

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 595
3327640

BETWEEN

BRONWYN MUIR
Applicant

AND

MINISTRY FOR PRIMARY
INDUSTRIES
Respondent

Member of Authority: Davinnia Tan

Representatives: Troy Wano, counsel for the Applicant
Stephen Wakem, counsel for the Respondent

Investigation Meeting: 15 July 2025 in Wellington

Submissions received: 18 and 28 July 2025 from the Applicant
24 July 2025 from the Respondent

Determination: 24 September 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

First offer of employment

[1] Ms Muir, who was based in New Plymouth, applied for the full-time role of Principal Advisor, Health, Safety and Wellbeing (“the role”) with the Ministry of Primary Industries (MPI). The role, newly created by MPI, was based in Wellington and for a fixed term of 18 months, ending on 17 January 2025.

[2] Following an interview process on 1 June 2023 with Jenny Bishop (Director of Food Compliance & Response), Bruno Butler (National Manager, Readiness and Response), and a health and safety specialist at MPI, Ms Muir received a provisional offer of employment dated 19 June 2023.

[3] The 19 June 2023 letter of offer included the following instructions for accepting the offer on its final page “instructions for acceptance”:

Please accept or decline this provisional offer of employment through your My Offer page of MPI’s career site within 7 days.

... I accept this offer...in accordance with the terms and conditions detailed in this letter... Acceptance of this offer is confirmed via the online acceptance process, in the portal by confirming “I accept”.

[4] On 26 June 2023, Mr Butler and Ms Muir had a telephone conversation discussing the salary and a later start date of 31 July 2023. Ms Muir sought a higher salary and advised she could not commence work until 31 July 2023 due to providing her employer a month’s notice of her resignation. MPI did not agree to Ms Muir’s request for a higher salary but offered to pay for her travel costs instead.

Second offer of employment

[5] An updated provisional offer of employment was sent to Ms Muir on 26 June 2023. The letter of offer was signed by Mr Butler who was acting in Ms Bishop’s role for the period 14 June 2023 to 27 June 2023. Except for the commencement date of 31 July 2023 and agreement to cover Ms Muir’s travel costs, the provisional offer of employment was identical in wording to the offer of 19 June 2023 which included the instructions for acceptance.

[6] Ms Muir says following receipt of this offer, she completed all of the paperwork relating to the pre-employment checks required, but did not accept the offer via MPI’s digital portal (as per its instructions for acceptance). However, Ms Muir claims that she verbally accepted the offer by way of telephone conversation on 26 June 2023 with MPI’s Director of Food Compliance & Response, Jenny Bishop.

[7] MPI denies that Ms Muir completed the paperwork provided to her by MPI. Ms Bishop also stated there was no phone call on 26 June 2023 and supported this with a phone log from MPI’s mobile phone provider.

[8] At the investigation meeting, Ms Muir says she first spoke to MPI’s Human Resources (HR) advisor, Kirsty Rogers and was then transferred to Ms Bishop. Ms Muir relies on a call log that shows she made a call made to MPI’s land line in Wellington and the duration of the call was 1.25 minutes.

[9] Ms Muir says that Ms Rogers informed her that Mr Butler was acting in Ms Bishop's role at that point. Ms Muir stands by her statement she accepted the role with Ms Bishop.

[10] The letter of offer was provisional on several conditions, which included:

- a. A criminal convictions background check with the Ministry of Justice;
- b. There being no successful appeal against Ms Muir's provisional appointment under the Public Service Act 2020; and
- c. Referee checks.

[11] MPI's director of people and capability, Kaye Ryan, gave evidence at the investigation meeting that MPI only confirms a person's employment upon these conditions being met because these are treated by MPI as "pre-employment" checks. All accepted offers are therefore still treated as conditional until that point. Ms Ryan also stated that an employee is not able to commence employment before these conditions have been met. Evidence relied on by MPI included "MPI's Organisational Policy - Recruitment", which under "requirements", includes the following:

All offers of appointment are provisional until the internal appointment review period expires...in addition, all external appointments are provisional until all security check results have been received and found to be satisfactory to MPI...

...All provisional appointments must be changed to a written confirmation of final appointment or be withdrawn (in writing) once the appointment review period expires and all security check activities have been completed.

[12] Ms Ryan stated that in Ms Muir's circumstances, MPI did not commence any of the checks because the provisional offer had not yet been accepted.

Discussions post-dating the second offer

[13] On 28 June 2023, Ms Muir rang Mr Butler and advised him of her father's terminal health and asked if the commencement date could be revised again to commence at a later date.

[14] Mr Butler says that during this call, he offered the following options to Ms Muir:

- Delaying a start date of 1 to 2 months;

- Starting work on 31 July 2023 but with MPI approving leave without pay or bereavement leave if or when her father passed away.

