

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 304
3375483

BETWEEN

VINCE JEFFERSON
Applicant

AND

FONTERRA CO-
OPERATIVE GROUP
LIMITED
Respondent

FONTERRA BRANDS (NEW
ZEALAND) LIMITED
Proposed Respondent

Member of Authority: Marija Urlich

Representatives: Applicant, in person
Rebecca Rendle and Jessica Greenheld, counsel for the
Respondent

Investigation Meeting: On the papers

Information and submissions received: Up to and including 18 February 2026, from the
Applicant
Up to and including 18 February 2026, from the
Respondent

Determination: 18 May 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Vince Jefferson has lodged an application against Fonterra Co-operative Group Limited (Fonterra) where he worked as a key account executive from 3 February 2020 until his employment ended by way of redundancy on 19 January 2023.¹ Mr Jefferson

¹ Prior to commencing this role Mr Jefferson had worked for Fonterra for nearly four years in a customer service role.

has raised personal grievances for unjustified disadvantage and unjustified dismissal and seeks that a penalty is ordered against his former employer for breach of the statutory duty of good faith.

[2] Fonterra raises preliminary issues for determination. It says Fonterra Brands (New Zealand) Limited (Fonterra Brands) is the entity which employed Mr Jefferson and seeks this is corrected by order of the Authority. Fonterra does not accept the entire factual scope of the personal grievances for unjustified disadvantage Mr Jefferson brings before the Authority were raised within the statutory 90-day period.

[3] This determination deals only with the preliminary jurisdictional issues as to the correct identity of the respondent employer and whether the factual matters Mr Jefferson seeks to rely on are within the scope of the unjustified disadvantage personal grievances he brings before the Authority for investigation and determination. This determination also deals with a request Mr Jefferson has made for directions under s 160(1) of the Act that Fonterra provide information regarding the digital tracing of material provided through the restructuring process.

The Authority's investigation

[4] By consent the investigation and determination of this employment relationship problem is made on the papers. The Authority has received information from the parties including submissions. Affidavit evidence has been filed by Mr Jefferson and Sarah Somerville, senior employment counsel Fonterra Co-operative Group Limited.

[5] 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 information received. In determining this matter, the Authority has considered all the material before it, including all information provided by the parties and their submissions.

Issues

- [6] The preliminary issues identified for investigation and determination are:
- (i) the identify of Mr Jefferson’s employer;
 - (ii) the factual scope of the personal grievances for unjustifiable disadvantage raised 6 May 2022 and 10 December 2022; and
 - (iii) whether orders should be made for the provision of information sought.

Discussion

(i) *The identity of Mr Jefferson’s employer*

[7] In his role Mr Jefferson supported the foodservice sales team and was managed by the national distribution manager for foodservices. In the Fonterra group responsibilities for food services sits within Fonterra Brands. Though Fonterra Brands is a separate legal entity, it is fully integrated with the wider Fonterra group which includes shared services. Fonterra is responsible for overarching governance, strategic direction and provision of shared services across its group entities including Fonterra Brands.

[8] Mr Jefferson signed his written individual employment agreement (the IEA) on 14 January 2020. The employing entity is named in the IEA as Fonterra Co-operative Group Limited in several places – the first page states the IEA is between Mr Jefferson and “the Company” which the IEA defines as “Fonterra Co-operative Group Limited” and the signature page records “Signed for and on behalf of Fonterra Co-operative Group Limited.” The IEA also refers to Mr Jefferson having the opportunity to participate in “the Fonterra Co-operative Short Term Incentive Plan”.²

[9] Mr Jefferson says Fonterra was his employer, this was his understanding through his employment and he does not agree to the change in respondent sought by Fonterra/Fonterra Brands. He has expressed a concern as to the effect of the sale of a number of Fonterra brands and apprehends a risk to this matter including additional legal and procedural complexity. Mr Jefferson says there is an unbroken record throughout his employment which demonstrates his employment relationship is in fact with Fonterra. He says how Fonterra arranges its internal corporate labelling does not

² IEA, clause 6.3 Remuneration.

bind the Authority and the indicia of Fonterra as his employer outweighs matters such as payroll coding. In particular, he relies on the following:

- (a) the IEA – which names Fonterra as his employer;
- (b) remuneration – he was invited to participate in the Fonterra STIP and his final pay slip was issued by Fonterra;
- (c) administering performance processes – the position description, performance improvement plan (PIP), disciplinary meeting invitation and first written warning; and
- (d) restructuring and termination – the restructuring proposal, dismissal letter and final certificate of service all identify Fonterra.

[10] Fonterra Brands says it is the employing entity because, it submits the real nature of the employment relationship demonstrates Mr Jefferson was employed by Fonterra Brands and not Fonterra:

- (a) Fonterra was named in the employment agreement as a consequence of a historic administrative error arising from the way some employment agreements were issued;
- (b) Mr Jefferson was set up in the Fonterra Group's internal systems as a Fonterra Brands employee;
- (c) the corporate structure means Mr Jefferson's role, management and day-to-day key functions and relationships sit within Fonterra Brands; and
- (d) Mr Jefferson would have been well aware of this.

