

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA538/2025
[2026] NZCA 147**

BETWEEN MARITIME UNION OF NEW ZEALAND
INCORPORATED
Applicant

AND LYTTELTON PORT COMPANY LIMITED
Respondent

Court: Campbell and Whata JJ

Counsel: S R Mitchell KC for Applicant
R I M Wooders and L W Z Fong for Respondent

Judgment: 29 April 2026 at 11.00 am
(On the papers)

JUDGMENT OF THE COURT

- A The application for leave to appeal is declined.**
- B The applicant must pay the respondent costs for a standard application on a band A basis together with usual disbursements.**
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REASONS OF THE COURT

(Given by Campbell J)

[1] The Maritime Union of New Zealand Inc (MUNZ) applies for leave to appeal a decision of Judge Holden in the Employment Court finding that Lyttelton Port Company Ltd (LPC) complied with its obligations under a collective employment agreement when developing a restructuring proposal.¹ LPC opposes the application.

¹ *Lyttelton Port Company Ltd v Maritime Union of New Zealand* [2025] NZEmpC 167 [Employment Court decision] at [47] and [75]–[86].

Background

[2] LPC developed a proposal to restructure its container terminal operations. MUNZ was invited to meetings to consult on the proposal.² MUNZ did not attend the meetings and instead raised concerns about the proposal through its lawyer.

[3] MUNZ complained that LPC failed to engage with it while developing the restructuring proposal and instead sought to consult with it only once a developed proposal had been formed. Before the Employment Relations Authority and the Employment Court, MUNZ claimed this process breached LPC's statutory obligation of good faith and its obligations under the collective employment agreement. The Employment Relations Authority found for MUNZ on both claims, but the Judge disagreed on appeal.³

[4] MUNZ seeks leave to appeal only against the Judge's finding that LPC did not breach its obligations under the collective employment agreement. The Judge interpreted provisions of that agreement in LPC's favour. The relevant clauses are:⁴

2.0 CONTRACTING OUT

While the employer prefers to utilise their own people and equipment for its on-going business activity, day to day decisions are made in respect to work being undertaken off site or services provided on site.

As a general principle and recognising the employers preference to utilise their own people and equipment, the employer shall when proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment of an employee, provide the employee and their union relevant information and an opportunity to comment on that information before a decision is made (this is the commencement of the consultation process).

The employer consideration shall not only be reliant on commercial and competitive criteria and shall also give appropriate weight to matters such as customer service, quality, efficiency and flexibility, health and safety of their employees and the impact loss of employment would have on their employees should they become redundant.

² LPC also invited the Rail and Maritime Transport Union Inc (RMTU) to consult on the proposal. RMTU took the same position as MUNZ and was a party to the litigation below. However, RMTU does not apply for leave to appeal the Employment Court's decision.

³ *Maritime Union of New Zealand v Lyttelton Port Company Ltd* [2025] NZERA 231 at [57]–[60]; and Employment Court decision, above n 1, at [47]–[48] and [75]–[86].

⁴ Employment Court decision, above n 1, at [20].

The intent of this clause is to provide an agreed basis whereby change and improvement can be achieved, in a manner consistent with the needs and aspirations of all the parties.

The parties agree that consultation used to achieve change is:

- an opportunity to review and analyse options;
- an opportunity for the involvement of the company, union and employees party to this agreement in decision making for change;
- to be facilitative of and not a veto or barrier to change but of opinion not negotiation.

In the absence of agreement (which is not mandatory, but encouraged) the parties may reserve their respective rights. Specifically the employer reserves the right to take the final decision on the introduction of changes and the union reserves its right to represent any matters resulting from such changes which they consider adversely affect the employment conditions of the employees.

...

4.0 CONDUCT OF UNION BUSINESS

...

4.4 Co-operation

The parties to this Agreement agree to work co-operatively and in consultation as appropriate on matters of mutual interest e.g., Health and Safety. To improve communication levels within the Company the employer will hold regular informative meetings with the parties to this Agreement.

...

[5] The Judge found that:

- (a) Clause 2 was limited to proposals to contract out work and was therefore inapplicable to the restructuring proposal.⁵
- (b) Even if cl 2 applied to the proposal, the process followed by LPC complied with cl 2.⁶

⁵ At [75]–[78].

⁶ At [79]–[82].

- (c) While cl 4.4 was broadly framed, it did not require LPC to engage with MUNZ prior to developing the proposal.⁷

MUNZ's application for leave to appeal

[6] MUNZ seeks leave to appeal against the Employment Court's decision on the grounds the Judge erred in finding:

- (a) cl 2 applied only to proposals to contract out work and so did not apply to the restructuring proposal; and
- (b) cl 4.4 did not require engagement prior to the development of the restructuring proposal.

[7] MUNZ's proposed question of law is: "[d]id the Employment Court err in failing to apply the principles of interpretation of collective agreements when interpreting the [c]ollective [a]greement?" MUNZ says this question of law is of general or public importance because it is a matter of public interest that the Employment Court applies correct interpretation principles when interpreting collective agreements and it is of general importance that the Employment Court protects the rights of employees in circumstances where their employment may be terminated.

