

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI Ā TARA**

[2025] NZERA 43  
3332620

BETWEEN	ADRIAN RATCLIFFE Applicant
AND	FONTERRA COOPERATIVE GROUP LIMITED Respondent

Member of Authority:	Davinnia Tan
Representatives:	Allan Halse, advocate for the Applicant Vonda Engels, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions received:	6 December 2024 from the Applicant 26 November 2024 from the Respondent
Determination:	28 January 2025

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

*Substantive claim*

[1] Mr Ratcliffe lodged a Statement of Problem with the Authority on 22 October 2024, claiming an unjustifiable disadvantage against Fonterra Cooperative Group Limited (Fonterra) on grounds that:

- a. Fonterra unjustifiably placed him on a performance improvement plan (PIP); and
- b. Failed to properly investigate allegations he made on 31 January 2024 of bullying against him.

## **Fonterra's application for urgency**

[2] On 6 November 2025, Fonterra made an urgent application to the Authority seeking a preliminary declaration that it is entitled to continue with the existing performance management process (PMP) with Mr Ratcliffe, its employee, dated 9 September 2024. It also lodged, separately, a Statement in Reply to the Statement of Problem on the same day.

## **Submissions**

[3] Fonterra submitted that an urgent preliminary declaration is a remedy available to the Authority under s 161(1)(r) of the Employment Relations Act 2000 (the Act).

[4] Fonterra has made the application for urgency on the basis that there is an ongoing employment relationship and the nature of Mr Ratcliffe's work is "safety-sensitive"; and that there has been "longstanding" concerns with Mr Ratcliffe's performance, and that such performance concerns, including its PMP had been independently assessed as genuinely held by the independent assessment; and that "the continuation of the performance process will not compromise or undermine the applicant's claims in any way."

[5] Mr Ratcliffe's response to Fonterra's urgent application is that:

- a. The application is "frivolous and vexatious";
- b. Fonterra is seeking to "predetermine the substantive matter"; and
- c. It constitutes "further bullying".

## **The issue**

[6] The issue for determination here is whether there is an urgent basis for Fonterra's application seeking to carry out and continue with its PMP under the PIP.

## **Analysis**

[7] For reasons below, I am not satisfied that there are grounds to make an urgent preliminary declaration on the grounds sought by Fonterra.

[8] Fonterra's application to carry out and continue its PMP was made on an "urgent" basis following receipt of Mr Ratcliffe's claim of a personal grievance that he has been unjustifiably disadvantaged by the PIP which has resulted in the PMP.

[9] Fonterra's legal submissions do not address the basis on which the Authority is able to make a determination as to whether Fonterra should be able to continue with its PMP. More importantly, Fonterra had already put in place the PIP which is one of the issues of Mr Ratcliffe's substantive claim.

[10] Further, Fonterra is incorrect to suggest that there is a statutory basis for the Authority to make an "urgent preliminary declaration" under s 161(1)(r). Section 161(1) of the Act provides for the Authority to make determinations about employment relationship problems, which includes, as set out in paragraph (r), "any other action...arising from or related to the employment relationship or related to the interpretation of the Act..."

[11] Determining whether Fonterra has an urgent basis to conduct its PMP leads to an unavoidable consideration of the substantive issue. These matters are inextricably linked and are not separate legal issues. S161(1)(r) is not applicable in these circumstances where the issue to be determined is inextricably linked and indivisible from Mr Ratcliffe's substantive personal grievance claim.

[12] I therefore find that the substantive matter is not urgent and no orders are made. However, as there is an ongoing employment relationship between the parties, the substantive claim will be given priority.

Davinnia Tan  
Member of the Employment Relations Authority