

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

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

**[2026] NZEmpC 16
EMPC 518/2025**

IN THE MATTER OF an application for pre-commencement
 disclosure

BETWEEN BRENDAN CULLEN
 Applicant

AND WĒTĀ FX LIMITED
 Respondent

Hearing: On the papers

Appearances:

CW Stewart, JO Whyte, and H Kodirova, counsel for applicant
P Wicks KC, B Simmonds, and J Hardacre, counsel for
respondent

Judgment: 3 February 2026

JUDGMENT OF JUDGE J C HOLDEN

[1] Mr Cullen was employed by Wētā FX Ltd as a senior test engineer. His employment was terminated by Wētā FX effective on 10 September 2025 on the basis of redundancy. Ms Stewart, as Mr Cullen’s representative, lodged a personal grievance on his behalf by letter dated 24 October 2025. That letter also sought information in relation to Mr Cullen’s dismissal.

[2] Mr Cullen’s personal grievance is that his dismissal was substantively unjustifiable and procedurally unfair, including because of Wētā FX’s alleged systematic failure to provide him with true and relevant information. At this stage, Mr Cullen has not filed a statement of problem in the Employment Relations Authority.

He has applied to this court for pre-commencement discovery. This judgment resolves that application.

The parties were encouraged to resolve this issue

[3] When this matter was initially considered in a directions conference in November 2025, Judge Beck noted that the application represented significant time and resource expenditure for both parties. She encouraged them to attempt to reach agreement in relation to the provision of information to Mr Cullen to enable the substantive matters at issue between the parties to be progressed efficiently.

[4] Regrettably, although the parties attended mediation, Mr Cullen's request for further information was not resolved.

The Court can order pre-commencement discovery

[5] The Court may, in relation to discovery that relates to proceedings brought or intended to be brought in the Court, or intended to be brought in the Authority, make any order that the District Court may make under s 105 or 106 of the District Court Act 2016.¹

[6] An application for pre-commencement discovery may be made where the applicant is or may be entitled to bring a proceeding, and it appears that another person is likely to have or have had in their possession, custody, or power, a document or class of documents that is relevant to an issue arising or likely to arise in the proceedings.²

[7] When such an application is made, the Court may make an order for pre-commencement discovery where it is impossible or impracticable for the applicant to formulate their claim without reference to one or more documents, or a group of documents, that may be or may have been in the control of another person. However, an order may not be made unless the judge is satisfied that the order is necessary at the time the order is proposed to be made.³

¹ Employment Relations Act 2000, sch 3 cl 13.

² District Court Act, s 105(1).

³ District Court Rules 2014, r 8.20(1) and (4).

The parties made competing submissions

[8] Mr Cullen is entitled to make a claim in respect of his dismissal, including in respect of matters leading up to the dismissal. Wētā FX does not suggest otherwise. The essential issue is whether it is impossible or impractical for Mr Cullen to formulate his claim without reference to one or more documents or a group of documents that may be in the control of Wētā FX, and whether a pre-commencement discovery order is necessary at this time.

[9] Mr Cullen says that these requirements are met because:

- (a) Wētā FX has deliberately withheld and wrongly denied the existence of extensive information relevant to its dismissal of Mr Cullen on the grounds of redundancy.
- (b) Mr Cullen requires pre-commencement discovery of this evidence to be able to formulate his intended case against Wētā FX for filing in the Authority.⁴
- (c) The actual or likely existence of the evidence is substantiated by Wētā FX's own restructure documentation and other oral and written statements made by Wētā FX.
- (d) He says it is impossible or impracticable for him to formulate his claims without reference to the documents he seeks because he has very limited information regarding Wētā FX's justification for its restructure process and the consequential termination of his employment.

[10] Mr Cullen says that the only information he possesses comes from a single brief PowerPoint presentation, from oral statements made to him by his manager, and limited written statements provided by Wētā FX's HR department after his employment ended.

⁴ Mr Cullen also intends to apply for removal of his proceeding to the Court pursuant to s 178 of the Employment Relations Act.

[11] He says that to be able to formulate his actual and potential claims, he requires access to all documents necessary to enable him and the Authority to understand Wētā FX's full substantive rationale for its restructure, and whether that rationale is consistent with the material provided to Mr Cullen prior to his dismissal. He also says he requires the information to understand the decision-making process in its entirety, Wētā FX's intent throughout the process, and the extent to which it may have acted in a manner that was deceptive or misleading, or likely to mislead or deceive.

