

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2025] NZERA 819
3361283

BETWEEN	KEVIN ANDERSON Applicant
AND	NEW ZEALAND TRANSPORT AGENCY WAKA KOTAHI Respondent

Member of Authority:	Sarah Blick
Representatives:	Angus Drumm, counsel for the applicant James Warren and Clare Abaffy, counsel for the respondent
Investigation Meeting:	2 September 2025 in Auckland
Submissions and information received:	5 and 17 September 2025 from the applicant 12 September 2025 from the respondent
Determination:	17 December 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Kevin Anderson says he was unjustifiably disadvantaged by New Zealand Transport Agency Waka Kotahi (NZTA) allegedly not offering a substantially similar role out of a restructure and being denied redundancy compensation. NZTA denies Mr Anderson has a personal grievance and that he is entitled to any remedies.

The Authority's process

[2] The Authority received witness statements for Mr Anderson and former NZTA Portfolio Manager (PM) Andrew Galloway. For NZTA, Senior Manager Safer Commercial Transport (SCT) Dylan Hunt, and Human Resources Business Partner Ben Foote provided witness statements. All witnesses confirmed their statements and answered questions under oath or affirmation at the investigation meeting.

[3] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and/or law, expressed conclusions on issues necessary to dispose of the matter and specified orders made as a result. Not all evidence or submissions are necessarily referred to but have been considered.

The issues

[4] The issues requiring investigation and determination are:

- (a) Does Mr Anderson have a personal grievance for unjustified disadvantage in relation to not being offered a substantially similar role out of a restructure and being denied redundancy compensation by NZTA?
- (b) If he does have a personal grievance, what remedies if any, should be awarded? He seeks:
 - (i) compensation under s123(1)(c)(i) of the Act; and
 - (ii) redundancy compensation calculated at six months' base salary.
- (c) If any remedies are awarded, are there issues of contribution?

Background

[5] Mr Anderson commenced employment with NZTA on 28 April 2015. He was appointed to the role of PM, Central North Island, pursuant to an individual employment agreement (IEA) dated 11 January 2021.

IEA - redundancy and compensation provisions

[6] In relation to redundancy, section U of the IEA relevantly provided:¹

Your employment will end on four weeks' notice by reason of redundancy if your position is no longer required, and you are not redeployed to another position in the Transport Agency.

You will receive redundancy compensation of three months base salary; and an additional two weeks base salary after completing 3 years of service and for each complete year thereafter. The maximum redundancy compensation payable is 6 months base salary.

You will not be entitled to redundancy compensation under this clause where:

... - the Transport Agency **offers you an alternative position on substantially the same terms and conditions of employment...**

¹ Emphasis added.

Portfolio manager role

[7] Mr Anderson was employed in the SCT, which included four PMs. Each of them were located in a different geographical region, with Mr Anderson based in Hamilton. Mr Anderson had two compliance manager roles reporting to him, who managed their own teams. Two of the PMs in other regions had other functions reporting into them. The PMs reported to Mr Hunt.

[8] NZTA says when it created the PM roles, it was intended the majority of their time would be spent engaging with industry stakeholders, managing a portfolio of key stakeholder relationships. While Mr Hunt's evidence was that the PM roles were not intended to have people management focuses, that is not how the role played out in practice. Further, Mr Anderson's 2020 position description included it was to "Develop, motivate and lead a high performing team".

[9] For some PMs, people management took up a considerable amount of time. This grew to be the case for Mr Anderson.

Discussions about change

[10] Mr Hunt's evidence was that senior leadership started considering change in around December 2023. In February 2024, he discussed the possible change with key staff members including all the PMs. He says it had become apparent that the compliance managers, for whom the PMs were responsible, were not aligned in their approach to what and how things were done. Mr Hunt says this became very evident at a hui in February 2024, that was held with the wider leadership team (PMs and Compliance Managers together). He says there was a commonly held view, which Mr Anderson shared, that PMs needed to be freed from people management to allow them to deliver better outcomes in the transport system, and that the compliance managers should have one overseeing manager to drive a consistent approach. Mr Hunt says these informal discussions continued for several months and helped shape NZTA's thinking about the changes that might be needed.

