

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 283
3303920

BETWEEN	MURRAY TUME Applicant
AND	PAE (NEW ZEALAND) LIMITED First Respondent
	THE CHIEF OF NEW ZEALAND DEFENCE FORCE Second Respondent

Member of Authority: Marija Urlich

Representatives: Allan Halse, advocate for the Applicant
Jordan Boyle, counsel for the Respondent

Investigation Meeting: On the papers

Submissions and information received: 17 November 2025 and 5 March 2026, from Applicant
17 July, 1 December 2025 and 5 March 2026, from the Respondent

Determination: 6 May 2026

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Mr Tume was employed by PAE (New Zealand) Limited (PAE) as a health, safety and environmental advisor from February 2023 until October 2024. He says he was unjustifiably dismissed and unjustifiably disadvantaged by the actions of PAE including in respect of his ability to carry out his role as a health and safety advisor.

[2] Mr Tume also brings an employment relationship problem against the Chief of New Zealand Defence Force (NZDF) which he describes as follows:¹

This statement is amended in response to a request by the Duty Authority Member who has asked for greater clarification to be provided to the SoP regarding NZDF's role in the employment problem. ...NZDF is named as Second Respondent because PAE operates on a military base and as such have been identified as a preferred provider by NZDF. The Applicant is employed by the first respondent as a Health and Safety Environmental Advisor responsible for the health and safety of PAE employees and contractors at the Papakura base and other Auckland military sites. The Applicant is off work because his workplace is unsafe and as a PCBU, NZDF has a "Duty of Care" (section 36 HSWA) to all employees and contractors on site. The Applicant has a proud military background and NZDF need to be informed that he has suffered serious emotional, psychological and physiological harm to his health on their military base. PAE are failing to support the Applicant and are actively victimising him for trying to enforce health and safety compliance across the Auckland military bases that PAE is contracted to. PAE are consequently breaching legal health and safety standards on the Auckland bases. NZDF is ultimately responsible for ensuring that the providers they engage are adhering to relevant health and safety standards and requirements.

[3] Mr Tume seeks a penalty against NZDF:²

A penalty/fine for the Respondent for authorising the victimisation and dismissal of a Health and Safety Advisor who was carrying out his lawful duties.

[4] NZDF applies to have the matter Mr Tume brings against it dismissed as vexatious or frivolous.³ Mr Tume opposes the application.

[5] For completeness, PAE says it is vexatious and an abuse of process that NZDF is included as the second respondent.⁴ It says PAE was Mr Tume's employer at all material times and it is the actions and decisions of PAE about which Mr Tume raises concerns.

[6] This determination deals with NZDF's clause 12A dismissal application.

¹ Amended statement of problem 13 December 2024.

² Amended statement of problem 13 December 2024.

³ Clause 12A, schedule 2 Employment Relations Act 2000.

⁴ PAE amended statement in reply 8 January 2025.

The Authority's investigation

[7] By consent this matter is determined on the papers. NZDF and Mr Tume have filed submissions, and Mr Tume has filed an affidavit in support of his position. During my consideration of this matter, I sought clarification from Mr Tume as to the references made in submissions filed on his behalf that NZDF was in effect a controlling third party and asked him to confirm if he intended to lodge an application under s 103B of the Act. Both parties provided further comment. For completeness, Mr Tume has not filed an application under s 103B of the Act or sought leave to notify NZDF out of time that it has caused or contributed to his personal grievances.⁵

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

Issues

[9] The preliminary issues identified for investigation and determination are:

- i. Should NZDF's application to dismiss under schedule 2, cl 12A of the Employment Relations Act 2000 be granted?
- ii. Is either party entitled to an award of costs?

Background

[10] The following factual matters are not in dispute:

- PAE contracts to NZDF to provide facilities maintenance and management services;
- Mr Tume commenced employment with PAE on 13 February 2023 in the position of health, safety and environmental advisor;
- during his employment with PAE Mr Tume was based at the NZDF Papakura Base;
- Mr Tume and NZDF were not in an employment relationship;⁶

⁵ Employment Relations Act 2000, s 115A(4).

⁶ Employment Relations Act 2000, s 4(2).

- in his role Mr Tume was required to have a working relationship with NZDF as a client of PAE and its personnel;⁷
- in February 2024 PAE advised Mr Tume it had received verbal complaints about him;
- on 26 February Mr Tume’s representative wrote to PAE that he was ceasing work under s 83 HSWA and raised concerns including that he was unable to reasonably carry out his duties, the workplace had become unsafe for him and was causing him harm;
- Mr Tume did not return to work after this date;
- PAE undertook a workplace investigation; and
- Mr Tume’s employment with PAE ended by way of dismissal on 8 October 2024.

Should Mr Tume’s application against NZDF be dismissed on the grounds it is frivolous and/or vexatious?

[11] Clause 12A of Schedule 2 of the Act gives the Authority power to dismiss frivolous or vexatious proceedings. The Employment Court in *Lumsden v Sky City Management Limited* recognised that the Authority’s power to dismiss proceedings on the grounds they are frivolous or vexatious is limited and the threshold for establishing that is high.⁸ Dismissing a claim is a serious step and not one to be taken lightly.

[12] The Authority’s jurisdiction comes from s 161 of the Act. This provides that the Authority has “exclusive jurisdiction to make determinations about employment relationship problems generally”. Section 4(2) identifies the employment relationships that are covered by the Act. Section 5 of the Act defines an employment relationship problem. Section 6 of the Act sets out the meaning of an employee.

