

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 734
3419124

BETWEEN WETA FX LIMITED
Applicant

AND BRENDAN CULLEN
Respondent

Member of Authority: David G Beck

Representatives: Paul Wicks KC, Bonnie Simmonds and June Hardacre,
counsel for the Applicant
Catherine Stewart, Jonothan Whyte and Hanifa Kodirova
counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: None from the Applicant
11 November 2025 from the Respondent

Date of Determination: 13 November 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The issue in dispute is whether this matter should be removed by the Authority to the Employment Court pursuant to s 178 of the Employment Relations Act 2000 (the Act) to essentially resolve an impasse in the disclosure of documentation retained by the respondent. The underlying employment relationship problem concerns a decision of the applicant to end the respondent's employment during a restructuring process.

[2] The application has been lodged on 3 November 2025, by Brendan Cullen and is unopposed by Weta FX Limited (Weta) his former employer.

What caused the employment relationship problem

[3] Mr Cullen has performed work for Weta since 2017 initially as a contractor but from 11 December 2023, pursuant to an individual employment agreement, as an employee when he took up the role of 'Senior Test Analyst'. The position title was changed to 'Senior Test Engineer II' on 5 January 2025. Mr Cullen asserts this change was made unilaterally by Weta without consulting him. Mr Cullen says he occupied a sole specialist testing role involving a key production tool utilised by Weta film production staff and external parties.

[4] Weta commenced a restructuring on 31 July 2025 to address what it says are cost pressures. Mr Cullen's role was identified in a proposal as potentially surplus with Weta broadly indicating a narrower orientation of only positions being retained that directly contributed to application development, pipeline development and research/innovation work.

[5] On 8 August, Mr Cullen provided feedback on Weta's proposed rationale for restructuring and supporting references from senior staff seeking to retain his role. Mr Cullen says Weta did not engage on his submissions and on 14 August, Weta confirmed Mr Cullen's role was disestablished.

[6] Concerned about the disestablishment Mr Cullen says he met his Head of Department on 18 August and says they disclosed to him an ulterior motive for the disestablishment of Mr Cullen's role existed. Mr Cullen says the Head of Department also disclosed they had participated in documented wider management meeting on 13 August, to discuss impacted employees' feedback on the restructuring proposal.

[7] Later on 18 August, Mr Cullen requested Weta disclose further reasoning behind the decision to disestablish his role and supporting documentation disclosing the decision-making process. Mr Cullen says the response from Weta's Human Resources (HR) department advised senior management had resolved to operate the key production tool in a maintenance only mode and as no new features were planned, they considered there was a low risk in not retaining Mr Cullen's senior testing role capability. On employee submissions addressing the restructuring proposal, Weta HR advised feedback had been collated and summarised and provided to those involved in the decision-making process. Mr Cullen is concerned that no additional documentation he believes exists, was provided.

[8] Mr Cullen's employment ended on 10 September. On 24 October, Mr Cullen raised a personal grievance claiming the restructuring process was flawed and the decision to dismiss him was unjustified. Mr Cullen's counsel sought full disclosure of information relevant to the decision-making process.

[9] Mr Cullen says in his personal grievance letter he disclosed he had retained confidential information he believed related to his grievance claims and provided signed undertakings that he would keep the information secure; only disclose to his legal advisors and use only for the purpose of advancing his grievances. Mr Cullen says he also gave assurances he had no intention of otherwise disclosing the information and once his dispute was resolved he would destroy the material held.

Matters before the Authority

[10] In an application to the Authority of 30 October 2015 identified as urgent, Weta is seeking a declaration that Mr Cullen has breached various post-employment obligations contained in his individual employment agreement; breached good faith and breached owed fidelity obligations related to Mr Cullen's removal and retention of confidential information. As remedies Weta seeks penalties for the identified breaches and orders compelling Mr Cullen to immediately return material in his possession and submit to a third-party forensic examination of personal electronic devices.

[11] Mr Cullen's counsel on 3 November, filed an application in the Employment Court for pre-commencement discovery of documents Mr Cullen asserts are essential to pursue his personal grievance claims and on the same date an application to have Weta's application removed to the Employment Court was made by Mr Cullen.

