

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 357
3266319
3353280

BETWEEN KELVIN HUGH WILSON
Applicant

AND CHIEF EXECUTIVE OF
INLAND REVENUE
Respondent

Member of Authority: Philip Cheyne

Representatives: Applicant in person
Susan Hornsby-Geluk, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 12 February 2025 and 21 April 2025 for the Applicant
3 and 12 February 2025 and 3 June 2025 for the
Respondent

Date of Determination: 19 June 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Under file number 3266319, Kelvin Wilson applied to the Authority to investigate and determine his personal grievance claim of unjustified dismissal against his former employer Inland Revenue. Following an investigation meeting, the Authority dismissed Mr Wilson's claims.¹

¹ *Wilson v Chief Executive of Inland Revenue Department* [2025] NZERA 18.

[2] In the original determination (file number 3266319), costs were reserved with each party having an opportunity to lodge submissions, in the event that there was not agreement.

[3] Under file number 3353280, Mr Wilson has applied to the Authority to reopen its investigation. Inland Revenue opposes Mr Wilson's application.

[4] This determination resolves the reopening application and costs on the original determination.

The Authority's investigation

[5] Mr Wilson applied to reopen the original investigation in January 2025.

[6] Mr Wilson appeared to think that his reopening application stayed consideration of costs on file number 3266319. However, as required by the Authority, submissions about costs were exchanged in February 2025.

[7] During a case management conference on 3 April 2025, the parties agreed that the reopening application could be investigated on the papers by each party having the opportunity to provide submissions.

[8] The parties also agreed that the determination for costs on file number 3266319 should be released at the same time as the determination on the reopening application. That arrangement responded to Mr Wilson's mistaken expectation that the Authority's determination on costs was stayed by effect of his application for reopening.

[9] Mr Wilson and Inland Revenue each lodged submissions regarding the reopening application.

[10] In this determination, I will state findings and express conclusions on issues necessary to resolve the two matters.

Reopening principles

[11] The Authority is given power to reopen an investigation upon such terms as it thinks reasonable.² Like all statutory discretions, the power must be exercised in accordance with principle.

[12] Applicable principles include the following:³

- a. The jurisdiction is not to be exercised for the purpose of re-agitating arguments already considered, or providing a backdoor method by which unsuccessful litigants can seek to re-argue their case.
- b. Some special or unusual circumstance must be found to exist to warrant the reopening, such as:
 - i. Fresh or new evidence that could not with reasonable diligence have been discovered prior to the hearing, which is of such a character as to appear to be conclusive; or
 - ii. A significant and relevant statutory provision or authoritative decision has been inadvertently overlooked or misapprehended; or
 - iii. Some other special or unusual circumstance particular to the case.
- c. The mere possibility of a miscarriage of justice is not a sufficient ground for granting a reopening. The threshold test is whether the party seeking the reopening can establish there would be an actual miscarriage of justice or at least a real or substantial risk of a miscarriage of justice if the determination were allowed to stand.
- d. The assessment of the possibility of a miscarriage of justice does not require a high standard of proof of that possibility. However of equal weight as a factor in the balance is certainty in litigation. This is to ensure successful litigants get their normal right to enjoy the fruits of judgments in their favour.
- e. An apparent misapprehension of the facts or relevant law will not warrant a reopening where the misapprehension is attributable solely to the neglect or default of the party seeking the rehearing.
 What must emerge, in order to enliven the exercise of the jurisdiction, is that the Court has apparently proceeded according to some misapprehension of the facts or the relevant law and that this misapprehension cannot be attributed solely to the neglect or default of the party seeking the rehearing. The purpose of the jurisdiction is not to provide a backdoor method by which unsuccessful litigants can seek to re-argue their cases.
- f. For the decision-maker on a reopening application the overriding consideration must be the interests of justice balanced against other relevant factors such as the importance of finality in litigation.

(footnotes omitted)

² Employment Relations Act 2000, clause 4 of Schedule 2.

³ *Mukkamala v Singh* [2020] NZERA 193 at [6].

The application

[13] In his application, Mr Wilson says that the Authority did not examine judgments he referred to under his heading of “For Certainty of the Job Description”, cases which he says would have affected the determination.

[14] Mr Wilson also says that the Authority did not consider what he refers to as the “2018 Jane/Bernadette restructure”. Not applying s 4 of the Employment Relations Act 2000 to that matter is said to be a ground for reopening.

The investigation should not be reopened

[15] To paraphrase, the Authority need not record or summarise parties’ submissions, but must state and explain findings on relevant issues of law and express its conclusions on issues required to determine the matter.⁴

[16] The original determination stated and explained the Authority’s finding about whether Mr Wilson’s terms and conditions of employment required him to answer in-bound calls, that being an issue required in order to determine the matter.⁵ I did not accept Mr Wilson’s submission that the language was ambiguous, but found that the word “channels” used in the job description meant mediums of communication. Receiving in-bound customer calls was within the required work of a person in Mr Wilson’s position.

[17] In submissions in support of the reopening application, Mr Wilson refers me to an online article titled “Elements of a Legally Binding Agreement in NZ” and the comment under the subheading “Certainty of Terms”. In short, to form a contract, the terms of it must be certain.

