

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 256
3448044

BETWEEN BIMLESH SHARMA
Applicant

AND THE CHIEF EXECUTIVE OF
THE INLAND REVENUE
DEPARTMENT
Respondent

Member of Authority: Eleanor Robinson

Representatives: Peter Cranney and Duncan Allan, counsel for the Applicant
Susan Hornsby-Geluk, counsel for the Respondent

Investigation Meeting: 10 April 2026 by AVL

Determination: 29 April 2026

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Before the Authority is an application for interim reinstatement brought by the Applicant, Bimlesh Sharma, under s 127 of the Employment Relations Act 2000 (the Act).

[2] Mr Sharma, a member of the New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi Incorporated (the PSA), was dismissed on 22 December 2025 for serious misconduct by the Respondent, the Chief Executive of The Department of Inland Revenue (IRD).

[3] Mr Sharma claims that he was unjustifiably dismissed from his position as a Customer Service Officer Level 2 in the IRD Customer and Compliance Services – Micro Business & Not for Profit segment. However, at the time his actions of concern took place, he was an acting Team Lead in the Customer and Compliance Services – Families Management team, Mr Sharma is seeking reinstatement on both an interim and a permanent basis.

[4] The IRD claims that Mr Sharma's dismissal was warranted, it had legitimate concerns in relation to his actions which it sufficiently investigated, and this decision was open to it as a

fair and reasonable employer in all the circumstances at the relevant time. The IRD opposes the claim for interim reinstatement and the substantive claim.

[5] This determination addresses the issue of interim reinstatement.

Note

[6] The taxpayer individual referred to in this determination will be referred to only as Taxpayer A to maintain confidentiality.

The Authority's Investigation

[7] Following the initial application by Mr Sharma, the parties attended mediation, but this did not resolve the issue.

[8] The application for an interim injunction was accompanied by an undertaking as to damages and an affidavit by Mr Sharma.

[9] A case management conference was held on 18 March 2026. The parties were directed to file submissions on 9 April 2026.

[10] The parties agreed to the Authority determining this preliminary issue of the interim reinstatement application based on the Statement of Problem and the Statement in Reply, documents submitted by the parties, on affidavit evidence, and on submissions from the parties.

[11] The evidence before the Authority for the purpose of determining this interim reinstatement application has been presented as is usual in such applications in affidavit form.

[12] Affidavits were received for the Applicant from Mr Sharma and from Kimberley Moss, an Organiser for the PSA.

[13] Affidavits were lodged on behalf of the IRD from Christopher Thomson, Group Lead, and Susan Gillies, Customer Segment Leader, in the Customer compliance Services – Families Segment.

[14] As the affidavit evidence presented must necessarily remain untested until the substantive investigation of the unjustified dismissal personal grievance, any findings of fact by the Authority in this determination are provisional only and may change later once the claims have been fully investigated and all witnesses have been examined on their evidence.

[15] As permitted by s.174E of the Employment Relations Act 2000 (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.

[16] It was submitted for IRD that there is a preliminary issue for consideration which is whether the remedy of reinstatement is available for Mr Sharma in light of the Employment Relations Amendment Act 2026.

[17] Mr Cranney disputes on behalf of Mr Sharma that the new legislation applies to the current situation.

[18] It is not my intention to address this issue in this preliminary determination on two grounds. Firstly, this is an application for urgent relief and as such is addressed under urgency which precludes a carefully considered determination of the nature required by the question raised by the IRD, and secondly, as conceded by Ms Hornsby-Geluk, it is best addressed in a substantive determination (and possibly by the Employment Court should the substantive determination be challenged).

Principles

[19] I granted Mr Sharma's application for this matter to be dealt with on an urgent basis because this is the usual procedure for dealing with an application for an interim reinstatement. In determining this matter, I must apply the law relating to interim reinstatement as set out in s 12(1) and s 12(4) of the Act which include recognising that employment relationships are built on the legislative requirement for good faith behaviour and addressing the inherent inequality of power in employment relationships.¹

[20] At the Investigation Meeting held by AVL on 10 April 2026, I heard submissions from the parties' representatives in relation to the interim reinstatement application and tested these by questioning how the available untested affidavit evidence related to the relevant principles for determining an interim injunction application.² Those principles fall to be addressed by the answers to the following questions:

- (a) whether or not Mr Sharma has established that there is a serious case to be tried in relation to the claim for unjustifiable dismissal; and if so:
- (b) Is there a serious case in relation to the claim for permanent reinstatement?