[8] LPC opposes the application. LPC says the application involves a question of construction of the collective agreement and does not identify any failure of the Employment Court to apply the principles of interpretation of collective agreements. LPC says the application is therefore outside the scope of s 214(1) of the Employment Relations Act 2000. In addition, LPC says the application does not raise any question of law of general or public importance.

Should leave to appeal be granted?

[9] Under s 214(1) of the Employment Relations Act, a party may, with the leave of this Court, appeal against a decision of the Employment Court as being wrong in

⁷ At [83]–[85].

law. By s 214(3), leave may be granted only if the question of law involved in the proposed appeal is one that “by reason of its general or public importance or for any other reason” ought to be submitted to this Court. The question of law must also be seriously arguable.⁸

[10] However, s 214(1) states no such appeal lies against “a decision on the construction of an individual employment agreement or a collective employment agreement”. The courts have not applied this exclusion literally. The Supreme Court held, in *New Zealand Air Line Pilots’ Association Inc v Air New Zealand Ltd*, that, reading s 214(1) in context, “the construction of collective agreements is not off limits altogether”.⁹ The Supreme Court explained that s 214(1) does not prevent this Court from considering questions of interpretive principle.¹⁰ Further, appellate jurisdiction is not removed “by a recitation of the principles where one or more of the principles [is] then misapplied or not applied at all”.¹¹ Arnold, O’Regan and Ellen France JJ emphasised, however, two limits on the scope of appellate review in this context. First, the alleged error “must extend beyond construction of an individual collective to the principles and the approach in general that is taken”.¹² Secondly, it is always necessary to identify the error of interpretive principle and to resist the temptation to turn errors of interpretation into errors of principle merely because the Court sees the result as wrong.¹³

[11] MUNZ does not take any issue with the Judge’s statement of interpretive principles.¹⁴ Its proposed appeal would merely argue that the Judge misapplied those principles. As noted, the Supreme Court has held that an alleged misapplication of interpretive principle can be the subject of an appeal under s 214(1).¹⁵

⁸ *New Zealand Professional Firefighters Union Inc v Fire and Emergency New Zealand* [2021] NZCA 60, [2021] ERNZ 54 at [20].

⁹ *New Zealand Air Line Pilots’ Association Inc v Air New Zealand Ltd* [2017] NZSC 111, [2017] 1 NZLR 948 at [47] per Arnold, O’Regan and Ellen France JJ, [105] per William Young J and [155]–[156] per Glazebrook J.

¹⁰ At [48] per Arnold, O’Regan and Ellen France JJ, citing *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 721 at [20] and n 21.

¹¹ At [51].

¹² At [62].

¹³ At [65]–[66], citing *Secretary for Education v Yates* [2004] 2 ERNZ 313 (CA) at [30] per Glazebrook (dissenting).

¹⁴ Employment Court decision, above n 1, at [49]–[54].

¹⁵ *New Zealand Air Line Pilots’ Association Inc v Air New Zealand Ltd*, above n 9, at [49]–[51] per Arnold, O’Regan and Ellen France JJ, [105] per William Young J and [155] per Glazebrook J.

[12] But that can only be so if the alleged error extends beyond the construction of the particular collective agreement that is in issue. The alleged error must extend to “the principles and the approach in general that is taken”.¹⁶ MUNZ submits that the Judge’s interpretation of cls 2 and 4.4 of the collective agreement between LPC and MUNZ was incorrect. It advances that submission through a close analysis of the text of those clauses. This indicates that the alleged misapplication would not extend beyond cls 2 and 4.4 of this particular collective agreement. MUNZ nonetheless submits that “[s]uch clauses are common in unionised environments”. We do not accept this. MUNZ does not refer to any case in which a clause such as cl 4 has been before the Employment Relations Authority or the Employment Court. MUNZ refers to only one case in which a clause that it says is “not unlike” cl 2 was considered by the Employment Court, *Television New Zealand Ltd v E tū Inc.*¹⁷ In that case, the Employment Court described the wording of the clause as “uncommon”.¹⁸ Further, the Judge in the decision below said that the clauses of the present collective agreement were “quite different” from the clause in issue in *Television New Zealand Ltd.*¹⁹

[13] For these reasons, we consider the proposed appeal falls outside s 214(1). For the same reasons, we would in any event not have been persuaded that the question of law that would have been raised was one of general or public importance.

Result

[14] The application for leave to appeal is declined.

[15] The applicant must pay the respondent costs for a standard application on a band A basis together with usual disbursements.

Solicitors:
Garry Pollak & Co, Auckland for Applicant
Bell Gully, Auckland for Respondent

¹⁶ At [62].

¹⁷ *Television New Zealand Ltd v E tū Inc* [2024] NZEmpC 93, (2024) 20 NZELR 629.

¹⁸ At [8].

¹⁹ Employment Court decision, above n 1, at [72].