[11] The performance process documents referred to in [9](c) above are headed "Fonterra Co-operative Group Limited" or footed "Confidential to Fonterra Co-operative Group" with the manager's signature referring to either food services or distributor services which it is accepted are within Fonterra Brands. Mr Jefferson's job description in the section "Title and reporting relationships" records "Organisational unit: Fonterra Brands NZ Ltd" and records "Location: Fonterra Brands, Auckland". The payroll system employment information records Mr Jefferson's "Company" as Fonterra Brands. This document includes "Effective as of: 20 Jan 2023", which is the day after Mr Jefferson's employment ended. Mr Jefferson's STIP results letter dated 24 November 2021 has cascading components with the most weighting to "Fonterra

Brands” following “Fonterra Group”. Mr Jefferson’s email signature, using a standard template, refers to “Fonterra Brands NZ” and “Fonterra Co-operative Group Limited”.

[12] The test to assess the identity of the employer is an objective inquiry under s 6 of the Act.³

[13] There can be no doubt Mr Jefferson entered an employment agreement with Fonterra and that it is present throughout the employment relationship, at the very least as the overarching entity overseeing engagement with him on important matters such as performance management and disciplinary processes. The documentation after the IEA was entered shows Mr Jefferson’s day-to-day was nested in Fonterra Brands.

[14] With respect to the error, it is not clear when this came to Fonterra’s attention and if it did while the employment relationship was extant, why Fonterra did not engage with Mr Jefferson, particularly given its resources, if it was a matter of import. There is insufficient information before the Authority to establish mutual agreement to a change of employer – in the circumstances of this matter which must include the resources available to Fonterra to engage with its employees this would, I find likely require some evidence the parties had turned their minds to the issue and engaged on it. There is no information of that type before the Authority. It is not clear on the information before the Authority what prejudice Fonterra may suffer if it remains as the respondent.

[15] This is not a situation where it was not legally possible for Fonterra to have employed Mr Jefferson because it was a legal entity throughout his employment and had legal capacity to enter the employment relationship. Further this is not a situation where the putative entity does not or no longer exists. In addition, Fonterra, with its overarching responsibilities cannot be said not to have benefited from Mr Jefferson’s work. Fonterra does not raise issues of mistake or misrepresentation for which a remedy is sought.

[16] On an objective assessment of the information before the Authority Mr Jefferson’s employing entity throughout his employment was Fonterra Co-operative

³ Employment Relations Act 2000, s 6.

Group Limited and he is able to lodge a matter against it in the Authority for investigation and determination.

(ii) *Scope of unjustified disadvantage personal grievance*

[17] Section 114 of the Act provides that a personal grievance must be raised with the employer within a period of 90 days.⁴ The grievance is raised with the employer as soon as the employee has made, or has taken reasonable steps to make, the employer or a representative of the employer aware that the employee alleges a personal grievance the employee wants the employer to address.⁵

[18] The 90-day period begins with the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee, whichever is the later, unless the employer consents to the personal grievance being raised outside the statutory timeframe. The meaning of the phrase “came to the notice of the employee” is discussed in *Wyatt v Simpson Grierson*:⁶

In summary, I find that the construction to be placed on... s 114(1) of the Employment Relations Act 2000 is that the 90-day period will usually begin when the action alleged to amount to a personal grievance occurs but, if the circumstances in which that action was taken are an essential element of the personal grievance, it will begin when the employee becomes aware of those circumstances to the extent necessary to form a reasonable belief that the employer's action was unjustifiable.

[19] In personal grievances where the conduct leading to the grievance has continued over a period (as Mr Jefferson says) the employee is required to submit the grievance within 90 days of the most recent occurrence. However, this may not preclude the Authority from taking account of earlier incidents as part of a course of conduct or as being relevant to the amount of any compensation awarded. In a disadvantage grievance the Authority can hear evidence of events that occurred outside the 90-day period as long as these were connected to events within the period so as to establish a course of conduct that can be evaluated as the basis for the grievance.⁷

[20] In his statement of problem Mr Jefferson describes the employment relationship problems he seeks resolved as including that:

⁴ Employment Relations Act 2000, s 114.

⁵ Employment Relations Act 2000, section 114(2).

⁶ *Wyatt v Simpson Grierson* [2007] 1 ERNZ 489; (2007) 4 NZELR 618 at [29].

⁷ *Premier Events Group Ltd v Beattie (No 3)* [2012] NZEmpC 79.

Between November 2021 and December 2022, I was subjected to four separate performance improvement processes, escalating workplace hostility, and an orchestrated redundancy initiated the day after I raised my first formal grievance.

[21] The remedies sought section of the statement of problem includes:

Across the employment relationship I submitted six formal grievances – two of which related specifically to workplace bullying

[22] On 6 May 2022 (first personal grievance) Mr Jefferson raised a personal grievance for unjustified disadvantage which he describes as “challenging the fairness of the ongoing performance process”. On 10 December 2022 (second personal grievance) Mr Jefferson wrote to Fonterra raising a personal grievance for unjustified disadvantage addressing the PIP, restructuring, bullying and failure to investigate concerns he had raised. He submits the span between 6 May and 10 December 2022 constitutes one continuous and unresolved employment relationship problem.