[12] The Authority convened an urgent directions teleconference on 4 November and afterwards on 5 November, directed the parties to urgent mediation (scheduled for 18 November) and timetabled submissions to deal with Mr Cullen's application to have Weta's application removed to the court.

[13] In the interim, Weta has filed a further 'urgent' application in the Authority on 11 November seeking an interim injunction seeking urgent orders requiring Mr Cullen and any of

his agents to return to Weta, confidential information in his possession and deletion of such and that Mr Cullen be the subject of a full forensic review of his personal electronic devices to ensure compliance with post-employment obligations.

Removal to the Employment Court

[14] The grounds advanced by Mr Cullen’s counsel in a submission of 11 November, seeking removal of the matters identified by Weta to the court are made pursuant to s 178(2)(a) – (c) of the Act:

- (a) an important question of law is likely to arise in the matter 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.
- (c) the court already has before it proceedings which are between the same parties and which involve the same or similar related issues.¹

[15] Weta do not oppose Mr Cullen’s application and has chosen not to make a submission on the matters.

[16] In expanding submissions on the grounds sought for removal Mr Cullen’s counsel has asserted in summary (using their headings):

Proceedings already in the court

- The application Mr Cullen has made in the court is between the same parties and involves “similar issues” that in addition to identified disclosure issues sought by Mr Cullen, involves the question of whether Mr Cullen has an overriding right to retain confidential information to pursue his personal grievance claims despite the confidentiality and post-employment obligations’ provisions of his individual employment agreement.
- That the above establishes a “sufficient nexus” between the two sets of proceedings and removal to the court would mitigate time and cost issues for both parties and reduce the

¹ Employment Relations Act 2000, s 178

overlap in any findings between the Authority determination and the court finding on pre-discovery: thus, allowing for the efficient use of judicial resources.

Important question of law?

- The novel legal issue identified is essentially: whether despite a specific contractual provision that Mr Cullen return all confidential material in his possession and delete/destroy such information held on any personal device upon termination of employment, this conflicts with statutory natural justice rights and international law obligations that arguably would allow Mr Cullen to pursue his personal grievance using retained documentation for the sole purpose of seeking legal advice and pursuing such claims.
- In support of establishing that a novel question of law does arise, unique contextual issues are asserted by Mr Cullen as including:
 - A reasonably held belief that Weta is deliberately withholding information pertinent to the decision made to disestablish Mr Cullen's former role.
 - Mr Cullen has voluntarily disclosed he is in possession of confidential material and has offered comprehensive undertakings to address Weta's concerns.
 - Overall, the issue has wider implications generally "as it relates to the fundamental right of an employee to challenge their termination and the natural justice rights associated with such challenge, and whether that includes retaining confidential information of the employer as evidence".

Public interest and urgency

- Allied to identifying a unique legal issue Mr Cullen asserts the matter has wider public interest and that any decision of the court will have wider implications for defining respective rights in restructuring situations.
- Urgency is also sought to mitigate financial issues including Mr Cullen's legal costs from excessive litigation advanced by a notably well-resourced employer party in a

context where Mr Cullen has not secured alternative employment, and his partner has also recently been made redundant by Weta.

Assessment

[17] Removal applications are governed by s 178 of the Act, the Authority in exercising its discretion must also consider that Section 3 of the Act setting out the Act's scheme or objects, at 3(a) (vi), identifies the reduction of the need for judicial intervention to be a key part of the Act's purpose. The Act's objects are explicitly reinforced by s 143 that deals with establishing procedures and institutions. Section 143(e) of the Act recognises that while employment relationships are ideally best resolved promptly by the parties, there will "always be some cases that require judicial intervention".

