IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON

I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI A TARA

[2025] NZERA 219
3364303

	BETWEEN	NICOLA GIBSON-HORNE Applicant
	AND	WELLINGTON FREE AMBULANCE Respondent

Member of Authority:	Davinnia Tan
Representatives:	Johanna Drayton, counsel for the Applicant Paul McBride, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions received:	7 April 2025 from the Applicant 7 April 2025 from the Respondent
Determination:	17 April 2025

DETERMINATION OF THE AUTHORITY

Application for removal

[1] This determination concerns removal of proceedings to the Employment Court under sections 178(2)(a) and 178(2)(b) of the Employment Relations Act 2000 (the Act). The application is grounded on the basis that the matter raises important questions of law that are likely to arise other than incidentally, and that the nature and urgency of the case make it in the public interest for it to be immediately removed to the Court.

[2] The respondent does not oppose the removal of the matter to the Employment Court but disputes that the case is of such a nature and urgency that it warrants immediate removal in the public interest.

Background

[3] The applicant has been employed by Wellington Free Ambulance for over 17 years, commencing full-time employment in January 2008 under a collective employment agreement (CEA). She has served as a Frontline Paramedic since 2009.

[4] On 13 May 2023, the applicant and her crewmate responded to a cardiac arrest. Despite prompt arrival and active resuscitative efforts, the patient could not be revived. The decision to cease resuscitation was based on the clinical picture formed after consultation with bystanders and assessment of the patient and occurred just prior to the applicant's manager arriving at the scene.

[5] Following this event, the respondent initiated an adverse event review (AER) process in June 2023 which the applicant contends was procedurally unfair.

[6] On 3 November 2023, before the AER process was concluded, the respondent commenced a separate independent workplace investigation into the clinical event. The applicant was advised that if concerns were substantiated, her conduct could amount to serious misconduct, and could lead to consequences including dismissal.

[7] The applicant opposed a proposed suspension in November 2023, noting the absence of any clinical concerns prior or subsequent to the incident. Nonetheless, she was placed on paid special leave and later formally suspended from frontline duties.

[8] On 10 July 2024, the applicant raised personal grievances, alleging multiple breaches by the respondent including an unjustified disadvantage claim arising from procedural and substantive failures and breaches of good faith.

[9] Specific concerns included the failure to provide all relevant information to the applicant, premature initiation of the independent investigation before the AER concluded, deviation from the respondent's policies including its 'Just Culture' principles, the unjustified suspension, failure to reinstate her following the investigation report, unauthorised disclosure of incorrect or inadequate information to external bodies such as the Coroner, Health and Disability Commissioner, and ambulance team, and

the respondent's failure to reasonably manage the extensive and onerous return-to-work plan.

[10] On 25 August 2024, the applicant returned to a lower-level paramedic role, as directed by the respondent.

Relevant Legal Framework

[11] Section 178(2) of the Act provides that the Authority may order removal of a matter to the Employment Court if:

a. An important question of law is likely to arise (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.

[12] These criterias are disjunctive and removal may be granted where either is satisfied.

[13] The application for removal has been made on both grounds, s178(2)(a) and (b).

Submissions of the Applicant

[14] The applicant submits that the proceedings raise several important questions of law, including:

a. At what point, when considering the interface between the Health Practitioners Competence Assurance Act 2003 (HPCAA) and the Act, can an employer justifiably form a belief that an employee may pose a risk of harm to the public by practising below the required standard of competence?
b. Whether a personal grievance or other proceedings can be brought against an employer for making notifications under the HPCAA, and if so, whether and in what circumstances statutory immunity applies.
c. Whether an employer is liable, vicariously or otherwise, for actions taken by an employee who has been delegated authority to practise, which others require to perform their duties.

[15] It is submitted that these questions are not only significant but currently unsettled, and that a determination by the Employment Court would clarify the

intersection between employment obligations and professional regulatory responsibilities.

[16] The applicant refers to the recent decision in *Johnston v Te Whatu Ora – Health New Zealand*[1] *(Johnston)*, where the Court held that similar issues about employer obligations and the scope of immunity under the HPCAA raised important questions of law justifying removal. The applicant submits that this case aligns closely with *Johnston* and that a consistent judicial approach would be aided by removal.

[17] The applicant also submits that 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.

[18] The applicant asserts that she is currently subjected to significant professional and personal pressures, including onerous training obligations, and proposed further assessments by the Paramedic Council. Her remediation plan precludes her return to full practice until at least July 2025.

[19] The applicant submits that the current workload imposed upon her raises real risks to her health and public safety and that these issues are of broader public interest, affecting potentially over 100,000 health professionals regulated under the HPCAA. She points to her current workload under the remediation plan, involving over 57 hours per week not including study or unpaid tasks, as jeopardising her health, safety, and ability to deliver safe patient care.

[20] The applicant notes that the release of *Johnston* in December 2024, the intervening holiday period, and the return of counsel in mid-January explain any delay, and that removal now would allow the Court to consider both matters together or in close proximity.

[21] The applicant emphasises that consistent and efficient resolution of these questions is essential to ensure legal clarity for employers and employees across the health sector and other regulated professions.

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[1] *Johnston v Te Whatu Ora- Health New Zealand* [2024] NZEmpC 253.

Submissions of the Respondent

[22] The respondent does not oppose the removal of the matter to the Employment Court.

[23] It does not, however, accept the applicant's characterisation of the matter as urgent or as justifying removal on public interest grounds under section 178(2)(b). The respondent contends that any delay in pursuing removal undermines the claim of urgency.

[24] Nevertheless, the respondent submits that the criteria under section 178(2) are disjunctive and that the existence of an important question of law (under 178(2)(a)) alone is sufficient to justify removal. There is, the respondent says, no compelling reason to withhold removal.

[25] The respondent agrees that the correct approach in such applications is to assess whether there are reasons not to remove the matter, and submits there are none in this case.

Analysis

[26] I am satisfied that the proceedings raise important and complex questions of law. The interaction between statutory employer obligations under the Employment Relations Act 2000 and the regulatory notification duties under the HPCAA has significant implications for employment relationships and professional regulation across the health sector.

[27] These questions are not merely incidental to the matter but are central. They include:

a. The threshold for justifiable belief of risk of harm under HPCAA;
b. The ability to raise personal grievances in the face of notification and whether immunity applies; and
c. Employer liability for the actions of employees delegated regulatory authority.

[28] These questions are of general application and will likely arise in other cases involving professionals governed by statutory regulators. Accordingly, the threshold under section 178(2)(a) is met.

[29] While the Authority notes the respondent's reservations as to the urgency limb, it is not necessary to make a finding under section 178(2)(b) as section 178(2)(a) is independently satisfied. Nonetheless, the Authority considers that there is merit in the applicant's arguments regarding urgency and the desirability of alignment with the *Johnston*[2] proceedings where the issues of law are similar in nature.

[30] The Authority agrees that early determination by the Court will promote consistency and judicial efficiency and is likely to be of benefit to a broad class of affected individuals. These considerations further support the case for removal, even if not strictly necessary to meet section 178(2)(a).

Order

[31] For the reasons above, this matter is to be removed to the Employment Court pursuant to section 178(2)(a) of the Employment Relations Act 2000.

Davinnia Tan
Member of the Employment Relations Authority

[2] I further note that these issues of law are similar in nature to those in *Johnston*[2].