

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2026] NZERA 336  
3437584

BETWEEN                      NEW ZEALAND ALUMINIUM  
   SMELTERS LIMITED  
   Applicant

AND                                MORRIS MUKWAKWAMI  
   Respondent

Member of Authority:        David G Beck

Representatives:              Nicola Whiteman and Gillian Service, counsel for the  
   Applicant  
   Respondent self-represented

Investigation Meeting:        On the papers

Submissions Received:        10 April 2026 from the Applicant  
   10 April 2026 from the Respondent

Date of Determination:        2 June 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]        Morris Mukwakwami was employed as a full-time mechanical maintenance engineer by New Zealand Aluminium Smelters Limited (NZAS) at their Tiwai Point smelter plant

from 30 September 2024 until his employment ended in disputed circumstances on 10 September 2025. At the time of appointment, Mr Mukwakwami had relocated from Wellington to Invercargill and as part of his appointment package a contribution of \$21,602.45 was reimbursed by NZAS, to meet Mr Mukwakwami's removal costs. A letter of employment offer dated 3 September 2024, containing individual terms and conditions of employment was provided to Mr Mukwakwami by NZAS and he signed a letter of acceptance on 9 September 2024. The cover letter of 3 September stated;

The terms and conditions contained in this Offer letter and the attached Schedule of remuneration and Benefits (Schedule), together form the employment agreement that will apply to your employment with NZAS

[2] Appendix A: described as "Schedule of Remuneration and Benefits" details under a heading: "Relocation Assistance", that Mr Mukwakwami would be reimbursed relocation expenses including some temporary accommodation support and describes how the reimbursement would operate. The preceding provision is followed by a heading: "Recovery of relocation expenses" indicating:

If you resign from or are dismissed by the Company within 24 months of your commencement date, you are required to repay the cost of all travel and removal expenses paid during your relocation.

The amount recovered will be:

0-12 months of employment	100% of relocation expenses
13-24 months of employment	50% of relocation expenses

[3] As since the ending of his employment, Mr Mukwakwami has not paid relocation costs sought, NZAS in an application to the Authority of 14 January 2026, is seeking the remedy of a compliance order under s 137 of the Employment Relations Act 2000 to ensure Mr Mukwakwami complies with the above provision and repays the amount of \$21,602.45 to NZAS.

## **The Authority's investigation**

[4] The parties agreed the matter could be dealt with by written submissions that the Authority received on 10 April 2026.

[5] Pursuant to s 174E of the Employment Relations Act 2000 (“the Act”), I make findings of fact and law and outline conclusions to resolve the disputed issue and make orders, but I do not record all the submissions received and refer to them where appropriate and relevant.

## **Issues**

[6] The Authority must determine the following issues to resolve the employment relationship problem:

- (a) Whether the obligation contained in the employment agreement to repay the relocation expenses at the end of the employment relationship is enforceable?
- (b) Is Mr Mukwakwami obliged to repay the relocation expenses and if so, on what terms?
- (c) How costs are to be dealt with.

## **The context of the payment**

[7] Mr Mukwakwami says the contextual factor that should be considered is he is challenging the circumstances of his employment ending on 10 September 2025, which he asserts was an unjustified summary dismissal. Mr Mukwakwami immediately challenged the dismissal in a self-authored personal grievance letter of 12 September. The parties attended mediation on 27 November but, the matter remained unresolved. Mr Mukwakwami then made an application to the Authority of 4 December 2025 and while he does not seek reinstatement as a remedy, the application challenging the dismissal, sought

amongst compensatory remedies: “A determination that relocation repayment of \$21,000 is unenforceable” (note the actual amount is not disputed as \$21,602.45).

[8] Mr Mukwakwami says it would be an unjustified action of his former employer to seek to enforce the reimbursement obligation as the dismissal is disputed and forms part of substantive proceedings before the Authority. The matter is set down for an investigation meeting on 29 and 30 July 2026. Essentially, Mr Mukwakwami is contending that if he is successful in establishing the dismissal was unjustified then the relocation payment is unenforceable as the ‘trigger’ to repay the relocation costs would not be met.

[9] In contrast, NZAS submissions say the matter is a straightforward breach of a “clear and unambiguous” contractual obligation that they brought to Mr Makwakwami’s attention as something they would seek to recover in both his letter of dismissal and a separate letter of the same day (10 September 2025) with an offer of immediate payment or instalments provided the total amount was paid within six months.

#### **Nature of payment and enforceability**

[10] Under s 137 of the Act the Authority has the power to order compliance where a party has not complied with a provision of “any employment agreement”.<sup>1</sup>

[11] Here the provision in dispute is an uncontroversial conditional reimbursement of expenses payment or recruitment incentive, tied to the longevity of the employment relationship. The terms of the repayment are clearly set out and unambiguous and Mr Mukwakwami was placed on early notice of the obligation created. Mr Mukwakwami has suggested the Authority take an equity and good conscience approach and recognise the power imbalance between the parties. While Mr Mukwakwami advanced no evidence of his personal financial circumstances, he did in his statement of problem challenging the dismissal, allude to a health issues and ongoing medical expenses associated with his child.

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<sup>1</sup> Employment Relations Act 2000, s 237(1)(a)(i).

## **Finding**

[12] I find that Mr Mukwakwami did not comply with the terms of his employment agreement and must proceed to address the debt owed to NZAS. However, I consider it appropriate in all the circumstances to order that Mr Mukwakwami have a reasonable period of grace before repaying the full amount due.

## **Orders**

[13] Pursuant to ss 137(2) and (3) of the Employment Relations Act 2000, the Authority orders:

- (a) That Morris Mukwakwami pays New Zealand Aluminium Smelters Limited the sum of \$21,602.45; and
- (b) That the above order be fulfilled by Mr Mukwakwami making six equal monthly payments of \$3,600.41, to be paid on the last calendar day of each month with the first payment falling due on 31 July 2026 and the last payment being due on 31 December 2026.

## **Costs**

[14] Costs are reserved until the substantive proceedings have been determined.

David G Beck  
Member of the Employment Relations Authority