[23] Fonterra seeks clarification as to the scope of the 6 May and 10 December 2022 personal grievances and in particular and in reliance on the 90-day statutory time frame for raising personal grievances seeks:

- (a) exclusion of events predating 5 February 2022 in respect of the first personal grievance;
- (b) exclusion of events predating 11 September 2022 in respect of the second personal grievance; and
- (c) exclusion of events or matters not raised in the first or second personal grievances or other validly raised personal grievances and not raised within the 90-day statutory time frame.

[24] Fonterra does not consent to any matters raised out of time forming part of the scope of determination by the Authority.

[25] Mr Jefferson’s letter 6 May 2022 raising the first personal grievance starts as follows:

I am writing to advise you that I’m raising a personal grievance against Fonterra for unjustified disadvantage. This relates to your decision on 28th April to proceed with a disciplinary hearing on matters of poor performance,

as well as to the ongoing performance improvement process which began on 22 November 2021.

[26] The 28 April letter from Fonterra was an invitation to a disciplinary meeting to discuss possible disciplinary action for poor performance relating to engagement with a PIP process. The PIP process referred to in the letter commenced in January 2022 and I accept, having reviewed the relevant material a substantively different process to those earlier between the parties.

[27] Matters prior to 5 February 2022 are time barred from being included in the scope of the Authority's consideration of Mr Jefferson's first personal grievance raised 6 May 2022.

[28] On 10 December 2022 Mr Jefferson wrote to his manager including:

I am writing to advise you that I'm raising a personal grievance against Fonterra for unjustified disadvantage. It is inevitable that you are going to fire me under this sham of a 'redundancy process', I am also going to be raising a personal grievance for unjustified dismissalAccordingly, my personal grievances relate to Fonterra's actions subsequent to my personal grievance raised on 6th May, including the decision to issue me with a first written warning for poor performance on 28th October and the restructure plan announced on 23 November.

I am raising two separate personal grievances for unjustified disadvantage in relation to the bullying I experienced from [former manager] and Fonterra's response to my concerns. I have set them out further in paragraph [32] below.

The reasons I believe that I have a personal grievance are due to the unfairness of the 3rd performance improvement plan, the ensuing disciplinary process, the first written warning, the 4th performance improvement plan, the restructure plan, and the subsequent negative impact on my employment conditions arising from these actions.

I have outlined the facts below as I see them and provided reasons why I consider I've been unfairly treated.

[29] The written warning, the restructuring plan and the fourth PIP are not course of conduct matters because they are discrete events in the course of the parties' employment relationship. With regard to the bullying allegation, the 10 December letter clarifies it commences with actions on 15 September 2022. There may be factual context prior to that date relevant to the Authority's investigation but the date of that cause of action arising is set out by Mr Jefferson as 15 September 2022, as he clearly states.

[30] The documents show the PIPs are not “rolling mauls” but discrete events. That said, matters outside the scope of the personal grievances raised may be relevant for context and remedies for those properly before the Authority.

[31] I have reviewed the correspondence between 9 October and 7 May and am satisfied further personal grievances were not raised. Mr Jefferson has raised issues and concerns but not to the degree required to meet the statutory test of raising a personal grievance. In reaching this conclusion Mr Jefferson’s demonstrated knowledge of the grievance raising process has been a relevant consideration.

[32] Matters prior to 10 September 2022 are time barred from being included in the scope of the Authority’s consideration of Mr Jefferson’s second personal grievance raised 10 December 2022.

Implied consent

[33] Mr Jefferson submits because Fonterra have actively engaged with him to seek to resolve the employment relationship problem it has consented to the scope of personal grievance as he describes. He points to Fonterra’s initial responses to his personal grievances, attendance at mediation and that these issues were not raised until matters had progressed between the parties.

[34] The evidence is not sufficient to establish intention to allow grievances out of time. Responding to concerns raised in compliance with obligations between the parties as here is not a basis to infer consent particularly given the delay involved which is some months and the complexity and number of matters.

(iii) Call for information: s 160(1)(a)

[35] Mr Jefferson requests Fonterra provide the original electronic file of the restructuring proposal issued 24 November 2022 in PDF format. He seeks to understand when changes or apparent changes to the document were made and the relationship, if any to PIPs he was subject to, the restructuring proposal including as first tabled and, it is understood his dismissal. This is relevant information particularly given the serious matters Mr Jefferson raises including that of sham.

[36] If the information has not yet been provided to Mr Jefferson it is to be filed and served within 20 working days of the date of this determination.

Summary

[37] Fonterra Co-operative Group Limited was Mr Jefferson's employer at all times relevant to the investigation of this employment relationship problem.

[38] The scope of the personal grievances raised 6 May 2022 and 10 December 2022 are as described in [27] and [30] above.

[39] Information to be filed and served per [34] above.

Costs

[40] Costs are reserved.

Marija Urlich
Member of the Employment Relations Authority