[18] The Authority's 'first stop' role as an adjudicative body and exclusive jurisdiction for employment relationship disputes has been affirmed by the Supreme Court in both *Gill Pizza Ltd v Labour Inspector Ministry of Business, Innovation and Employment* and *FMV v TZB*.² In addition, the Court of Appeal in *Labour Inspector v Gill Pizza Limited and Ors* has suggested removal to the Employment Court before investigation should be "contemplated in relatively limited circumstances".³

[19] I, however, consider this situation is somewhat unique and note unusually, no conventional employment relationship matter is currently before the Authority in the sense that Mr Cullen has yet to make an application to resolve his alleged unjustified dismissal claim. At the initial case management teleconference, I directed the parties to urgent mediation with a view they should focus upon the predominant issue of Mr Cullen's allegation his dismissal was unjustified and impliedly seek to find a full and final settlement of that matter. Should this not be resolved at mediation, it is likely Mr Cullen will pursue an application in the Authority and setting aside the dispute about his retention of material belonging to Weta, this would be a matter the Authority would still have to resolve.

² *Gill Pizza Ltd v Labour Inspector Ministry of Business, Innovation and Employment* [2021] NZSC 184 and *FMV v TZB* [2021] 1 NZLR 466.

³ *A Labour Inspector (Ministry of Business, Innovation and Employment) v Gill Pizza Ltd and Ors* [2020] NZCA 192 at [48].

[20] An alternative ground for considering removal is applying the Authority's residual discretion under s 178(d) of the Act, as objectively the retention of information and disclosure disputes are quickly becoming intractable and have some unique features.

[21] The Employment Court decision of *Johnston v The Fletcher Construction Company Limited* supports the utilisation of s 178(2)(d) being a legitimate 'stand-alone' general ground for removal depending upon the specific circumstances.⁴ Factors I consider that tend toward removal generally are that;

- (i) The overlapping ground that pre-discovery formal pleadings are already being pursued, will ensure that Mr Cullen is required to fully and fairly set out his claim, in turn assisting with Weta's concerns and any responses to them.
- (ii) The formal discovery regime in the Court may better assist in distilling what is relevant and required.
- (iii) The requirement for sworn evidence, and any evidence being given in a court of record, is important where allegations of deliberate withholding (and retention) of information have been made and need to be determined.
- (v) Given the level of litigation manoeuvres already engaged in, there is a distinct possibility that either party will challenge the ultimate decision of the Authority, regardless of result.
- (vi) A Judicial Settlement Conference may be convened, after a particular claim is directed and produced, which in combination may have more chance of resolving the matter.

[22] I am also persuaded that not removing the matter could entail costs expended in the Authority proceedings becoming disproportionate and likely to result in significant duplication. I am also aware of the application of *Johnston* in *Smith's City (Southern) Limited v Claxton* as being analogous, which opined in the circumstances prevailing, the court's "structured process" of document disclosure would better serve the parties and that it was more suited to a purely adversarial process.⁵

[23] While the Authority has made initial attempts to encourage low level dispute resolution neither party appears to have heeded this, and both are adopting a predominantly litigious approach. In such unique circumstances, I find that an exception has been made out for grounds

⁴ *Johnston v The Fletcher Construction Company Limited* [2017] NZEmpC 157 at [39].

⁵ *Smith's City (Southern) Limited v Claxton* [2019] NZERA 647.

to remove the whole matter to the Employment Court so that discovery issues and Weta's legitimate concerns about Mr Cullen allegedly breaching his post-employment agreement obligations without due cause, can be resolved and a path cleared to resolve the substantive matter consequently dealt with. I note this could include the court directing the matter back to the Authority once preliminary disclosure and document retention issues are resolved.

[24] I have had regard to timing issues and further delay but nothing pertaining to Mr Cullen's personal circumstances has been identified that would persuade me that removing this matter would not best serve both parties apparent desire to litigate this matter further and that disclosure be dealt with by the court.

Conclusion - should the removal be granted?

[25] I find that exceptional grounds exist for removing this entire issue to the Employment Court and the extant matters are removed subject to the parties having first complied with the Authority's direction to attend urgent mediation and attempt in good faith, to resolve their employment relationship problem.

Costs

[26] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves in these unique circumstances; it is my view that consideration should be given to costs lying where they fall. However, If the parties are unable to resolve costs, and an Authority determination on costs is needed, the party that considers costs should be awarded in their favour may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of this determination. From the date of service of that memorandum the other party will then have 14 days to lodge a reply memorandum. Upon request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[27] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate basis unless circumstances or factors, require an adjustment upwards or downwards.⁶

David G Beck
Member of the Employment Relations Authority

⁶ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.