¹ Employment Relations Act 2000 s 3.

² *McInnes v Western Bay of Plenty District Council* [2016] NZEmpC 36 at [8] ERA Auckland 92 in which Judge Inglis (as she then was) referred to the court of Appeal decision in *NZ Tax Refunds v Brooks Homes Ltd* [2013] NZCA 90.

[21] Also noted as needing consideration are the balance of convenience and the impact on the parties, including any third parties, of granting or not granting an order for interim reinstatement, and the overall justice of the matter.

Brief Background Facts

[22] The IRD is responsible for the administration of the tax system in New Zealand in accordance with the Tax Administration Act 1994 (TAA). It collects most of the taxation revenue that the Government needs to fund its programmes and also administers a number of social support programmes.

[23] At 2.29 p.m. on 24 October 2025 the Domain Specialist, Complaints Management, sent an email to Team Leads requesting that they advise their teams that Complaints Management were case managing a situation relating to an individual, Taxpayer A. Taxpayer A's full name and IRD number were included in the email to enable staff to be able to identify Taxpayer A should they received contact.

[24] The email stated:

Can you please let your teams know they may receive a call from Taxpayer A ... they are to advise him he is being managed by Complaints, and we will contact him. The officer can then disconnect that call. Please do not engage with Taxpayer A.

[25] At 2.45 p.m. Mr Sharma accessed Taxpayer A's account as follows:

- a) At 2.45 p.m. he searched for Taxpayer A by IRD number in START (the IRD taxpayer database);
- b) entered account Favourites/BIC Codes;
- c) entered indicator/Attributes;
- d) reviewed indicator/Attributes;
- e) checked a related attribute;
- f) entered indicators/Customer indicators, BIC codes, and financial/accounts;
- g) exited the account at 3.21 p.m.

[26] At 2.52 p.m. on that same day, 24 October 2025, the Domain Specialist, Complaints Management sent a further email to Team Leads including Mr Sharma requesting that they remind staff about the Code of Conduct and the IRD's fundamental business rule that they should not be accessing Taxpayer A's account unless he had been verified and there was a valid business reason.

[27] At 3.19 p.m. the Domain Specialist's email was forwarded to Families Team Leads including Mr Sharma with a covering note which stated:

As per message from [Domain Specialist] below – if you become aware of any of your people accessing this account, please don't speak to them re this – instead, please have a chat with your GL.

Please also remind your people, they are only allowed to access accounts where they have business reason to be there.

[28] At 3.27 p.m. on 24 October 2025 Mr Sharma sent an email to his team forwarding the Domain Specialist's original email and requesting that they take the suggested actions should they receive a call from Taxpayer A. Mr Sharma also stated:

Interesting as this may sound, Code of conduct reminder, you should not be accessing customers account unless they have been verified and there is a valid business reason.

[29] On 28 October 2025 Ms Gillies sent an email to all Families Management team staff, including Mr Sharma, referring to Taxpayer A and reminding them that they must not access Taxpayer A's account unless he contacted them directly and his identity had been verified, and/or there was a clear business reason to do so.

[30] Mr Sharma did not raise his access of Taxpayer A's account with a leader.

[31] The IRD became aware of the potential access by Mr Sharma to Taxpayer A's account as part of active monitoring of the START database by the Integrity and Internal Assurance Team. An internal review of Mr Sharma's user ID identified that there appeared to be no apparent business reason for Taxpayer A's account to have been accessed by him.

[32] On 25 November 2025 the IRD wrote to Mr Sharma, raising concerns that he may have accessed Taxpayer A's account without a genuine business reason and that he may have breached the Code of Conduct. The letter invited Mr Sharma to a meeting to respond to the concerns raised in the letter.

[33] Mr Sharma was given the opportunity to review a 'flyby' of exactly what he did in the system prior to the meeting. This revealed that he had accessed a considerable amount of sensitive and confidential information not only about Taxpayer A, but also about other taxpayers, and that he needed to take a number of deliberate actions in the system in order to do.

[34] Mr Sharma was offered the opportunity to take special paid leave, but he declined this offer.

[35] Mr Sharma stated in his affidavit that as he had only recently been seconded to the Customer and Compliance Services – Families Segment he thought it would be useful to orient himself to the context of the case and prepare himself to answer any questions from his team, and he therefore accessed Taxpayer A's account in order to familiarise himself with some of the details.

