

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2025] NZEmpC 246
EMPC 181/2023**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

AND IN THE MATTER OF an application for further and better
disclosure

BETWEEN MICHAEL LANIGAN AND THE OTHER
PLAINTIFFS LISTED IN APPENDIX A
First Plaintiffs

AND E TŪ INCORPORATED
Second Plaintiff

AND FONTERRA BRANDS (NEW ZEALAND)
LIMITED
Defendant

Hearing: On the papers

Appearances: T Oldfield, counsel for first plaintiffs
P Cranney, counsel for second plaintiff
M Dew KC, R Rendle and J Greenheld, counsel for defendant

Judgment: 17 November 2025

**INTERLOCUTORY JUDGMENT (NO 6) OF JUDGE HELEN DOYLE
(Application for further and better disclosure)**

Introduction

[1] The Court decided an application by Fonterra Brands (New Zealand) Limited for orders directing further and better disclosure by the second plaintiff.¹

¹ *Lanigan v Fonterra Brands (New Zealand) Ltd* [2025] NZEmpC 185.

[2] As part of the decision the Court accepted counsel's proposal that redacted emails referred to in the list of documents provided by E Tū Incorporated should be reviewed by a Judge as to whether the redactions are appropriately made based on the claimed privilege.²

[3] The process to address a review of the redactions was set out in a minute of the Court dated 20 October 2025. The parties were given an opportunity to make further submissions if they wished by a particular date. Neither party wished to make further submissions.

[4] Copies of the emails referred to in category 1 of the list of documents, which included the redacted emails, were supplied to Fonterra at the same time as disclosure. E Tū has provided to the Court copies of the documents without redaction, in anticipation of them being reviewed by a Judge, who is not a member of the full Court panel, to consider the privilege claimed in relation to them as stated in the list of documents.³

[5] This judgment decides whether the redactions are appropriate based on the claimed privilege.

The privilege said to attach to redacted emails

[6] The privilege said to attach to the redacted aspects of the emails was referred to broadly in the list of documents as legal risk/advice and/or legal professional privilege. There was also reference to irrelevancy.

[7] The Court concludes that s 54 of the Evidence Act 2006 (the Evidence Act), which relates to communications with legal advisers, and s 56, which relates to preparatory material for proceedings, are the relevant provisions for the privilege claimed. To reach this conclusion the Court has considered the privilege broadly described in the list of documents with the redacted aspects in the emails.

² At [40].

³ The Chief Judge of the Employment Court directed that a full Court would hear the challenge to a determination of the Employment Relations Authority because of the nature of the issues involved.

[8] The emails are from the E Tū union secretary and an E Tū negotiation specialist to Mr Lanigan. They are dated 12 May, 3 July and 7 September 2023.

[9] Legal advice and risk most aptly describe the redacted sentences in the emails. The redacted aspects of the emails show that their primary purpose is to communicate whether E Tū would provide support and assistance for any potential liability for costs to Mr Lanigan. Most of the redacted aspects of the 12 May 2023 email to Mr Lanigan refer or relate to legal advice provided to E Tū.

[10] A challenge to the determination of the Employment Relations Authority (the Authority) had been, at the time of the last two emails, filed by Mr Lanigan and was filed within days of the first email.⁴

Application of legal principles to the emails

[11] It is appropriate to consider the privilege claimed in the list of documents with regard to s 54 and s 56 of the Evidence Act.

[12] The relevant aspects of s 54 relating to privilege for communications with legal advisers provide:

54 Privilege for communications with legal advisers

- (1) A person who requests or obtains professional legal service from a legal adviser has a privilege in respect of any communication between the person and the legal adviser if the communication was—
 - (a) intended to be confidential; and
 - (b) made in the course of and for the purpose of—
 - (i) the person requesting or obtaining professional legal services from the legal adviser; or
 - (ii) the legal adviser giving such service to the person.

[13] The relevant aspects of s 56 relating to privilege for preparatory materials for proceedings provide:

⁴ The other first plaintiffs were joined as parties by minute on 21 November 2023 and the second plaintiff by judgment: *Lanigan v Fonterra Brands (New Zealand) Ltd (No 2)* [2024] NZEmpC 60.