[11] Mr Hunt says he discussed with Mr Anderson that NZTA were considering moving the people reports away from the PM positions so that they could focus on external engagements as opposed to people leadership. Mr Hunt says Mr Anderson was supportive, which he says was unsurprising given difficulties Mr Anderson had experienced in relationships with two compliance managers who reported to him.

[12] Mr Hunt contrasts Mr Anderson's response with another PM who advised they would not be interested in a role without people management, and they applied for and were appointed to another advertised management role in September 2024, responsible for 13 direct reports. He points out Mr Anderson did not apply for that role.

NZTA develops business case and Mr Anderson goes on leave

[13] Mr Hunt took the lead on developing the business case for the proposed change in the SCT. The business case was discussed with and approved by the Senior Leadership Team and the Chief Executive of NZTA. Mr Foote took the lead on writing the proposal for consultation.

[14] On or about 2 September 2024, Mr Anderson had a health issue arise which caused him to take time off work as sick leave.

[15] On 8 October 2024, while he remained on sick leave, Mr Hunt contacted Mr Anderson. Mr Hunt says Mr Anderson said he needed to reduce stress and anxiety, and that he did not enjoy the people leadership aspect of his role. Mr Hunt offered to have the two compliance managers report to another staff member on a temporary basis. Mr Anderson agreed to this. The same day, this arrangement was confirmed and put in place.

[16] Mr Anderson says other than issues arising with his direct reports, people management was an important element of his role and one that was challenging but also one that he enjoyed. He says he liked having operational responsibility (via the people function) because it allowed him to have an impact on the industry.

Change proposal announcement and consultation process

[17] At the time the change proposal was prepared and announced, there were only two permanent PMs in place. Mr Anderson was one of them. A third PM was on secondment.

[18] On 4 October 2024 Mr Hunt had a meeting with the PMs to discuss the proposal prior to it being released on 9 October 2024. Mr Anderson remained off on sick leave and did not attend the meeting.

[19] On 9 October 2024, NZTA started formal consultation on proposed changes. A ‘Proposal for Consultation - Road Safety Regulation, Regulatory’ was provided to staff (the Proposal). The Proposal included a proposal that PMs have no direct reports and would be focused solely on Portfolio Management. It proposed to increase the number of portfolios each PM held and reduce the number of PMs from four to three. A new role of Compliance Operations Manager (COM) was proposed. It described a change of reporting line for the compliance managers and the rationale for each. The creation of the COM role would eliminate the need for the remaining PMs roles to retain their previous people management function – with all of the compliance manager roles to report to the COM. NZTA says it did not consider the COM role was a suitable role for Mr Anderson or the other PMs to be redeployed to automatically, given the extent of the differences between their original roles and those associated with the COM role.

[20] The Proposal defined the potential impact on a position as “significant” or “minor” as follows:

- If the potential impact on the position is **Significant** (e.g., the **number of positions carried out by several employees is reducing** (i.e., reducing 3 of the same position to 1 of that position); there is a **significant change to the position**; or the position has been disestablished). If the position an employee is employed in is disestablished, NZTA will seek redeployment opportunities for those employees.
- If the potential impact on the position is **Minor** this means there will be **no proposed change to the position or the proposed change is minor** e.g., a change in job title, change in reporting line, business group or a minor change in your position description (PD), and the incumbent would be automatically reconfirmed in the position by way of non-contestable reconfirmation.

[21] An Appendix to the Proposal stated a person is an “affected employee” if their position:

- remains the same, but NZTA intends to reduce the number of roles carried out by several employees (i.e. reducing from 3 of the same position to 1 of that position); or
- has been disestablished; or
- there will be a substantial change to their position.