[12] He says that pre-commencement disclosure is necessary because without the relevant information he is not able to establish a substantive legal position and formulate his case with reasonable particularity as to his claims, the grounds for each claim, and the relief he seeks in respect of each claim. In particular, he says the information is necessary so that he can consider Wētā FX's substantive rationale for his dismissal, especially because the question of whether he can recover the reimbursement for lost remuneration may turn on whether his redundancy was substantively justifiable.

[13] He says that it is necessary to come to the Court, because even after proceedings are filed in the Authority, the Authority does not deliver the comprehensive, rules-based, and affidavit-backed inspection that is desirable and necessary in a highly commercially sensitive and factually complex case, such as the one Mr Cullen wishes to bring. Finally, he says that the overall interests of justice and consideration of equity and good conscience all support granting his application.

[14] Wētā FX says it is both possible and practicable for Mr Cullen to formulate his claim without pre-commencement disclosure, and that pre-commencement disclosure is not necessary. Accordingly, it says there is no basis for an order.

[15] It says Mr Cullen's application is speculative; he wishes to determine whether there are additional claims he could make.

Some information has been sought and provided

[16] At the end of July 2025, Wētā FX started a business wide restructure process, which impacted over 100 roles.

[17] Potentially affected employees, including Mr Cullen, were provided with a consultation pack on 31 July 2025. That was a reasonably high-level document but confirmed that, as part of its key focus, Wētā FX was prioritising roles that contributed directly to application development, pipeline development and research innovation, with a reduction in technical supporting roles. The consultation pack briefly set out the rationale for change for each role; in the case of Mr Cullen’s role, Wētā FX noted that, to cut costs, it was prioritising other areas so that it proposed that Mr Cullen’s role would be disestablished, and the testing function absorbed by application engineers.

[18] Mr Cullen sent a number of questions, covering the process and decision-making, comparator roles, evidence and submissions, consistency across departments and procedural fairness. He also sought copies of all documents recording the decision-making process and the due diligence in relation to the restructure, and a detailed response to his submissions.

[19] Wētā FX provided a point-by-point response to Mr Cullen’s questions but provided no further documentation, saying there were no further documents in relation to his role or the decision, and that publicly available financial information would be provided once it became available.

Pre-commencement discovery is not necessary for Mr Cullen to commence proceedings in the Authority

[20] Pre-commencement discovery is limited to what is necessary to enable the intended claim to be properly pleaded.⁵ The focus is on pleading, not on proof. Further and more general disclosure can be sought once the pleadings have been completed.

[21] The form for a statement of problem is relatively simple; an applicant must describe the problem, state the facts relied on, and set out the resolution sought.⁶ An applicant can file an amended statement of problem if they wish to do so, including after documents have been disclosed.

⁵ *Hetherington Ltd v Carpenter* [1997] 1 NZLR 699 at 705.

⁶ Employment Relations Authority Regulations 2000, form 1.

[22] The modest requirements for a statement of problem reflect that proceedings in the Authority are intended to be accessible and relatively informal. The Authority is tasked with resolving employment relationship problems by establishing the facts and making a determination according to the substantial merits of the case, without regard to technicalities.⁷

[23] The Authority's powers are broad; it may call for such evidence and information as required to assist it in its investigation.⁸

[24] This context is important. It means the role and expectations of pleadings in the Authority are not the same as in a court, where the pleadings establish the parameters of the case and form a road map for the Court and the parties.⁹ The Authority is an investigative body that is meant to resolve the employment relationship problem between the parties, however it is described in the pleadings.¹⁰ In that sense, the statement of problem and the statement in reply simply form the starting point of the Authority's investigation.

[25] In the present case, Mr Cullen says his redundancy was neither substantively justifiable nor procedurally fair. Those claims are articulated in some detail in his personal grievance letter and in his affidavit in support of the present application. He also sets out his belief that Wētā FX withheld information, which, if true, may be a basis for finding a breach of Wētā FX's obligation of good faith, which is another of Mr Cullen's proposed claims. It also seems he proposes to seek special damages in respect of costs incurred in the course of the restructure process.

