IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE

[2026] NZERA 380
3471144

	BETWEEN	ALLIANCE GROUP LIMITED Applicant
	AND	PAUL BRENDAN BROWN Respondent
Member of Authority:	David G Beck	
Representatives:	Shaun Brookes and Amiria Bates, counsel for the Applicant Mary Jane Thomas, counsel for the Respondent	
Investigation Meeting:	On the papers	
Submissions Received:	8 June 2026 from the Applicant 15 June 2026 from the Respondent	
Date of Determination:	15 June 2026	

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This is an application submitted on 8 June 2026, by Alliance Group Limited (Alliance) seeking removal of a matter to the Employment Court pursuant to s 178 of the Employment Relations Act (the Act). The matter concerns a 20 March 2026 application before the Authority regarding the ending of an employment relationship on 30 January 2026, in which Paul Brown is seeking a finding that he was unjustifiably dismissed and compensatory remedies; as well as an order of permanent reinstatement. The matter is set down for an investigation meeting on 29 and 30 June 2026.

[2] Alliance opposes Mr Brown's application asserting that the summary dismissal of Mr Brown for serious misconduct, after he returned a second non-negative result in a random

drug test, was justified in all the circumstances and if not found to be so, reinstatement is impractical.

[3] The parties have requested that this application for removal to the Court be dealt with urgently, 'on the papers' by the Authority considering the content of the application seeking removal and a submission by Mr Brown's counsel on the removal issue.

What caused the employment relationship problem

[4] Mr Brown has worked for Alliance since 1987 and is a member of the New Zealand Meat Workers' Union (the union). Mr Brown's position is covered by a collective agreement. At the time the employment ended, Mr Brown was an 'A Grade Beef Slaughterman' working at Alliance's Mataura plant.

[5] Alliance have conceded that approximately two years ago, as required by the company 'Drugs and Alcohol Group Policy', "Mr Brown disclosed to Alliance that he was taking prescription cannabis" [1] as pain relief.

[6] On 28 July 2025 upon returning a non-negative result to a random saliva drug test, Mr Brown was issued a final written warning, and he undertook, despite protestations as to its relevance, an agreed drug and alcohol rehabilitation programme. In an unrelated matter Mr Brown was issued a first written warning on 20 August 2025, for a failure to follow instructions.

[7] On 27 January 2026, Mr Brown returned a non-negative result after a random saliva drug test. As per the company policy Mr Brown was offered but declined to undertake a further urine test to establish the quantity of tetrahydrocannabinol (THC) in his system. Mr Brown was then sent home pending investigation of what Alliance viewed the matter as potential serious misconduct. Alliance describes the issue as:

> The presence of THC in Mr Brown's system during working hours constituted a breach of the Policy. A breach of the policy is dealt with as serious misconduct given the safety sensitive nature of the work undertaken at the Alliance plants, and any potential impairment creates safety risk. As Alliance explained in the disciplinary meeting, the possibility of impairment cannot be excluded solely on the basis of a prescription or an employee's belief that they are not impaired.

[1] Statement in Reply, 2 April 2026, [para 2.2].

[8] Mr Brown was suspended on 28 January 2026 and in the interim, on 29 January he undertook a further drug test which returned a negative result.

[9] A disciplinary meeting was held on 30 January with Mr Brown's Operations Manager present, at which Mr Brown was summarily dismissed. In an unsworn affidavit provided to the Authority of 7 April 2026 (opposing interim reinstatement), the operations manager in summarising the reason for dismissal says:

> During the meeting Mr Brown acknowledged that he was already on a final warning and that he did not dispute he had THC was present in his system [sic]. His explanation was that he held a prescription for medical cannabis and that his prescribing doctor had advised he would not be impaired at work. I considered this explanation however, I was not satisfied that the existence of a prescription ruled out the possibility of impairment, nor that it overrode Mr Brown's obligations under the Drug and Alcohol policy. [2]

[10] After his union raised a personal grievance by letter of 10 February 2026, Mr Brown made an application to the Authority of 20 March 2026 seeking interim reinstatement. During a directions conference of the Authority on 11 May, the parties agreed to proceed to an investigation meeting on 29 and 30 June to deal with the substantive matter of whether Mr Brown had been unjustifiably dismissed and whether he should be permanently reinstated.

Matter now before the Authority

[11] The grounds Alliance advances for removal to the Court, pursuant to s 178(2)(a) of the Act, is that it involves an important question of law. Broadly framed the legal issue asserted by Alliance is: can an employer justifiably terminate a worker's employment relationship for disclosed (prescribed) medicinal cannabis use where the work environment is "safety sensitive"?

[12] Ancillary questions Alliance has posed are:

(a) Can employers determine a cut-off level of THC for the purposes of maintaining a drug-free safety sensitive workplace?