[22] The Appendix further stated:

Non-contestable reconfirmation

Employees will be automatically confirmed into positions if:

- the position is the same or substantially similar to their current position; and

- the number of staff eligible for confirmation is the same or less than the positions available (i.e. **non-contestable reconfirmation**).

If an employee is offered non-contestable reconfirmation, and they do not wish to take up the offered position in the new structure, the employee's employment will end by reason of resignation and there will be no entitlement to redundancy compensation (in accordance with the applicable employment agreement)...

[23] The Proposal sought feedback between 9-23 October 2024.

[24] A letter sent to Mr Anderson referred to the proposal for change, stating:

If the change is implemented as currently proposed, there would be a significant change to your position, specifically:

- Change of position title to Portfolio Manager
- Change in accountabilities and position description.

Based on the current proposed changes, you would be automatically redeployed into the Portfolio Manager role in the new structure. We consider this position a suitable alternative position for you.

Apart from the change mentioned above, all other terms and conditions of your employment would remain unchanged in the new structure.

[25] Mr Anderson returned to work on 15 October 2024 (after a period of around eight weeks leave). Following Mr Anderson's return to work, Mr Hunt met with Mr Anderson via a video call and they discussed the Proposal. He says he explained the people function would be removed from the PM role, and that the document had identified the changes to the PM role as being significant, but because he was already doing the PM role, NZTA identified the amended PM role as one that he was easily capable of doing and one that was a suitable alternative role from a redeployment perspective. He says he explained that, if the Proposal went ahead, he would be put into the proposed PM position and that redundancies would be unlikely.

[26] Mr Anderson accepts that he was supportive of changes, and does not dispute that he raised no concern about the removal of the people management function, or the impact of that on his role or any dissatisfaction with the proposed role at the time. Mr Hunt says had Mr Anderson told him that it was important for him to keep the people function, NZTA would have considered that when final decisions were being made, particularly considering the change in the proposal for the Permitting functions.

[27] Mr Anderson was provided with a draft job description for the new PM roles.

[28] Between 17 October and 20 December 2024, Mr Anderson was on further sick leave.

[29] Mr Hunt says at no time before or during the formal consultation process did Mr Anderson raise any concerns about the removal of the people management function, or the impact of that on his role or any dissatisfaction or concern with the proposed role. He says there were several ways staff could give feedback, which Mr Anderson does not dispute.

[30] Mr Anderson did not express any intention to apply for the COM position. Mr Hunt has referred to Mr Anderson having purchased an apartment in Melbourne and of his intention to move to Australia, which he had been open about. It is common ground that Mr Anderson's partner had moved to Australia and was doing contract work.

Feedback and confirmation

[31] NZTA reports the feedback as primarily positive. Some concern was raised about the move away from oversight of operational delivery. One PM gave feedback that they were concerned the role would be pushed away from operational delivery, but saw this as a 'way of working' rather than a realignment.

[32] On 14 November 2024, the Proposal was confirmed (with some changes). This meant four PM roles were reduced to three roles. NZTA says it decided, because of the feedback received, not to make the proposed change to the reporting line for certain roles - Manager Permitting and Permitting Programme Manager roles. The Proposal had been for the Permitting function to report to Programme Manager On Road Compliance. Mr Hunt says the feedback received showed further consideration of the Permitting function was required, before a decision could be made about where it was best aligned in the future.

[33] As a result, the Permitting function would remain under the management of a PM, and NZTA opted to allocate this to the PM who was on secondment at the time. Mr Anderson and the other two PMs were automatically redeployed into the new PM roles, identified as suitable alternative positions. This was communicated to Mr Anderson in writing on 14 November 2024.

Mr Anderson engages and expresses preference for redundancy

[34] Mr Anderson says his initial reaction to the Proposal was that he did not want the redeployment role that was offered, which to a PM role but without any of the

regional or strategic oversight for the operations. He says the changes made meant that the leadership element of his role was completely gone.