[15] However, Ms Muir was not open to any of the options. As such, the phone call ended with Mr Butler stating that MPI would get back to Ms Muir on potential solutions.

[16] In her witness statement, Ms Muir says her request for a later start date was a “preference” and not a “condition” of her accepting MPI’s offer of employment. However at the investigation meeting, Ms Muir says she had not accepted what Mr Butler offered during the call, and therefore did not accept the second provisional offer as these terms were still being negotiated.

[17] Ms Muir says that both her and Mr Butler later “landed” on a later start date of 30 October 2023 following a text message exchange on 29 June 2023.

[18] On 29 June 2023 Mr Butler and Ms Muir exchanged the following text messages:

Mr Butler: Morning Bronwyn, sorry for the delayed message! Jenny was out all day yesterday. She is still considering her options today and will get back to you by COB. We’re trying to see if we can get someone to cover the 4-months, or potentially a contractor in. If you were to start at the end of October, it would most likely mean we need to shorten the fixed-term period. Will get back to you though! :)

Ms Muir: Thanks Bruno appreciate this very much and apologies...

Mr Butler: Afternoon Bronwyn. So sorry for the delay! It has been hard trying to confirm things with Jenny... we are working on the plan to extend your start date to 30 October. However we would need to keep the end date the same, so this would shorten the contract to 15 months fixed-term. I am working on getting an hourly rate contractor on board for 1 day a week. [sic] Who [sic] already works in another part of MPI. There [sic] job will be to scope/ set the conditions for your arrival, and get things started on critical pieces of work. Then handover to you. Hopefully this gives you more information going into the weekend! Once we get this all confirmed I’ll update the contract and give you a call to talk through it :)

[19] On 5 July 2023, Ms Muir resigned from her employment in New Plymouth with her last day of employment being 20 October 2023. Ms Muir stated in her letter of resignation that she had accepted an offer from MPI and negotiated a later start date in October 2023.

[20] On 19 July 2023, MPI engaged a contractor in the role to work one day a week.

Dispute

[21] Ms Muir believes there was an agreement for a new commencement date of 30 October 2023 and that the only outstanding matter was for MPI to provide her with an updated offer of employment.

[22] Mr Butler stated that while he accepts a later start date was being considered, at no stage did he offer, agree, or confirm that a delayed start date could be accommodated by MPI. Mr Butler disagreed with Ms Muir's statement that a new commencement date of 30 October 2023 was agreed to.

[23] Mr Butler stated that in his discussion with Ms Muir, he advised that MPI would need to consider engaging a contractor for the period Ms Muir was not able to work which had its own considerations and therefore take a few weeks to work through. Mr Butler says he advised Ms Muir of the impact on the scope of the work and length of the fixed term which would need to be agreed. However, Ms Muir stated that she was never advised that these factors would have a "material impact" on the role prior to acceptance of the later start date of 30 October 2023.

[24] During the investigation meeting, Ms Bishop stated that it was only once the contractor had begun then MPI was in a position to work out what a third offer could look like for Ms Muir. Ms Bishop stated that when MPI's second offer was not accepted it left MPI in limbo and it was trying its best to make it work for everyone, including for MPI to deliver a health and safety program.

[25] Mr Butler's evidence was that he accepted that but for Ms Muir's request for a later start date, MPI would not have required a contractor to fill the role prior to her commencing the role. He stated that his understanding at the time he exchanged the text messages with Ms Muir on 29 June 2023 was that a contractor would not impact on the job being a full time equivalent role (FTE role).

[26] On 3 August 2023 Ms Bishop called Ms Muir to provide an update following the engagement of the contractor. Ms Bishop advised Ms Muir that the contractor would have an impact on the fixed-term position with regard to the "duration and possibly the terms of reference for the position." Ms Bishop did not recall Ms Muir advising her that she had resigned from her role in New Plymouth in this phone call.

[27] On 22 August 2023, Ms Muir emailed Ms Rogers at MPI advising she had provided all documents and information required for employment “in preparation for signing the Letter of Offer and IEA when Jenny has a chance to finalise. I spoke to Jenny just over a week ago so know that this is in progress – no concerns there.”

[28] On 28 August 2023, Ms Bishop returned to her substantive role and called Ms Muir. Ms Bishop stated that during this call, she explained to Ms Muir that “with the budget pressure and the progress made by the contractor, the role will now need to be modified to a 0.5 FTE, fixed-term” and asked her if she was “still interested”. Ms Bishop stated that Ms Muir had informed her that she had resigned from her position and was “annoyed” and “non-committal for the 0.5 FTE”. Ms Bishop stated that Ms Muir requested an offer in writing but in response Ms Bishop explained that MPI “would like an indication of interest to this”. Ms Bishop then stated she offered to see if other departments at MPI would be interested to find the other 0.5FTE for a role split between two teams.

