

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2025] NZERA 832  
3300660

BETWEEN

CALEB KIRIONA  
Applicant

AND

TE PUKENGA – NZ  
INSTITUTE OF SKILLS AND  
TECHNOLOGY  
Respondent

Member of Authority: Geoff O’Sullivan

Representatives: Michael Quigg & Amelia Burley, counsel for the  
Applicant  
Sherridan Cook & Alex Morimoto, counsel for the  
Respondent

Investigation Meeting: 25 August 2025 at Wellington and by AVL

Submissions and further information received: Up to and including 26 September 2025

Determination: 19 December 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Mr Kiriona was employed by Te Pukenga as a Director from 1 August 2023 on a purported Fixed Term Individual Employment Agreement (Fixed Term IEA). Prior to this he had a contract as an independent contractor to Te Pukenga.

[2] By letter dated 9 April 2024, Te Pukenga advised Mr Kiriona that his fixed term of employment was to end at the close of business on Friday, 12 April 2024, and that he would be paid out the balance of a four week notice period. Mr Kiriona says the termination of his employment without payment for the balance of the Fixed Term IEA

constituted an unjustified dismissal and a breach of his Agreement. Mr Kiriona says that as Te Pukenga did not make payment to him of the balance of the term, but instead paid only the notice provision contained in the Fixed Term IEA, it was in breach of its statutory and contractual obligations to him in that it failed to correctly calculate the payments due to him. These breaches disadvantaged him in his employment.

[3] Mr Kiriona claims as a result of the conduct of Te Pukenga he has suffered hurt, anxiety, humiliation, loss of dignity, and injury to feelings. He claims payment of salary through to the balance of the Fixed Term IEA, namely 31 December 2024, or the equivalent sum as special damages. He claims underpayment of salary, employer superannuation contributions, and holiday pay together with compensation in terms of s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act) or in the alternative, general damages for mental distress, anxiety, humiliation, loss of dignity, and injury to feelings arising from the breach of his Employment Agreement.

[4] Mr Kiriona also seeks special damages in respect of legal costs, penalties, and costs.

[5] Te Pukenga disputes Mr Kiriona's claims saying it has not acted in any way that could have caused disadvantage, that in relation to his employment, it has correctly calculated all payments due to him and throughout has acted as a fair and reasonable employer could have done in the circumstances following its decision to terminate his Fixed Term IEA of 24 July 2023 by reason of redundancy. It emphatically denies any breach of the IEA.

### **The Authority's Investigation**

[6] For the Authority's investigation, written witness statements and supporting documentation were filed by Mr Kiriona, and for Te Pukenga by Gerard Gilmore, and Peter Winder. Kirsten Sargent also filed a Brief of Evidence regarding payment of final pay. Witnesses answered any questions posed by the Authority or counsel. The parties also lodged written closing submissions.

[7] As permitted by s 174E of the Act, this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made. It has not recorded all evidence and submissions received.

## **The Issues**

[8] The issues requiring investigation and determination are:

- (a) Was the IEA a Fixed Term Agreement, and if so, could it be terminated early for reasons of redundancy? and if so;
- (b) Was any redundancy genuine? and if so;
- (c) Was the redundancy and how it was carried out in accordance with the actions of a fair and reasonable employer (s 103A of the act)?

## **Non-Publication**

[9] At the commencement of the hearing Mr Kiriona made an application that his name be suppressed. Interim Non-Publication Orders were made, however, Mr Kiriona seeks permanent non-publication, or in the alternative, anonymisation of his name. In making his application, Mr Kiriona relies on the full Court's decision in *MW v Spiga Limited*.<sup>1</sup>

[10] Mr Kiriona argues that in justifying its actions Te Pukenga creates “negative aspersions as to the Applicant’s actions and motivations ...”. He says that there is a real likelihood of damage to future jobs arising from the publication of his name.

[11] Simply put, insufficient evidence has been provided in support of those submissions. Even if it had been, it is unlikely to have met the threshold for a non-publication order. There is no proper foundation on which an argument for non-publication in these circumstances can be mounted. Accordingly, the Authority will not make an order for non-publication under these circumstances.