[35] On 15 November 2024 Mr Anderson emailed the National Manager Road Safety Regulations, Mr Hunt and Mr Foote to raise his view of the redeployment role. He stated:

...with it [the redeployment role] being void of regional operational delivery, direct team and people leadership/management, it no longer has the accountabilities that I am looking for in my next role and does not align with my strengths and experience.

[36] The email stated Mr Anderson's preference was for redundancy compensation. Mr Hunt says this email was the first he was made aware of Mr Anderson's view about the importance of these factors to him. It was also the first time Mr Anderson expressed to him that he wanted redundancy compensation.

[37] Following this email, Mr Foote and Mr Hunt arranged a video call meeting with Mr Anderson, which took place on 20 November 2024. NZTA's witnesses recall Mr Anderson suggesting NZTA could "pay redundancy" if it chose to do so. Mr Foote explained there was no rationale to support offering redundancy compensation. Mr Anderson accepted in evidence that minutes taken by Mr Hunt were accurate when they recorded that he said (or said words to the effect) that "things can be sorted behind the scenes, magic can happen" and that "he has done right by the agency and now its [NZTA's] turn to do right by him". The meeting closed with an agreement that the "ball was in [NZTA's] court" to consider and come back to Mr Anderson.

[38] Mr Anderson engaged counsel who on 22 November 2024 wrote to NZTA setting out his view that the removal of the people functions meant the role was substantially different and this meant it was a redundancy situation.

[39] The bulk of reorganisation changes came into effect on 2 December 2024, however this date was deferred for the PMs and Compliance teams until the COM role was filled.

NZTA offers people management alternative

[40] On 5 December 2024, NZTA's solicitors wrote to Mr Anderson's counsel, communicating an offer that Mr Anderson's role hold the line-management

responsibility for NZTA's Permitting Manager and Permitting Programme Manager. It says this ensured his new role had the same supervisory leadership element as that associated with Mr Anderson's original role, involving the line management of two managers with regulatory responsibilities.

[41] NZTA says there was no inherent reason why the permitting function needed to report into the seconded PM's role, and as the PM performing the role was open to it being reallocated, it was able to confirm an offer to Mr Anderson that he could perform that function after he expressed an interest in retaining people leadership.

[42] That offer was reiterated in a further letter from NZTA's counsel dated 18 December 2024.

[43] Mr Anderson believes this was not a credible offer because the change of the reporting lines was temporary and the goal was to move these functions elsewhere permanently and that could not be certain at that time. He also says he had understood from the relevant PM that there was a "promise" these functions would remain with them for the time being. He says it made sense for these roles to stay with the relevant PM because that was where those functions are located.² When questioned at the investigation meeting, Mr Anderson acknowledged that he did not speak to the relevant PM about this issue when the offer was put to him. Mr Hunt's evidence is that the PM was not concerned about the responsibilities being reallocated.

[44] Mr Anderson says he was put in a position where he either had to resign or take a job that was not on similar terms to what he had. He says NZTA wanted PMs who were not caught up in people management - but that did not mean that the changes were appropriate for him individually given what his role as Central North Island Portfolio Manager entailed. He says the new role was not what he signed up for.

[45] Mr Anderson declined the offer. His counsel wrote on 20 December 2024 raising a personal grievance stating that he had been unjustifiably disadvantaged by the failure to pay him redundancy.

[46] He later resigned from NZTA on 17 January 2025, effective from 28 February 2025.

² This is not quite accurate as the relevant manager was based in Wellington and the relevant team was based in Palmerston North.

Relevant law

[47] Section 103(1)(b) of the Act allows a personal grievance where the employee's employment or one or more conditions of employment are affected to the employee's disadvantage by some unjustifiable action by the employer.

[48] The onus is on Mr Anderson to prove that the action affected a condition of his employment and that it disadvantaged him. The onus then shifts to NZTA to provide it was justified pursuant to section 103A of the Act.