[18] However, Mr Wilson had an employment agreement. The issue was whether the terms he had agreed to by February 2018 as a Customer Services Officer required him to answer in-bound calls. That required applying the job description.

[19] In large measure, Mr Wilson seeks to re-argue his point about the ambiguity of the job description, repeating some points and adding others that could have been made

⁴ Employment Relations Act 2000 s 174E.

⁵ *Wilson v Chief Executive of Inland Revenue Department*, above n 1 at [54].

at the time. However, it is not appropriate to reopen an investigation for that purpose. Nor does it appear that the outcome would be affected.

[20] The second ground advanced concerns a matter from 2018. Mr Wilson characterises it as “changes to the Official Structure”, but without consultation and in breach of good faith under the Employment Relations Act 2000.

[21] In response, Inland Revenue notes that no issue about the 2018 matter (the “2018 Jane/Bernadette restructure”) had been raised in the statement of problem and, in any event, Mr Wilson would have been well outside the timeframe for raising a personal grievance about it.⁶

[22] To the extent considered necessary, the history prior to the November 2023 dismissal was outlined in the original determination at paragraphs [16] – [21] and [25].⁷ Mr Wilson’s point about “transactional” and “interactional” work, with only the latter including a requirement to take in-bound customer calls, together with his points about Tikanga and good faith, were considered under the heading “Other grievances/issues” starting at paragraph [101].

[23] It is not appropriate to reopen an investigation for an unsuccessful party to re-argue the case.

[24] Regardless, there is no apparent risk or real possibility of a miscarriage of justice arising from further consideration of an event in 2018, with respect to whether Inland Revenue justifiably dismissed Mr Wilson in November 2023 for medical incapacity.

[25] For these reasons, Mr Wilson’s application to reopen the investigation is declined.

Costs

[26] The Authority has power to order a party to pay another party such costs and expenses as it thinks reasonable. This discretion must be exercised in accordance with principle. The starting point is that Inland Revenue as the successful party is entitled to costs.

⁶ Employment Relations Act 2000 s 114.

⁷ *Wilson v Chief Executive of Inland Revenue Department*, above n 1.

[27] Often, the Authority adopts a daily tariff approach when considering costs. That sum can be adjusted to reflect the circumstances of the case.

[28] Inland Revenue initially sought costs based on two days as its starting point, but later acknowledge that was a mistake. The meeting had been scheduled for two days but it was completed in one day. The starting point then is costs of \$4,500.00.

Uplift

[29] Inland Revenue seeks an uplift on the basis that Mr Wilson's conduct during the proceedings unnecessarily increased its cost. The first matter is that Mr Wilson lodged an application for interim reinstatement, but withdrew it shortly before it was investigated by the Authority. Inland Revenue seeks a half-day based on the daily rate for the first day of an investigation meeting.

[30] After dates were allocated to investigate Mr Wilson's personal grievance he lodged an application and supporting affidavit seeking interim reinstatement. Inland Revenue lodged a notice of opposition, an amended statement in reply and affidavits. Inland Revenue says it had also prepared draft submissions for the investigation meeting set for 22 April 2024.

[31] On 16 April 2024, Mr Wilson withdrew the claim for interim reinstatement.

[32] An applicant can withdraw their claim at any time.⁸ However, the Authority may still order costs due to the withdrawn claim.

[33] I agree that it is likely that costs in the order of a half-day would have followed, assuming Inland Revenue had successfully defended the interim reinstatement claim. However, costs following the withdrawal should be reduced somewhat to recognise the modest saving of time from not needing to appear for a meeting. Half of the rate for an additional day, rounded down to \$1,500.00 is appropriate.

[34] Inland Revenue also says that Mr Wilson repeatedly amended his claim, sought to introduce privileged material which required a preliminary determination and introduced new evidence at a late stage including a document said to intimidate.

⁸ Employment Relations Act 2000 Schedule 2 clause 14.

However, I attribute these steps to Mr Wilson's lack of experience in legal forums. It is not appropriate to uplift the costs based on those actions.

[35] There are two other points raised by Inland Revenue. While the investigation meeting lasted one day, counsel had to prepare and provide comprehensive written submissions afterwards. They needed to address the broad claims made by Mr Wilson. The second point is that Inland Revenue sent Mr Wilson a Calderbank offer at an early stage, but Mr Wilson rejected it.

[36] I agree that both points merit a modest uplift. Together, they should result in an extra half-day of the additional daily rate.

[37] Mr Wilson says he has limited means, but he has not provided any detail to support that.

[38] Overall, fixing costs at \$7,750.00 reflects the expectation that costs in the Authority should be modest.

Summary

[39] Kelvin Wilsons' application to reopen the investigation is declined.

[40] Inland Revenue seeks costs on the reopening application (file number 3353280). If the matter is not resolved by agreement, each party should have an opportunity to provide brief submissions. Inland Revenue may lodge and serve its submissions within 14 days. Mr Wilson may lodge and serve submissions in reply within a further 14 days. A determination based on those submissions will follow.

[41] On file number 3266319, Kelvin Wilson is to pay the Chief Executive of Inland Revenue costs of \$7,750.00 by Thursday 17 July 2025.

Philip Cheyne
Member of the Employment Relations Authority