## **Background**

[12] Te Pukenga was established on 1 April 2020 to centralise all of New Zealand’s institutes of technology and polytechnics, and industry training organisations. It established a national office and proceeded to implement its statutory objectives.

[13] Mr Kiriona was initially engaged as an independent contractor but later was employed by Te Pukenga under a Fixed Term IEA dated 25 July 2023. The Fixed Term IEA commenced on 1 August 2023 and subject to a general termination provision, was professed to expire on 31 December 2024.

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<sup>1</sup> *MW v Spiga Limited* [2024] NZEmpC 147 at [96].

[14] In December 2023, Te Pukenga was sent a Ministerial Directive under a Letter of Expectation that maintaining a centralised organisation for the delivery of vocational education and training was no longer a priority for the then newly elected government<sup>2</sup>.

[15] Following this Directive, Te Pukenga commenced a process of reversing the nationwide organisational restructure that had commenced before moving to disestablish roles that were no longer viable. As a result of this, Mr Kiriona's employment was terminated by reason of redundancy and he was paid in lieu of notice, meaning he was paid up until 7 May 2024.

## **Discussion and Analysis**

### *The Fixed Term IEA*

[16] Mr Kiriona and Mr Winder on behalf of Te Pukenga had a number of conversations about the Fixed Term IEA, and what Mr Kiriona's expectations were. On 25 July 2023 Mr Kiriona was given the Fixed Term IEA which he reviewed. In his evidence he says he noted it did not include a redundancy clause which he says confirmed to him that it was not expected that his role would cease prior to the expiry of the term. He also states in his evidence (paragraph 30):

“Alternatively, I interpreted the removal of the redundancy clause to confirm my expectation that in the unlikely event my role was disestablished prior to the expiry of the fixed term I would be paid for the balance of the term. I was satisfied with the terms and conditions on this basis, except for the holiday leave component. I negotiated the leave component with Peter Winder, increasing the annual leave from four to five weeks per annum. I signed the fixed term employment agreement on the spot as it was close to the effective 1 August 2023 commencement date.”

[17] It is clear therefore that Mr Kiriona was aware and accepted fixed term employment. His personal grievances are based on his interpretation of the IEA which he says did not allow for termination on the grounds of redundancy without the balance of the term of employment being paid out. In essence, Mr Kiriona elected to treat his IEA as fixed term.

[18] In his evidence, Mr Kiriona says he accepted the role of Program Director at Te Pukenga and says it was suggested to him that instead of staying on as an independent contractor the parties should explore a fixed term employment agreement.

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<sup>2</sup> Common Bundle tab 5

[19] The Fixed Term IEA was included in the bundle of documents<sup>3</sup>.

[20] Mr Kiriona does not say that the Fixed Term IEA was deficient and not a valid fixed term agreement. Rather he argues the opposite. As indicated above, the argument he puts forward relates to the interpretation of the term of agreement.

[21] Clause 2 of the Fixed Term IEA deals with term and provides:

“2.1 This agreement will commence on the date specified in Korero Apiti Schedule 1, and will continue until the specified expiry date in Korero Apiti Schedule 1, unless terminated in accordance with this agreement.

“2.2 The reason for this fixed term is included in Korero Apiti Schedule 1. This is expected to be concluded within the term set.

“2.3 You will be given a minimum of four weeks’ notice confirming that the Fixed Term Agreement will end on the expiry date.”

[22] Clause 12 of the Fixed Term IEA dealt with termination and provides:

“12.1 Either party may terminate this agreement prior to the expiry date by giving written notice as per Korero Apiti – Nga Kupu Matua Schedule 1.

“12.2 We may pay you your base salary in lieu of working some or all of this notice period. In addition to, or as an alternative to, paying you in lieu of working some or all of your notice period, we may require you not to attend work during some or all of your notice period, but to continue to pay you as if you were working. During this period you will remain entitled to all of the remuneration and benefits set out in this Agreement and you will continue to be bound by the duties of confidentiality and fidelity during this period.”