[29] On 29 August 2023, Ms Muir emailed Ms Bishop advising she had seen a role advertised by MPI and asked:

Is this possibly a role I could pick up to support the Principal Advisor role and funding shortfall?

[30] Ms Muir accepted in evidence that she emailed Ms Bishop because she understood MPI could no longer offer her the original agreement, but maintained she had a verbal agreement with MPI.

[31] Ms Bishop said that from 29 to 31 August 2023, it was unsuccessful in finding another MPI cost centre to fund the additional 0.5 FTE. Consequently, on 8 September 2023, Ms Bishop emailed Ms Muir advising that “the provisional offer” for the role commencing 31 July 2023 would be withdrawn. This letter stated:

... Thank you for the discussion last week about changes in relation to the...role.

As discussed, significant budget pressure and change in business circumstances have resulted in the role now becoming 0.5FTE on a permanent basis... this means that the role offered to you on 26 June 2023 and not accepted due to your personal circumstances and more recently changes in our business circumstances, I now need to withdraw our provisional offer to you of fixed term full time employment which was due to commence on 31 July 2023...

[32] On 15 September 2023, Ms Muir replied to Ms Bishop stating she believed she accepted the role as follows, but did not state she spoke to Ms Bishop on 26 June 2023 accepting the role verbally. Ms Muir stated:

... I am firmly of the view that I did verbally accept the Principal Adviser Health Safety and Wellbeing full-time role. I say this for the following reasons.

1. You phone me on 10 June to discuss the role.
2. The offer was formally put to me in an email from Kirsty Rogers, containing the letter of offer and employment agreement, on 26 June.
3. It is not clear to me why you say the role was not accepted due to “my personal circumstances” – I suggest you clarify what you mean by that. For my part, I am clear that I accepted that offer verbally.
4. In fact, what happened after 26 June is that I sought to renegotiate a possible delay to the start time for that role (having already declared my intention to accept the role). This was discussed and also agreed with Bruno following a number of texts and telephone calls between the two of us.

...

[33] Ms Bishop replied stating that:

MPI does not agree we have an employment agreement in force with you as you did not accept the formal offer that was put to you on 26 June 2023. In accordance with the terms and conditions of that offer, it had lapsed... More broadly, MPI sees matters differently... we had started discussing with you what a new offer could [look] like. That included a new start date of around October and a new salary, and we had started to look into how that might look from MPI’s budget requirements. For the reasons I communicated to you, we were unable to present another formal offer of employment to you that incorporated what you had requested we consider...I reiterate that you are welcome to apply for the permanent .5 position...

[34] On 22 September 2023, Ms Muir raised a personal grievance with MPI.

The Authority’s investigation

[35] For the Authority’s investigation written witness statements were lodged from Ms Muir, her husband and sister-in-law. For MPI, witness statements were lodged from Ms Bishop, Ms Ryan, and Mr Butler. Ms Muir, Ms Bishop, Ms Ryan, and Mr Butler answered questions under oath or affirmation from me and the parties’ representatives. The representatives also gave oral closing submissions.

[36] All material from the parties was fully considered. However as permitted by s 174E the Act, this determination has not recorded all evidence and submissions received.

The issues

[37] The issues requiring investigation and determination were:

- (a) Whether Ms Muir was employed by MPI;
- (b) If so, whether Ms Muir was unjustifiably disadvantaged and / or unjustifiably dismissed by MPI.
- (c) If Ms Muir is found to have valid personal grievance(s) whether she should be awarded compensation of \$20,000.00 (subject to contribution) and lost remuneration amounting to \$11,538.46 gross (subject to mitigation and contribution).
- (d) Should either party contribute to the costs of representation of the other party.

Was Ms Muir employed by MPI?

[38] Section 6 of the Act provides that an employee means “any person of any age employed by an employer to do any work for hire or reward under a contract of service; and includes...a person intending to work.” Section 5 of the Act sets out the definition of a person intending to work as being a person who has been offered and accepted work as an employee.

[39] If Ms Muir accepted the offer then she is considered to be a person intending to work and an employee.

[40] Whether Ms Muir was a person intending to work depends on what happened between the parties and if there was both an offer MPI and acceptance from her. The words “offer” and “acceptance” have frequently been considered in contract law and it is settled law that the court or decision maker examines all the circumstances to see if one party has made an offer that the other party subsequently accepted.

[41] Ms Muir claims that she met the definition of an “employee” under the Act as a person intending to work. Submissions advanced for Ms Muir were that she accepted MPI’s second revised offer by way of telephone conversation with Ms Bishop on 26 June 2023, “but subject only for a subsequent request to extend the start date”, which she says was “not a demand, or a fresh condition for acceptance but a request, just as

the request for a salary increase was an attempt at negotiation, formally rejected by MPI and then accepted” by Ms Muir. It is Ms Muir’s position that at this point an employment relationship was formed, with “the only detail to be finalised being” the requested commencement date of 30 October 2023 “or alternatively at the agreed start date of 31 July 2023.”

