

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

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

**[2026] NZEmpC 33
EMPC 107/2025**

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

AND IN THE MATTER OF an application for discovery against a non-
party

BETWEEN CHIEF EXECUTIVE, MINISTRY OF
PRIMARY INDUSTRIES MANATŪ AHU
MATUA
Plaintiff

AND SESIKA PAYNE AND 30 OTHERS
Defendant

Hearing: 24 February 2026
(Heard at Auckland)

Appearances: A Russell, counsel for plaintiff
D Church, counsel for defendant
P Cranney, counsel for non-party

Judgment: 24 February 2026

**ORAL INTERLOCUTORY JUDGMENT OF JUDGE KATHRYN BECK
(Application for discovery against a non-party)**

[1] These proceedings involve a non-de novo challenge to a determination of the Employment Relations Authority.¹

[2] In my minute dated 16 September 2025, I granted the plaintiff leave to file an application for a non-party discovery order against the New Zealand Public Service

¹ *Payne v Chief Executive of the Ministry of Primary Industries Manatū Ahu Matua* [2025] NZERA 79.

Association Te Pūkenga Here Tikanga Mahi (PSA). The PSA was formerly the second defendant in these proceedings but is no longer a party.

[3] That application was heard in Court today. While the application was opposed, the parties have been able to resolve most issues and much of the documentation sought in the application has been provided to the plaintiff. However, there remains an issue with 5,000 emails between the PSA and Ms Payne, the first named defendant, on both her private and work email addresses sent during the relevant period.

[4] The PSA does not consider it appropriate to provide all emails to the plaintiff without first reviewing them for relevance or privilege. It says the review would be resource intensive and, in any case, it is not best placed to conduct it. It submits that such review should be carried out by the defendants.

[5] To date, the defendants have taken the position that they will abide the decision of the Court and have taken no steps in relation to the application. Mr Church, counsel for the defendants, helpfully agreed to the Court's request that he be present today.

[6] Following submissions presented by counsel for the plaintiff and the PSA, and discussion with counsel for the defendants, the following orders are made by consent:

- (a) The USB stick containing the emails in question will be provided by the PSA to the defendants.
- (b) The plaintiff and the defendants will confer and agree search terms which will be applied to the emails to ascertain which are relevant to the matters in this proceeding. The defendants will advise the plaintiff of the number of emails that are deemed relevant under this process.
- (c) The defendants will review the relevant emails and provide the plaintiff with a list of any emails over which they are claiming privilege. The balance of the relevant emails will be made available to the plaintiff for inspection; no list is required.

[7] In the event the plaintiff and the PSA are unable to agree on costs, the PSA will have 14 days from the date of this judgment within which to file and serve any memorandum and supporting material, with the plaintiff having a further 14 days within which to respond. Any reply should be filed within a further seven days.

[8] Costs between the plaintiff and the defendants are reserved.

Kathryn Beck
Judge

Judgment delivered orally at 10.18 am on 24 February 2026