[23] The Fixed Term IEA goes on to deal with termination for cause and what is to happen on expiry or early termination.

[24] Accordingly, at the heart of Mr Kiriona’s grievance claims is the interpretation of the general termination clause contained in clause 12.2 set out above. Mr Kiriona says that clause does not allow termination on the grounds of redundancy. Te Pukenga says it does. In answers to questions under cross examination, Mr Kiriona explained that he was not challenging the status of Fixed Term IEA, nor the genuineness of the redundancy. In respect of the redundancy, he said he was aware that it was coming and accepted that it was inevitable. He said his grievances arise because of his belief the Fixed Term IEA meant he should have been paid out to the end of the term. He said that if that had happened, he would not have had a claim. He said because clause 12 of the Fixed Term IEA also allowed for termination for serious misconduct, breach of any

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<sup>3</sup> Bundle of Documents document 4

of the material provisions of Fixed Term IEA, or where he had conducted himself in any matter considered prejudicial to the business interests or reputation of Te Pukenga, if Te Pukenga wished to rely on redundancy it would need to specifically include that in the Fixed Term IEA.

*The Applicant's submissions*

[25] Mr Quigg submits that the Employment Court case *Williams v Attorney General in respect of the Secretary for Justice*<sup>4</sup> is authority for the statement that the Fixed Term Agreement could not be terminated before the end of its expiry date, unless it expressly provided a means to do so. It was submitted on behalf of the Applicant that in order for clause 12.1 to allow termination, it would have needed to expressly refer to redundancy.

[26] I was also referred to *Irwin v Massey University of Wellington Campus*<sup>5</sup>. This case dealt with a Fixed Term Agreement which also contained a term allowing the employee to terminate the agreement on not less than three months' written notice.

[27] In that case, the Court noted that the contract of employment was superficially problematic. While noting fixed term contracts could have provisions for early termination, the Court noted the Chief Judge's comments in *Williams* that a hybrid contract can only terminate or be terminated before the expiry of its term upon the happening of events defined in the contract. The Court noted that in the case before it, the contract had no clearly defined grounds for termination other than those specified in clause 9 of the agreement in that case. The Court considered that the purpose of the clause in the case before it was to cover situations where the employer terminates a fixed term contract other than in accordance with the contract and where the employee is entitled to redress. It saw the clause in that case as setting out a method for calculating compensation in the event of a termination for reasons other than those stipulated in the contract. The Court found that the clause headed "Compensation for Termination of Contract" was not a redundancy clause.

[28] I was also referred to Judge Corkill's comments in *Kwik Kiwi Cars Ltd v Crossley*<sup>6</sup>. In that case the Employment Agreement between the parties gave as a reason for it being fixed term that there was likely to be a merger between two existing entities

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<sup>4</sup> *Williams v Attorney General in respect of the Secretary for Justice* [1999] 2 ERNZ 457

<sup>5</sup> *Irwin v Massey University of Wellington Campus* [2002] 2 ERNZ 97.

<sup>6</sup> *Kwik Kiwi Cars Ltd v Crossley* [2020] NZEmpC142

which would necessitate some restructuring. The agreement also contained a redundancy provision. The Court in that case concluded that the Fixed Term Agreement had the effect of overriding the protections of the redundancy regime which would have otherwise applied. Consequently the reasons given for the fixed term arrangement could not be regarded as genuine. The Court found that the agreement in that case was not a qualifying fixed term agreement under s 66 of the Act.

[29] That is different to the current case where Mr Kiriona does not dispute that the agreement was anything other than fixed term. What he says, is that Te Pukenga cannot rely on the general termination provision to terminate the agreement on the grounds of redundancy.

#### *Te Pukenga's submissions*

[30] Te Pukenga submits that clause 12.1 is not ambiguous and it allows either party to terminate Fixed Term IEA by giving the agreed notice in writing. They say the Fixed Term IEA has an ordinary and natural meaning and is therefore a powerful indicator of what the parties' intentions were. Other than the cases mentioned earlier, Te Pukenga referred to *Mather v Waikato Institute of Technology* (unreported) 24 September 2004 AA309/04. In that case the Authority found that Fixed Term Agreements could be terminated early for reasons of redundancy despite the absence of an express redundancy clause, where fixed term agreement contained a catchall or general right of termination provision.