[42] Counsel for Ms Muir submitted that the text message exchange between the parties “clearly signal...an intent to work towards that request” and both parties “had fully begun to act on the relationship”. Counsel also submitted that Ms Muir’s completion of the “additional employment paperwork” was indicative of her acceptance of the offer. As such, counsel submitted that “this is not a case of pre-employment check[s] not being met, but simply a situation of an employee who had all but negotiated the key terms of employment with her employer, had taken all steps to satisfy all related pre-employment conditions...”

[43] MPI’s position is that Ms Muir did not accept the provisional offers of 19 or 26 June 2023 and that the offer lapsed after 7 days as set out in its letters. MPI says that as Ms Muir never signed or accepted the provisional offer, the process under the Public Service Act 2020 (internal notification of Ms Muir’s provisional appointment for the purposes of reviewing any appeals against her appointment) never took place. As such the condition was never fulfilled, including other conditions that must be met “to MPI’s satisfaction”. In addition, MPI says Ms Muir did not complete the form for the Ministry of Justice’s conviction history check nor the conflict-of-interest declaration form. This meant that the offer of employment had lapsed and therefore there was no employment agreement in place.

Was there a contract of service?

[44] For there to be a contract, there must be an offer and acceptance. Acceptance must be unqualified, and can be done so in writing, verbally, or by conduct.¹

[45] I am not persuaded that there was a contract for employment between Ms Muir and MPI. My reasons follow.

[46] There was a lack of unequivocal evidence of acceptance of MPI’s offer of employment, whether verbally, written or by conduct. Even if I accept there was, which

¹ *Edwards v Laybuy Holdings Ltd* [2023] NZEmpC 188; Burrows, Finn and Todd on the Law of Contract in New Zealand (7th ed, LexisNexis, Wellington, 2022) at [41-42].

I do not, any agreement would have remained conditional on various conditions being met, such as those described by Ms Ryan and stipulated on the letter of offer.

[47] However, the evidence before the Authority is that Ms Muir acknowledged that she had not accepted the offer via MPI's HR portal as stipulated in the letter of offer, and, on 22 August 2023, had indicated to MPI that she was "in preparation for signing the Letter of Offer" but had not done so, on the basis that she was awaiting a third provisional letter of offer. At the investigation meeting, Ms Muir's evidence was that she had not formally accepted the offer because the commencement date was not finalised. This means that there was no certainty of a key term of employment capable of acceptance, and as such there can't be acceptance of an offer of employment.

[48] In other circumstances, notwithstanding MPI's stipulated requirement for formal acceptance via its "HR portal", I may have found that verbal acceptance or conduct would suffice. However, there is insufficient and conflicting evidence before the Authority to demonstrate there was verbal acceptance (or by conduct) of an offer of employment of the second provisional offer. There is also no evidence of a third provisional offer capable of acceptance.

[49] Based on the text message exchange on 29 June 2023, a later commencement date that both parties had hoped for and were working towards, remained unconfirmed, and discussions Mr Butler had with Ms Muir with prefaced with an "if" (i.e. hypothetical and conditional). He had stated, "if you were to start at the end of October..." and only went so far as to advise that MPI were "working on a plan" but that it had yet to be confirmed.

[50] Although I considered whether the engagement of a contractor would suggest MPI was acting on the basis of an agreement, on closer review and supported by MPI's evidence, the engagement of the contractor only took place following Ms Muir's non-acceptance of the second provisional offer. As such, I do not consider that MPI was acting in reliance of any employment agreement. Rather, MPI was ensuring that work was undertaken while it was looking to finalise the terms of a third provisional offer of employment with Ms Muir.

[51] While I am sympathetic to the circumstances Ms Muir found herself in and consider MPI could have been more forthcoming during discussions with Ms Muir as to the likely impacts of a later start (and the engagement of a contractor) on the FTE nature of the fixed term role, a fundamental pre-requisite for a contract of employment

to exist is missing, which is an unequivocal, unqualified, acceptance of the second provisional offer, in the form agreed (as set out in the letter of offer). The second provisional offer had not yet been fully accepted because parties were still negotiating and finalising the terms of a potential third provisional offer. Consequently, there was simply no employment agreement in place at the time of its actions, and there was also no third offer capable of acceptance.

[52] As such, Ms Muir’s claim is unsuccessful.

[53] As I have found that Ms Muir was not an employee, she is not entitled to pursue a personal grievance claim against MPI.

Orders

[54] No orders are made.

Costs

[55] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[56] If the parties are unable to resolve costs, and an Authority determination on costs is needed, MPI may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Ms Muir will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[57] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.²

Davinnia Tan
Member of the Employment Relations Authority

² For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1