[2] Affidavit of Bruce Caughey in Support of Notice of Opposition, 7 April 2026.

(b) Is an employer entitled to rely on a non-negative oral saliva test to take disciplinary action in circumstances where the test result may not be able to determine impairment?

(c) Has a drug and alcohol policy been breached where the worker taking medicinal cannabis disclosed this was pursuant to a medical prescription, prior to being drug tested?

[13] Mr Brown opposes the application for removal to the court on the basis it will delay his application for reinstatement being expeditiously dealt with

Assessment

[14] Removal applications are governed by s 178 of the Act. The Authority, in exercising its discretion, must also consider that Section 3 of the Act setting out the Act's scheme or objects, at 3(a) (vi), identifies the reduction of the need for judicial intervention to be a key part of the Act's purpose. The Act's objects are explicitly reinforced by s 143, that deals with establishing procedures and institutions. Section 143(e) of the Act recognises that while employment relationships are ideally best resolved promptly by the parties, there will "always be some cases that require judicial intervention".

[15] The Authority's 'first stop' role as an adjudicative body and exclusive jurisdiction for employment relationship disputes has been affirmed by the Supreme Court in both *Gill Pizza Ltd v Labour Inspector Ministry of Business, Innovation and Employment* and *FMV v TZB*.[3] In addition, the Court of Appeal in *Labour Inspector v Gill Pizza Limited and Ors* has suggested removal to the Employment Court before investigation should be "contemplated in relatively limited circumstances".[4]

[16] The factors I must consider are set out in s 178 of the Act:

> (1) The Authority may, on its own motion or on the application of a party to a matter, order the removal of the matter, or any part of it, to the Court to hear and determine the matter

[3] *Gill Pizza Ltd v Labour Inspector Ministry of Business, Innovation and Employment* [2021] NZSC 184 and *FMV v TZB* [2021] 1 NZLR 466.
[4] *A Labour Inspector (Ministry of Business, Innovation and Employment) v Gill Pizza Ltd and Ors* [2020] NZCA 192 at [48].

without the Authority investigating it.

(2) The Authority may order the removal of the matter, or any part of it, to the Court if—

(a) an important question of law is likely to arise in the matter other than incidentally; or

(b) the case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the Court; or

(c) the Court already has before it proceedings which are between the same parties and which involve the same or similar or related issues; or

(d) The Authority is of the opinion that in all the circumstances the Court should determine the matter.

(3) Where the Authority declines to remove any matter on application under subsection (1), or a part of it, to the Court, the party applying for the removal may seek the special leave of the Court for an order of the Court that the matter or part be removed to the Court, and in any such case the Court must apply the criteria set out in paragraphs (a) to (c) of subsection (2).

[17] In short, an application for removal to the Court is governed by applying factors detailed in s 178(2)(a)-(c) of the Act and having regard to the Court of Appeal decision in *Gill Pizza Ltd* that emphasised: *"*.... removal under s 178 is contemplated in relatively limited circumstances, with particular caution expected in cases that have not been fully investigated by the Authority".[5]

[5] *Labour Inspector (Ministry of Business, Innovation and Employment) v Gill Pizza Ltd* [2021] NZCA 192 at [48].

Discussion

An important question of law?

[18] The Employment Court in *Danske Mobler Ltd v Labour Inspector of the Ministry of Business, Innovation and Employment* [6] suggested:

> A question of law does not need to be complex, tricky or novel to warrant being called important.[7] It may be important if the answer is likely to have a broad effect or could assume significance in employment law generally. But previous cases have made it clear that it is not necessary for the issue to have an impact beyond the particular parties. A question may be regarded as important if it is decisive of the case, or some important aspect of it, or is strongly influential in bringing about a decision in the case, or a material part of it.[8]

[19] I consider this matter, as framed by Alliance, is 'on the surface' somewhat novel, and one that neither the Authority nor Court has specifically determined.[9] I also accept complex factors of the balance between the use of a medically prescribed pain relief treatment and the unknown impact on a person working in a safety sensitive arena are at issue. Alliance have also identified issues of wider import.

[20] Notwithstanding, the factors identified tend toward removal, the individual context of a case is inevitably always at issue and in this case, I am not convinced an important question of law is necessarily at issue. Stripped back, this is a matter of whether Alliance has applied its own policy in a fair and reasonable manner. That would involve interpretation of the policy and assessment of the facts at issue and, its application to Mr Brown, including whether Alliance in dismissing Mr Brown, has in all the circumstances, met the justification test of s 103A of the Act and a consideration of allied good faith factors. In this sense, no unusual or

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[6] *Danske Mobler Ltd v Labour Inspector of the Ministry of Business, Innovation and Employment* [2023] NZEmpC 233 at [18]. See also CJ Goddard comment on a question of law in respect of predecessor provision to s 178 in *Hanlon v International Educational Foundation (NZ) Inc* [1995] 1 ERNZ at {7].

