supplied to them.[23]

[124] Judge Travis supported the approach in *Hughes* that vulnerability was not required and the fact the applicant there was paid substantially more compensation than the other employees of their catering company did not rule them out. Similarly Mr Matsuoka's work, which included delivery of food, drinks and equipment to planes, as well as organising stock, came within the description of the provision of food catering services for the aviation sector in clause (e) of Schedule 1A.

[125] *Lend Lease Infrastructure (NZ) Ltd v Recreational Services Ltd* - [24] parks maintenance staff were found not to be providing "cleaning services" in the Schedule 1A sense. While there were forms of cleaning involved, such as picking up litter, removing spider webs and water blasting, "cleaning services" was found to imply primarily an indoors activity and man-made surfaces, like everyday indoor domestic cleaning.

[126] Judge Inglis, as she then was, identified that what was required was an "assessment of the real nature of the role which will include consideration of its focus and purpose. The frequency and importance of cleaning within the role will assist in determining if a cleaning service is being provided"[25].

[127] With "blended" roles a "factual assessment of the real nature of the role undertaken by the employee under their employment agreement and the relationship of the tasks in question to that role".[26] Comment was made that *Matsuoka* involved food

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[23] Above at n [65].
[24] *Lend Lease Infrastructure (NZ) Ltd v Recreational Services Ltd* [2012] NZEmp C 86.
[25] Above at [61].
[26] Above at [62].

catering services for several hours of the day and the bulk of his average day was consumed with the provision of such services.

[128] The parliamentary purpose was described as protecting "limited categories of employees in sectors subject to frequent restructurings, who are generally unskilled, and who lack bargaining power".[27]

[129] In *Tan v LSG Sky Chefs New Zealand Ltd* an airline equipment and supply supervisor sought to rely on providing food catering services for the aviation sector, to found an entitlement to transfer under Part 6A.[28] Mr Tan's work involved supervising all equipment and inventory at the employer's premises and liaising with airlines about equipment to ensure smooth supply of airline equipment. The purpose of the job was to ensure all parts of the business had the equipment in stock to provide catering to all the airlines contracted with. Equipment included plates, cups and trays, both reusable and disposable.

[130] *Tan* was decided by Judge Travis, who considered the impact of Supreme Court statements in *Service and Food Workers Union Ngā Ringa Tota Inc* on His Honour's previous approach in *Matsuoka.*[29] It was concluded that Schedule 1A was drafted without limitations and His Honour declined the draft on the criteria.[30]

[131] The real nature of Mr Tan's role was found not to be to provide food catering services but rather to maintain equipment stores – he was insufficiently proximate to the actual provision of food services.

[132] *Hau v SA & AC Lester Ltd* – the Authority considered a manager and barista in a family run café.[31] The café provided food onsite and offsite, with the Authority concluding that the comprehensive nature of the café's service brought Mr Hau's position within the definition of an employee providing "food catering services".

[133] In *Hau* the Authority described the "traditional" view of catering as making food and taking it elsewhere to a venue for specific occasions, as not always required for the sense in which "food catering services" is used in the Schedule. The catering work was

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[27] Above at [80].
[28] *Tan v LSG Sky Chefs New Zealand Ltd* [2013] NZEmpC 35.
[29] *Service and Food Workers Union Ngā Ringa Tota Inc v OCS Ltd* [2012] NZSC 69.
[30] Above in *Tan*, at [58].
[31] *Hau v SA & AC Lester Ltd* [2021] NZERA 109.

not seen as incidental to Mr Hau's usual tasks – it was virtually identical in nature, excluding delivery obligations. This distinguished it from the incidental, preliminary or preparatory cleaning tasks undertaken in the *Lend Lease Infrastructure* decision. The comments were noted to not necessarily extend to all café workers.

[134] A check on the protective purposes of Part 6A noted the employee as not in a strong bargaining position and falls within the category of employees vulnerable where the employer changes and a new employer wishes to retain the employee's services but on altered terms and conditions.

Analysis

[135] Clause (f) in Schedule 1A is something of a catch-all provision as clauses (a) to (e) include cleaning services and food catering services in specific sectors, facilities or places of work. Some also include other types of services.

[136] Food catering or cleaning services provided to for example, students in a school or university hostel, patients in hospitals, prisoners in prisons are likely captured in the earlier categories in Schedule 1A.

[137] In *Lead Lease* Judge Inglis referred to s 5 of the Interpretation Act, the text and purpose of the statutory provision under scrutiny and the need to take heed that the Supreme Court has indicated even if the meaning of the text may appear plain in isolation of the purpose that meaning should always be cross-checked against the purpose in order to observe the dual; requirements of s 5. [32]

[138] An assessment is needed for blended roles. In some cases the blend will be between Schedule 1A tasks and non-Schedule 1A tasks. But here there is potentially a blend in the chief steward role between two tasks in Schedule 1A – food catering services and cleaning services.

[139] I do not consider that the fact the cook and steward are providing a small amount of cooking and/or cleaning services to themselves is enough to take away from their wider role. The vast bulk of their work is to provide services to others.

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[32] *Lend Lease* at [45], referring to *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] NZSC 36. 01

Chief Cooks

[140] From the cases above, the question is whether the real nature of the roles, their focus and purpose, comes within the Schedule 1A description.

[141] The union says that food is provided in a workplace and that is sufficient to amount to a catering service, which is covered. Cooks are catering for staff. This is not a *Lend Lease* situation where the task (cleaning in that case) was only an incidental component of the role. Here providing food is the entirety of the role. The chief cook is described by the union as an in-house caterer.