[49] The test of justification in s 103A(2) of the Act must be applied, which involves considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the action occurred. Good faith obligations under s 4(1)A of the Act also apply.

Analysis

[50] While Mr Anderson was on sick leave during some of the consultation period, the evidence was that he and Mr Hunt remained in contact during this time. For the avoidance of doubt, there is no suggestion by Mr Anderson that his ability to engage was impacted by being on sick leave.

[51] Section U of the IEA provided that if by reason of redundancy if Mr Anderson's position was no longer required, and he was not redeployed to another position in NZTA, he would receive redundancy compensation. It provided he would not be entitled to redundancy compensation under the clause where offered an alternative position on "substantially the same terms and conditions of employment".

[52] Mr Anderson's claim that he was unjustifiably disadvantaged relates to a failure to offer a role on "substantially the same terms and conditions" and then to pay redundancy compensation.

[53] NZTA submitted that there was a genuine organisational need, which informed the restructure, to make changes to the PM role so the role could focus on engagement with external stakeholders at a national level. It considered this aligned with the role's primary purpose. It also considered the people management element of the role (mainly connected to compliance operations with a geographic focus) interfered with focus on

the primary purpose. This was particularly the case for some PMs (such as the relevant PM with the Permitting functions, who had significantly more direct reports).

[54] The evidence was clear that the removal of people management responsibility was one of the main drivers behind the change proposal, which sought to focus the revised PM roles on NZTA's intended primary purpose for that function. The evidence showed that since its inception, the PM role evolved, and the portion of time spent on managerial responsibilities appeared to have grown. The change proposal was intended to shift the PM back to prioritise their portfolio engagement with key stakeholders, in line with the primary purpose of the role.

[55] As observed in *Stevens v Hapag-Lloyd (NZ) Ltd*, while noting that it was not necessary to minutely scrutinise the two roles, any change in jobs as a result of a restructure will produce some degree of change.³ As in that case, the parties here intended by the use of the words "substantially" and "alternative" that such employment offered under Section U would differ in some respects. Applying similar considerations as in that decision, NZTA submitted that an objective assessment of the two roles confirms that the new PM role was "substantially the same" to Mr Anderson's previous PM role:⁴

- (a) The roles were evaluated to be at the same band, on the same salary, with the same benefits.
- (b) The work was to be performed in the same location, for the same hours.
- (c) The role would retain the same functions in respect of the portfolio management tasks that it was required to perform.
- (d) The role would continue to involve extensive engagement with external stakeholders.
- (e) The role continued to be part of the SCT Leadership team.

[56] NZTA submits that it goes too far to suggest that the removal of the people function rendered an otherwise substantially similar position, to be entirely different. I agree. In light of those considerations, I find Mr Anderson was offered an alternative position on substantially the same terms and conditions of employment.

³ Above n 3, at [48].

⁴ *Stevens v Hapag-Lloyd (NZ) Ltd* [2015] NZEmpC 28.

[57] If I am wrong in that finding, and the removal of the people management function would have rendered the role not substantially the same, NZTA is entitled to rely on the terms of its updated offer following engagement with Mr Anderson when determining whether the alternative role was substantially the same. It is clear that had Mr Anderson raised his concerns during any stage of the consultation period, NZTA could have sought to address his concerns at an earlier stage. When it became aware of the concerns, NZTA confirmed an offer to allocate people management responsibilities to Mr Anderson's role, providing him with two direct reports (as was the position with his original role).

[58] The evidence showed that responsibility for Permitting functions would have involved accountability for the delivery of an important regulatory function, being the authorisation of permits and permit-related conditions, and the monitoring and enforcement of compliance with these, as well as responsibility for Permitting-related work programmes. While somewhat different regulatory functions than those for which he previously had line management responsibility, the management function he would perform was in substance the same.