[7] *Johnston v Fletcher Construction Co Ltd* [2017] NZEmpC 157, [2017] ERNZ 894 at [22].

[8] *Auckland District Health Board v X* (No 2) [2005] ERNZ 551 (EmpC) at [35].

[9] See for example discussion in *Smith v Lyttelton Port Company Ltd* [2022] NZERA 353 where the applicant obtained a medical cannabis prescription after a being negatively drug tested and *Thomas v Scott* [2025] NZERA 592 where medicinal cannabis use was disclosed prior to employment but the employment ended not as result of drug testing, the Chief Member of the Authority made an observation that the employer's drug policy was otherwise confined to the possession or "use of *non-prescribed* drugs or stimulants" and "In other words *prescribed* medical cannabis was not covered by the operation of the clause" at [para28].

wider issue of law is at stake other than a conventional analysis by the Authority of whether an existing company policy has been properly interpreted and then fairly and consistently applied.

[21] While I have not yet had the opportunity to view evidential statements on the substantive issue from Alliance witnesses or test them by questioning during an investigation meeting, it is apparent that the 'impairment' concerns Alliance management have for workers using prescription medication is a matter to be dealt with generally by the application of their own policy. In this regard, I observe that in dismissing Mr Brown there is a significant issue of Alliance's admitted knowledge of his medicinal marijuana prescription and previous tolerance of this on an ongoing basis.

[22] In assessing the application and background factors, I do not favour Alliance's summation of the issue as being an important question of law. It is in my view an application essentially asking the Court to generally legitimise its actions pertaining to Mr Brown, rather than an assessment, that the Authority can undertake, of the scope of Alliance's drug and alcohol policy and whether it was fairly applied in Mr Brown's circumstances.

Urgency

[23] There is no reason advanced to suggest that urgency is at issue. I would think that the Court is no better equipped to deal with the issues identified and would suggest the Authority as a specialist, low level investigative body has already timetabled the matter for a less time consuming, costly, and adversarial manner. The ground of urgency is not made out.

[24] I have also assessed the 'public interest' factor which may at worst, be described as potentially prurient, which may not assist resolution.

Similar or same proceedings before the Court

[25] The Court has no extant proceeding before it of a same or similar nature.

Residual discretion

[26] Having considered the factors contained in s 178(2) (a) – (c) of the Act, the Authority has a residual discretion to exercise, pursuant to s 178(2)(d). In this context, given the unusual context of this dismissal, it is objectively reasonable to consider that whatever the Authority

determines either party may seek to challenge the outcome. In of themselves, these could arguably be grounds for letting the Court determine matters further. However, Authority Member Urlich, in *Talent Propeller Ltd v YJL* has cautioned that:

> Parties come before the Authority because they are in dispute and seek resolution of that dispute using the statutory scheme. To remove a matter because it is perceived as intractable or difficult, or has features of such, does not weigh in favour of removal because such factors cannot be said to be unusual features of matters before the Authority. Indeed, it would not be in the public interest to remove matters on such grounds. With respect to the inevitability of challenge that may well be Talent's view but it is not a given in light of the statutory scheme and the progress of this matter, including determinations which have not been challenged. [10]

[27] The Court decision of *Johnston v The Fletcher Construction Company Limited* supports the utilisation of s 178(2)(d) being a legitimate 'stand-alone' general ground for removal depending upon the specific circumstances. [11] However, for reasons identified above I do not consider that there are factors that point toward removal.

[28] I have considered the parties identifying that this matter may inevitably end up in the Court by challenge from either party to an initial Authority determination but that is a risk with many applications and may not necessarily be the case here as this is a dismissal involving conventional principles of justification and consideration of contribution.

[29] I have also had regard to timing issues and potential further delay for Mr Brown who has already forgone his interim application for reinstatement and, the Authority has agreed to deal with the substantive application on an expeditious basis.

Conclusion - should the removal be granted?

[30] I find that no grounds exist for removing this matter to the Employment Court.

Costs

[31] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves in these unique circumstances; it is my view that consideration should be given to costs lying where they fall. However, If the parties are unable to resolve costs, and an Authority determination on costs is needed, the party that considers costs should be awarded in their

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[10] *Talent Propeller Ltd v YJL* [2021] NZERA 575 at [18].
[11] *Johnston v The Fletcher Construction Company Limited* [2017] NZEmpC 157 at [39].

favour may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of this determination. From the date of service of that memorandum the other party will then have 14 days to lodge a reply memorandum. Upon request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[32] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate basis unless circumstances or factors, require an adjustment upwards or downwards. [12]

David G Beck
Member of the Employment Relations Authority

[12] For further information about the factors considered in assessing costs see: *www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.*