[13] The Supreme Court considered the jurisdiction of the Authority arising out of s 161 in the recent judgment of *FMV v TZB*.⁹ The Supreme Court stated that s 161 of the Act:

[...] reflects the relational framework of the Act and drives the fact-based, problem-solving approach of the Authority. The Authority has exclusive

⁷ Mr Tume’s position description.

⁸ *Lumsden v Sky City Management Limited* [2015] NZEmpC 225.

⁹ *FMV v TZB* [2021] NZSC 102.

jurisdiction to make determinations about “problems generally”, not specific causes of action. **The only requirement is that the problem must be an “employment relationship” one; that is, it must relate to or arise from the “employment relationship”** in its entire sense [...] (emphasis added.)¹⁰

[14] Mr Tume says he brings a matter against NZDF because:

- (i) it is in effect a controlling third party as defined by s 5 of the Employment Relations Act 2000;
- (ii) NZDF bears derivative liability for harm he suffered through failures of his former employer PAE (New Zealand) Limited (PAE); and
- (iii) at all relevant times he undertook his duties for PAE at NZDF controlled sites.

[15] Mr Tume says because where he worked is a NZDF controlled facility all safety procedures, access protocols, and site systems are directed by Defence Force command and by law, NZDF is a PCBU and owes a duty of care to every worker operating on its bases.¹¹ He says NZDF’s obligations as the PCBU were activated because it was aware of his serious and ongoing safety concerns and took no action to ensure compliance by PAE and that its failure to monitor or intervene contributed directly to his distress, disadvantage and dismissal. Mr Tume’s application against NZDF concerns its statutory role as a PCBU on the site at which he was employed. He says it must have known or ought to have known he was unsafe at work due to the actions of PAE. He raises no factual basis for this aside from the parties’ respective roles – he as an employee of PAE, PAE as his employer and NZDF as the PCBU with health and safety obligations.

[16] NZDF submits Mr Tume’s application against NZDF should be dismissed because:

- (i) there is no employment relationship between it and Mr Tume;
- (ii) NZDF has no knowledge of the employment matters between Mr Tume and PAE;
- (iii) there is a clear process under the Act to join a controlling third party to matters before the Authority and Mr Tume has not followed that process;

¹⁰ Above at [60].

¹¹ Health and Safety at Work Act 2015, s 17.

- (iv) the Authority does not have jurisdiction under the Health and Safety at Work Act 2015 (HSWA) in the absence of an employment relationship;
- (v) the matter Mr Tume seeks to bring against NZDF is entirely misconceived, lacks legal merit and is therefore impossible to take seriously; and
- (vi) Mr Tume's intention appears to be to raise with NZDF through this matter his concerns about PAE's conduct towards him and this is an abuse of the Authority process.

(i) *Controlling third party s 103B*

[17] Mr Tume invites the Authority to treat NZDF as if it is in effect a controlling third party. This invitation faces significant, indeed insurmountable barriers because:

- (i) Mr Tume has not applied to the Authority for NZDF to be joined as a controlling third party;¹²
- (ii) the information before the Authority does not disclose Mr Tume has notified NZDF within the statutory time frame of how he says its actions have caused or contributed to his personal grievances;¹³ and
- (iii) he has not applied for leave to notify NZDF after the relevant notification period of how its actions have caused or contributed to his personal grievances.¹⁴

[18] These procedural requirements are not technicalities.¹⁵ They are statutory requirements which must be complied with because through them the Authority is seized with and able to exercise its controlling third party jurisdiction.

(ii) *Penalty for authorisation of victimisation and dismissal*

[19] Mr Tume says in his application lodged in the Authority that the conditions of his employment include his duties as a health and safety advisor and the actions of PAE have impacted his ability to carry out his duties in breach of those conditions giving rise to his personal grievances. Further, Mr Tume says in his second amended statement

¹² Employment Relations Authority Regulations 2000, s reg 9(a).

¹³ Employment Relations Act 2000, s 115A(1)(a)(i).

¹⁴ Employment Relations Act 2000, s 115A(3).

¹⁵ Employment Relations Act 2000, s 157(1).

of problem that NZDF authorised PAE's alleged conduct against him in breach of his employment agreement and seeks a penalty is ordered against NZDF. The Authority has a penalty jurisdiction extending to those not party to the employment relationship.¹⁶

[20] The high threshold to dismiss the penalty sought by Mr Tume is not met. The Authority has a penalty jurisdiction for those not party to the employment agreement. The consideration and resolution of the penalty matter will follow from the evidential inquiry which is yet to be conducted. That said Mr Tume has been on notice for some time as to the sincere concern NZDF has as to the factual basis of the employment relationship problem he has lodged against it. It is entitled to be fully, fairly and clearly appraised of the facts he says give rise to the matter.¹⁷ There is also the matter of time limits on actions for recovery of penalty which may yet be relevant to the progress of the matter Mr Tume brings against NZDF.¹⁸

Outcome

[21] Consideration of a s 12A dismissal application involves an exercise of discretion. In the absence of compliance with the requirements to bring a controlling third party application this part of Mr Tume's matter has no prospect of success and is properly dismissed.

[22] The factual inquiry into the basis of the penalty sought is yet to occur. Though matters involving penalties, by their nature have a high evidential threshold, that such an inquiry has not yet occurred weighs in favour of declining to exercise my discretion to dismiss this aspect of Mr Tume's employment relationship problem.

[23] A case management conference is to be convened to progress the investigation of Mr Tume's application.

Costs

[24] Costs are reserved.

Marija Urlich
Member of the Employment Relations Authority

¹⁶ Employment Relations Act 2000, s 134.

¹⁷ Employment Relations Authority Regulations, Form 1.

¹⁸ Employment Relations Act 2000, s 135(5).