[59] There is therefore no clear basis for Mr Anderson to suggest he suffered any detriment as a result of the nature of the amended role he was offered. The only change would have been in the identity of his two reports and the fact that the operational compliance function which they managed was national rather than regional. This was the same reporting line which had been in place for one of the original PM roles.

[60] Mr Anderson expressed concerns about the offer including a people function not being permanent, and not wishing to take a role that had been "promised" to the other PM, and the difficulty of managing the Permitting team when he was based in a different location. I have not been satisfied these concerns were genuine because:

- (a) The offer was conveyed formally by letter, with there being no compelling basis to suggest it was not genuine or not able to be made without encroaching on the other PM's terms and conditions.

- (b) The possibility of further future change did not mean the offer was not valid or not reasonable, with NZTA able to confirm the people management function would not change for at least five months, and possibly longer.⁵
- (c) When asked if he would have accepted the role if the line management responsibilities were guaranteed to remain, Mr Anderson said he would still have turned it down, on the basis it would not be fair for one PM to retain direct reports, when the others do not have that same responsibility. This is despite there being line responsibility differences prior to the reorganisation.
- (d) Mr Anderson would have retained his right to assert an entitlement to redundancy if there was a future reorganisation – and being well-represented at the time he could have sought assurances that this was indeed the case if he accepted the offer.
- (e) Managing the Permitting team remotely from the Waikato region would have involved different ways of leading, but this was not an unusual situation within many workplaces, including NZTA, and would not reasonably have inhibited his people leading functions.⁶

[61] Although Mr Anderson has suggested the offer to include a people function appears to have been made in an attempt to disentitle him from redundancy compensation, that is his subjective view. That offer was made at an early opportunity following NZTA's meeting with Mr Anderson and him setting out his concerns formally. While I acknowledge that the inclusion of a people function did not align with the main intention of restructuring the PM roles, the function remained due to feedback received during the restructuring and remained a function which needed to be performed within the SCT team.

[62] Finally, I find that NZTA's actions in how it approached the restructuring were justified. Mr Anderson was well aware of and had the opportunity to comment on the proposed changes in advance of the changes being confirmed, and, even before the changes were formally proposed, with the potential changes being discussed with the PMs in February 2024. Further, when Mr Hunt floated the proposed changes with Mr Anderson informally, he did not raise any concerns in the early stages of the Proposal. Mr Anderson met with his manager as part of the formal consultation process and had

⁵ NZTA witnesses gave evidence that as at the date of the investigation meeting, the matter was being reconsidered.

⁶ NZTA pointed out Mr Anderson's own manager was based in Christchurch. It appears the Portfolio Manager with the Permitting responsibility was already managing the relevant team at a distance also.

the opportunity to provide feedback, but he did not raise any concerns. Mr Anderson was then offered the new PM role on the basis that it was fair and reasonable to automatically redeploy him to this role, as the best candidate for the role. Although a ‘significant’ change in accordance with NZTA’s change protocol, I accept NZTA fairly considered that the new role retained the majority of the core functions of Mr Anderson’s previous role.

[63] From the above assessment NZTA complied with its legal obligations when seeking to redeploy Mr Anderson into a new role, and when it became aware of Mr Anderson’s concerns, its decision to offer Mr Anderson the new PM role to include a people management function was justifiable in the circumstances. Under section U of the IEA it referred to an “offer” of an alternative position on substantially the same terms and conditions of employment. NZTA submits that its updated offer put beyond doubt that the alternative role was substantially the same. I agree.

[64] It follows that Mr Anderson has not shown that he was disadvantaged in his employment by NZTA’s actions. He has not established a personal grievance.

Outcome

[65] Having not established a personal grievance, Mr Anderson is not entitled to any remedies.

Costs

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

[67] If the parties are unable to resolve costs, and an Authority determination on costs is needed, NZTA 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 Mr Anderson will then have 14 days to lodge any reply memorandum. On request by either party, and given the time of year, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[68] 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.⁷

Sarah Blick
Member of the Employment Relations Authority

⁷ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1