56 Privilege for preparatory materials for proceedings

- (1) Subsection (2) applies to a communication or information only if the communication or information is made, received, compiled or prepared for the dominant purpose of preparing for a proceeding or an apprehended proceeding (the **proceeding**).
- (2) A person (the **party**) who is, or on reasonable grounds contemplates becoming a party to the proceeding has a privilege in respect of—
 - (a) a communication between the party and any other person:
 - (b) a communication between the party’s legal adviser and any other person:
 - (c) information compiled or prepared by the party or the party’s legal adviser:
 - (d) information compiled or prepared at the request of the party, or the party’s legal adviser, by any other person.

[14] The email of 12 May is the most heavily redacted of the three emails. The other two emails have only minor redactions. The email of 7 September 2023, which is from the national secretary of E Tū to Mr Lanigan, refers to and relies on the email of 12 May 2023.

[15] In accordance with the process agreed, the Court considers that the redactions made are in accordance with claimed privilege. The reasons are discussed below.

[16] However, even if the redactions were not made in accordance with privilege, the Court considers that they are not relevant. That is because they relate to arrangements between E Tū and Mr Lanigan relating to cost liabilities for the challenge, other support, and reasons for that.

[17] The redactions are clearly covered by litigation privilege under s 56 of the Evidence Act. At the time of the email communications, Mr Lanigan was contemplating becoming a party to this proceeding or was a party. The three emails from E Tū were about the proceeding. That was their dominant purpose. The emails referred to legal risk and assessment with respect to the subject matter and any covering of liabilities and other support. Those communications, to the extent of the redactions made, are privileged, as they are communications for the dominant purpose of preparing for a proceeding or apprehended proceeding.

[18] There is also an arguable case that the redactions are appropriate as legal advice privilege under s 54 of the Evidence Act. Most of the redactions in the 12 May 2023 email relate to legal advice received by E Tū. The legal advice is set out briefly in the email. Having considered the email of 12 May 2023, privilege would be available for the legal advice received by E Tū and referred to Mr Lanigan.

[19] The complication, and the reason why s 56 privilege is more appropriate in this case, is that E Tū holds that privilege. Some consideration needs to be given to whether the privilege was maintained when the information was communicated to Mr Lanigan in the email.

[20] Section 53 of the Evidence Act relates to the effect and protection of privilege. Section 53(b) provides that for the privilege to be maintained by another person they must have come into possession of the information with the authority, in this case of E Tū. The information must have been provided in confidence and for purposes related to the circumstances that have given rise to the privilege.

[21] Mr Lanigan came into possession of the information in the email with the authority of E Tū because he was a member of that organisation, and it was sent to him. The information was provided for purposes related to the circumstances that had given rise to the privilege, which was for giving and receiving legal advice. Mr Lanigan was in the process of commencing proceedings. The information was provided in circumstances where the confidentiality of the legal advice could be expected to be maintained.

Conclusion on review

[22] On review by the Court, the redactions in the 12 May, 3 July and 7 September 2023 emails are appropriately made, based on the privilege claimed for communications with legal advisors and/or legal risk and advice to Mr Lanigan preparing for litigation. Even if privilege did not apply, the redactions were not improper because the redacted information was not relevant to the substantive proceedings.

[23] The three unredacted emails supplied to the Court for the purposes of this review are to be returned to the solicitors for the second plaintiff.

[24] Costs are reserved.

Helen Doyle
Judge

Judgment signed at 12 pm on 17 November 2025

APPENDIX A

PETER ARMSTRONG

JAN BOSMA

MARTIN BROCK

ANTHONY CROPP

SHANNON FARLEY

DION HUBERS

BRIAN HUGHES

ANDREW JAMES

BRADLEY JESSON

CLIFF MCNEIL

WILLIAM MARR

BRUCE MUNRO

JASON POWRIE

DARREL ROBERTS

PAUL TAU

JEREMY WRIGHT