

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 7
3376343

BETWEEN NZEI TE RIU ROA
INCORPORATED
Applicant

AND SECRETARY FOR
EDCUATION
Respondent

Member of Authority: Marija Urlich

Representatives: Peter Cranney, counsel for the Applicant
Megan Vant, counsel for the Respondent

Investigation Meeting: 7 October 2025 by audio-visual link

Determination: 7 January 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] NZEI and the Secretary for Education (the Secretary) are party to a pay equity claim settlement (the settlement). NZEI has applied to the Authority for a determination as to whether obligations imposed on the Secretary under s 2AAC(b) and s 3(1)(b) of the Equal Pay Act 1972 (the EPA) continue despite the passing into law of the Equal Pay Amendment Act 2025.

[2] The Secretary raises a preliminary issue as to jurisdiction – the Authority is unable to determine the question raised by NZEI because there is no effective remedy

available. This determination deals with the preliminary issue. The parties did not file affidavit evidence.

The Authority's investigation

[3] 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 and submissions received.

Issues

[4] The issue requiring investigation and determination is whether the Authority has jurisdiction to determine the matter lodged by the NZEI.

The parties' positions

[5] NZEI does not question that the clauses contained in the settlement which preserved its ability to seek a periodic review of or to maintain pay equity are of no effect as a result of clause 10(1) of Schedule 2 of the EPA. It also does not question that as a result of clause 9(1) of Schedule 2 of the EPA another pay equity claim cannot be raised for 10 years from the date of settlement.

[6] NZEI submits even if no claim is made s 2AAC continues to have effect as an employer obligation and that obligation is to “ensure” equal pay for “mixed work” and to ensure pay equity for predominately female work because the Secretary must ensure its own compliance with s 2AAC(b). It submits the Authority has jurisdiction to determine the issue as sought given the wide scope of s 161(1)(r) and the broad ability of the Authority to resolve employment relationship problems generally.¹

¹ *FMV v TZB* [2021] NZSC 102 at [75] and *20 District Health Boards v NZNO* [2021] NZEmpC 138 at [34] – [42].

[7] The Secretary submits:

The pay equity claim is settled

- (i) the Authority's role in regard to pay equity settlements is limited² and it is expressly prevented from determining matters which would provide for a review or a process for review of such a settlement;³
- (ii) asking the Authority to determine the Secretary must itself ensure compliance with s 2AAC(b) and s 3(1)(b) of the EPA is in effect a requirement to review remuneration settled by the parties and/or challenge the agreed remuneration within the 10-year period;

There is no employment relationship problem

- (iii) the settlement is not an employment agreement and any proceedings are otherwise proscribed by the EPA;
- (iv) there can therefore be no employment relationship problem or "dispute" between the parties in relation to whether the remuneration paid to employees covered by the settlement complies with or continues to comply with s 2AAC(b) and s 3 (1)(b) of the EPA;
- (v) a settlement cannot be re-opened or re-examined;
- (vi) the application is asking the Authority to "fix" terms and conditions of the collective agreement which is expressly excluded from the definition of "employment relationship problem";

What is proposed by NZEI is hypothetical and without a remedy

- (vii) the matter should be dismissed because there is no pay equity claim before the Authority and no effective remedy available to the NZEI; and
- (viii) the remedy for breach of s 2AAC(b) is a pay equity claim, there is no such claim and one cannot be raised within 10 years of the date of settlement.⁴

² Equal Pay Act 1972, s 13ZM, s 13ZY and 13ZI.

³ Equal Pay Act 1972, s 13ZY(8)(c)(ii).

⁴ *Julian v Air New Zealand Ltd* [1994] 2 ERNZ 612 (EmpC), p 21.

Discussion

[8] The Authority has exclusive jurisdiction to make determinations about employment relationship problems generally, including those arising under the EPA.⁵ An employment relationship problem is a difficulty or controversy arising from an employment relationship.⁶ This is a factual matter.

[9] The Secretary has made detailed submissions opposing jurisdiction. The following sections of the EPA are relevant:

2AAC Differentiation in rates of remuneration prohibited

An employer must ensure that—

- (a) there is no differentiation, on the basis of sex, between the rates of remuneration offered and afforded by the employer to employees of the employer who perform the same, or substantially similar, work; and
- (b) there is no differentiation, on the basis of sex, between the rates of remuneration offered and afforded by the employer for work that is exclusively or predominantly performed by female employees and the rate of remuneration that would be paid to male employees who—
 - (i) have the same, or substantially similar, skills, responsibility, and experience; and
 - (ii) work under the same, or substantially similar, conditions, and with the same, or substantially similar, degrees of effort.

3 Criteria to be applied

- (1) In determining whether there exists an element of differentiation, based on the sex of the employees, in the rates of remuneration of male employees and female employees for any work, the following criteria shall apply:
 - ...
 - (b) for work which is exclusively or predominantly performed by female employees, the rate of remuneration that would be paid to male employees with the same, or substantially similar, skills, responsibility, and experience performing the work under the same, or substantially similar, conditions and with the same, or substantially similar, degrees of effort.

13ZH Settling pay equity claim

...

(2A)

The parties may not agree to review, or agree on a process for the review of, a pay equity claim settlement.

⁵ Employment Relations Act 2000, s 161(1)(qd).

⁶ *FMV v TZB* [2021] NZSC 102 at [93].

[10] In broad terms the asserted employment relationship problem the NZEI brings before the Authority for determination involves the interpretation and operation of the EPA. Such an assessment is within the Authority's jurisdiction to determine. How any such employment relationship problem may be resolved will require a factual inquiry of aspects of the parties' settlement and how that nests within the statutory context of the EPA. The Authority's role in resolving employment relationship problems is practical, non-technical and intensely factual. While the statutory framework poses challenges to NZEI's application, as submitted by the Secretary, the factual basis of the matter is not fully before the Authority at this preliminary stage. Given the factual inquiry into the interpretation and operation of the subject provisions has not yet occurred it cannot be said the Authority is barred from its consideration.

Outcome

[11] For the above reasons the Authority has jurisdiction to determine the application lodged by NZEI.

Costs

[12] In matters involving pay equity the Authority's usual approach is that parties will bare their own costs.⁷

Marija Urlich
Member of the Employment Relations Authority

⁷ Consolidated practice note.