[26] Having considered Mr Cullen's personal grievance letter and his affidavit in support of his application, I am of the view pre-commencement discovery is not necessary for Mr Cullen to properly prepare a statement of problem that informs Wētā FX and the Authority of the problem he seeks to have resolved, and the facts that he relies on.

⁷ Employment Relations Act, s 157(1).

⁸ Section 160.

⁹ *Price Waterhouse v Fortex Group Ltd* CA179/98, 30 November 1998 at 17–18; and *Airways Corporation of New Zealand Ltd v Postles* [2002] 1 ERNZ 71 (CA) at [5].

¹⁰ Employment Relations Act, s 160(3).

[27] In particular, Mr Cullen says in his affidavit that Wētā FX based its decision on a mistaken belief that development on a piece of software, which he was a subject matter expert in, had halted. Mr Cullen refers to ongoing projects on the software, including details about what they required and their importance for Wētā FX's business. In connection, Mr Cullen also says that Wētā FX wrongly considered that his work could be absorbed by other staff, underestimating the scale of the hardware and the extent of testing and maintenance it required.

[28] I consider that Mr Cullen's knowledge of these matters is enough for him to formulate a claim challenging Wētā FX's substantive justification for its decision, without reference to the further documents sought.

[29] Mr Cullen has also indicated his intention to challenge Wētā FX's substantive justification by pointing to errors in its financial analysis, and seeks documents about the financial rationale for the restructure. No sufficient basis has been presented for this aspect of the prospective claim; it is a mere speculative possibility. Pre-commencement discovery is not a mechanism to encourage fishing expeditions.¹¹ In any event, the Authority can call for such financial information as it thinks necessary to resolve the employment relationship problem between the parties.

[30] In respect of Mr Cullen's belief that Wētā FX withheld information, the personal grievance letter and his affidavit point to financial information that was referred to in the information pack provided to Mr Cullen, but that was never disclosed. He also says that a conversation he had with his head of department revealed that a directive had been issued in late 2024 to halt development on the software that Mr Cullen was a subject matter expert in, and that it was a key factor in the disestablishment of his role. Mr Cullen says other information and decision-making documents were also referred to in that conversation that were never made available to him.

[31] Against that background, I consider that Mr Cullen can sufficiently formulate a claim that relevant information was withheld from him. Reference to the alleged documents themselves is not required, nor is it needed to formulate a claim that

¹¹ *Hetherington Ltd v Carpenter*, above n 5, at 702.

procedural fairness was impacted by the withholding of information, as has been suggested as another potential claim by Mr Cullen.

[32] I also consider that, overall, there is sufficient information for him to identify the resolution he seeks, bearing in mind the investigative role of the Authority.

[33] Of course, Mr Cullen remains entitled to apply to the Authority to have the matter removed to the Court, and to apply to the Court for special leave for an order if the Authority does not agree to do so.¹² In that context, he could raise his apparent concern that the Authority's processes for an investigation would not lead to the disclosure of all the information that Mr Cullen considers to be relevant.

[34] Mr Cullen's rights of challenge also are unaffected and, therefore, if the matter is not removed to the Court but he is dissatisfied with the outcome of the Authority's investigation, it remains open to him to have the matter reconsidered by the Court, engaging the Court's processes.

Application declined

[35] In summary, I do not accept that it would be impossible or impracticable for Mr Cullen to prepare and file a statement of problem based on the information he has, or that an order for pre-commencement discovery is necessary.

[36] Accordingly, the application for pre-commencement discovery is declined. Mr Cullen is encouraged to file a statement of problem with the Authority as soon as practicable so that the matter can be progressed.

Wētā FX may apply for costs

[37] Having been successful in defending the application for pre-commencement discovery, Wētā FX is entitled to apply for costs if it wishes to do so. In that case, it is to file and serve a memorandum within 28 days of the date of this judgment. A memorandum in response from Mr Cullen is to be filed and served within 21 days thereafter, and any memorandum from Wētā FX in reply is to be filed and served

¹² Employment Relations Act, s 178.

within a further seven days. It is intended that any application for costs then would be dealt with on the papers.

J C Holden
Judge

Judgment signed at 3.30 pm on 3 February 2026