[142] Occasionally consultants, contractors or the like will be on the MV *Buffalo* and will be provided meals by the cook. This done without charge to the consultant or their employer. Mr Coleman told the Authority that the last time prior to the Authority's November 2025 investigation meeting that a contractor stayed on the ship was for five days in December 2024. A daily allowance payment is made to the chief cook if there is higher than a specified number on board to cook for. Mostly these will be outgoing crew members. However, there has not been frequent payments required.

[143] The Chief Cooks are spending most of their timing planning for, preparing and providing meals. They are providing a food service. The more challenging question is whether they are a food catering service.

[144] The traditional definitions of catering envisage the provision of food for events. However, other clauses in Schedule 1A do not have that social event or gatherings implication.

[145] Here the chief is providing food to those already residing in the premises. This is more in keeping with students in a school/university hostel, patients in a hospital or rest home, or prisoners in a prison. The vessel's chef is providing food to the staff on the vessel who are present for extended periods, unable to readily source cooked food from elsewhere. This has similarities to school hostel students, hospital patients and prisoners, who have limited ability get prepared food from elsewhere, although Uber Eats and the like may have changed the situation for students in recent years.

[146] I consider it is initially arguable that the chief cooks come within the clause (f) description.

Chief Stewards

[147] Mr Bell had no recollection of seeing the particular job description supplied to the Authority by Holcim but on the basis of Mr Coleman's evidence it seems more likely that it was. Permanent employment agreements must be held on the vessel, under maritime requirements.

[148] Mr Coleman told the Authority that the intention of the position description was that this split into three components. The process for development of such documents involves sending a draft to the captain to adjust, if required.

[149] Mr Coleman's view is that stewards spend about a third of their work time helping with kitchen duties – preparing salads, putting out food and equipment (plates, cutlery etcetera), and putting the equipment away after the meal. He told the Authority that this split into thirds was the intention behind the position description.

[150] Mr Coleman accepts that all chief stewards would offer some assistance in the galley, for example by making salads. Mr Bell likely did more than was average because of his culinary experience. Mr Perera's evidence was that Mr Bell spent about 40% of his time in the galley.

[151] The chief steward clears plates, a necessary part of the food provision process.

[152] Another third is spent on cleaning. It is agreed that some days this takes more time than others, such as when sheets are changed. All agree that there is some cleaning required each day.

[153] The final third is spent on ordering food and cleaning related products (such as toilet paper), getting the order on board with the help of others and putting the order away.

[154] The stewards do a component of work that is necessary for the provision of food to staff - ordering food and stores.

[155] Mr Coleman describes the chief steward role is also a senior one, being the head of the "catering department". However, the only person in the department, other than himself is the chief cook. He accepts that some time is spent as a manager, perhaps not a third though, if issues arise about the cleaning or food.

[156] Cleaning services do not, on the face of it have the same possible implication as food catering services with taking the food somewhere for a specific occasion. Cleaning may be undertaken at the same place all the time and come within the definition.

[157] I conclude that when the food assistance (even other than Mr Bell's additional assistance) component, the stoking of food and the cleaning component are combined it is initially arguable that this comes within the clause (f) description.

Conclusion on Schedule 1A

[158] I consider it arguable that the roles come within the Schedule 1A wording but the parliamentary purpose cross check needs to be undertaken. That purpose was described as protecting "limited categories of employees in sectors subject to frequent restructurings, who are generally unskilled, and who lack bargaining power".[33]

[159] These workers do not readily fit within a group not in a strong bargaining position. They are part of a wider union group which has significant bargaining power. They cannot be said to be unskilled. There have not been frequent restructurings in their workplace.

[160] By a fine margin I conclude that these roles are not covered by Schedule 1 of the Act and thus Part 6A does not come into play. Even if they were, the lack of certainty from the latest information received about any future arrangement between Holcim and Nova Marine means there is no "proposed restructuring" which can properly be examined.

Compliance orders

[161] Compliance orders were initially sought requiring Holcim to comply with clause 39 of the collective agreement, comply with its good faith obligations and facilitate employees who are covered under Part 6A to transfer to Nova Marine as the purchaser of the *Buffalo*, as employees on the same terms and conditions as those in the collective agreement.

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[33] Above at [80].

[162] However, as was acknowledged in later investigation meetings, to some extent the circumstances have moved on.

[163] Compliance is a discretionary remedy. Of relevance is that no other remedies are sought here.

[164] The circumstances of this matter are unusual. In the absence of clear evidence of likely outcomes of discussions between Nova Marina and Holcim about future arrangements between them, and with some Holcim employees still employed as a result of the Authority's interim injunction, there is reason to issue a compliance order requiring Holcim to comply with clause 39 of the collective agreement, as now captured in the individual agreements of those interim reinstated and its statutory good faith obligations, recognising that subsequent determination/s of the Authority in the near future may impact on that order.

[165] I order that Holcim immediately comply with its obligations under clause 39 of the collective agreement and its statutory obligations of good faith under s 4 of the Act.

Costs

[166] Costs are reserved. At least aspects of this proceeding are likely covered by a presumption against costs being awarded in certain collective situations.[34]

[167] If a party wishes to seek costs, they should first attempt to reach an agreement between the parties.

[168] If they are not able to reach agreement then a party seeking costs should lodge and serve a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum the other party would then have 14 days to lodge any reply memorandum.

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[34] See www.era.govt.nz/determinations/awarding-costs-remedies.

[169] Given the overlap between the files relating to Holcim, the Authority would be amenable to granting an extension to these times if dealing with costs on the three matters together seems preferrable.

Nicola Craig
Member of the Employment Relations Authority