[31] Applying s 103A of the Act, the Authority in that case saw it as reasonable to conclude in the event of a good cause arising, redundancy of the position being a good cause, then the IEA is able to be validly terminated on notice in accordance with a catchall or general termination provision. Te Pukenga distinguished the decision in *Irwin v Massey University* on the basis the clause was designed to set compensation and to act as an indemnity clause. Te Pukenga submitted that the Fixed Term IEA with MR Kiriona gave them the express right to terminate, acknowledging, that this right is limited by Te Pukenga's obligations in particular under s 103A of the Act.

#### **Conclusion**

[32] As indicated above, during the investigation meeting Mr Kiriona made it clear what his issues with the termination of his employment were. His claim is based on

there being a valid fixed term arrangement in place. Without that there would be no basis for his claim of the balance of the term stipulated in the Fixed Term IEA namely until 31 December 2024.

[33] Mr Kiriona also made it clear he was in the loop regarding the impending redundancy which followed a change in government. He said had no issue arising out of the redundancy. He acknowledged that the entire base of his claim was premised on the belief that the Fixed Term IEA required Te Pukenga to pay him up until 31 December 2024 and its failure to do so formed the basis of his claims of personal grievances, breaches of contract, and unjustified dismissal.

[34] At the heart of the matter is the question as to whether Te Pukenga could rely on the general termination provision contained in clause 12 of the Fixed Term IEA to terminate for redundancy without paying out the balance of the term. Mr Kiriona was emphatic, it could only terminate for redundancy if it paid out the balance of the term. He said this was because there was no separate provision in the fixed term IEA relating to redundancy that Te Pukenga could rely on.

[35] As stressed above, Mr Kiriona is not claiming that the Fixed Term IEA is null and void and his employment was permanent. In other words, in terms of s 66.6(a) of the Act, Mr Kiriona is not saying the fixed term was ineffective, he wishes to rely on its terms.

[36] The Fixed Term IEA between the parties allowed either party to terminate the agreement prior to the expiry date by giving four weeks' notice. However, Te Pukenga is required under s 103A of the Act to justify any action it takes which means it needs to justify the termination of employment under this provision. The test is whether its actions and how it acted were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.

[37] It is common ground that the reason for the termination of employment was redundancy following the change of government and the change in political direction. Mr Kiriona does not challenge that. The question therefore is on the basis the Fixed Term IEA is valid, and is terminated on the grounds of a genuine redundancy, can Te Pukenga rely on the four weeks' notice period?

[38] Having analysed the decisions referred to, I conclude it can. Mr Kiriona is asking the Authority to read into his agreement something that is just not there. The fixed term IEA (cl 12.1) has a general termination clause which Te Pukenga relied on for termination for cause on notice. I have found they were entitled to do so.

[39] I find the termination of employment on the grounds of redundancy was the actions of a fair and reasonable employer.

[40] Mr Kiriona submits that whilst accepting that his employment could terminate early, and his redundancy was genuine, the notice period does not apply, and he is entitled to payment to the end of the term. That is not what the fixed term IEA provides. Mr Kiriona has not made out his claims of unjustified disadvantage, unjustified dismissal and breaches of contract. His claims fail.

### **Costs**

[41] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If they are not able to do so and an Authority determination on costs is needed Te Pukenga may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Caleb Kiriona would then have 14 days to lodge any reply memorandum. If requested by the parties, an extension of time to resolve costs between themselves may be granted.

[42] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless circumstances or factors require an upward or downward adjustment of that tariff.<sup>7</sup>

Geoff O'Sullivan  
Member of the Employment Relations Authority

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<sup>7</sup> See [www.era.govt.nz/determinations/awarding-costs-remedies](http://www.era.govt.nz/determinations/awarding-costs-remedies).