[36] He stated in his affidavit that he did answer a number of questions from his team and accessing Taxpayer A's account had helped him to do so. He also stated that he understood that was workplace learning which aligned with IRD's leader induction which included leading oneself.

[37] The investigation meeting took place on 1 December 2025. It was attended by Mr Thomson and an HR Advisor for the IRD, and Mr Sharma was supported by his union representatives. The meeting was recorded and a transcript provided to Mr Sharma.

[38] After the meeting, Mr Sharma's union representative provided a written response which was read out during the meeting. This included that:

- a) Mr Sharma had been employed for nine years with no previous disciplinary history and a strong performance record;
- b) At the time of the incident, he was two days into a new Team Lead role in a different segment. He had received minimal handover and no training to orient himself to Families' practices;
- c) His access to Taxpayer A's account was to familiarise himself with the situation and to answer questions from his team. It was work-related learning with a view to supporting his team;
- d) His access was momentary, and he did not make any changes to the account or share, use, or act upon the information in any way.;
- e) On reading the second email from the Domain Specialist, he realised he should not have accessed the account;
- f) The additional emails sent by IRD demonstrated that the original communication was insufficiently clear;
- g) including Taxpayer A's full name and IRD number in the email was unusual and invited the assumption that that information was shared for situational awareness and legitimate operational context.
- h) This was a training issue not misconduct.

[39] Mr Thomson wrote to Mr Sharma on 11 December 2025 setting out his concerns, his response to the concerns, his preliminary thinking relating to his response, and referring to Mr Sharma's obligations as an IRD employee. Mr Thompson consideration included the following:

- i. Mr Sharma did not need to access Taxpayer A's account to close out any team conversations, the Domain Specialist's email was clear that Complaints Management was handling the matter and all Mr Sharma needed to do was tell his team that;

- ii. Mr Sharma did not need to view Taxpayer A's account to understand the approach the Families Segment takes. This was the same as across all segments i.e. not to access a taxpayer's account with a valid business reason and authorisation to do so;
- iii. A valid business reason for accessing an account ends when an interaction or piece of work is completed. Mr Sharma did not have a valid business reason to access Taxpayer A's account;
- iv. Mr Sharma's apology and offer to undertake further training was not sufficient to mitigate the very serious concerns about his lapse of judgment and breach of his obligations. On recognising that his access had been inappropriate, Mr Sharma did not disclose this to a leader.

[40] Mr Thomson advised that his preliminary view was that Mr Sharma's conduct amounted to serious misconduct and proposed that summary dismissal as the appropriate outcome.

[41] Mr Sharma was invited to comment on Mr Thomson's preliminary view and proposed outcome either in writing or in person.

[42] On 16 December 2025 the PSA wrote to the IRD Service Owner Advisory setting out its concerns in relation to the IRD's process and approach.

[43] On 17 December 2025 Mr Sharma provided feedback to Mr Thomson's preliminary views. This included that:

- a. summary dismissal was not warranted. His actions were an attempt to meet leadership expectations in an unfamiliar environment in which he was still familiarising himself with the Team Lead role. It was not an exercise in curiosity;
- b. He had continued to be trusted to coach others and perform leadership roles even after concern was raised, therefore IRD did not genuinely believe him to pose a risk to system integrity or to have no trust and confidence in him;
- c. He recognised in hindsight that he should have sought clarification and also informed a leader about his access.

[44] On 18 December 2025 the PSA wrote to the Commissioner of the Inland Revenue requesting that Mr Sharma not be dismissed.

[45] Mr Thomson stated in his untested affidavit evidence that he carefully considered the further feedback, views and information provided by and on behalf of Mr Sharma, in particular that:

- (i) Mr Sharma may only have been an Acting Teal Leader in the Families segment for two days, but he had previously been a Team Lead in other segments. He did not need a Families specific orientation to understand that accessing a customer account without a valid business reason or authority was not acceptable;
- (ii) in terms of a training issue, Mr Sharma had already undertaken Code of Conduct training and as Team Lead, he was meant to regularly have integrity discussions with his team members so he should have been intimately familiar with his obligations under the Code of Conduct;
- (iii) in relation to Mr Sharma continuing to perform his role, there had been no wish to predetermine the matter.

[46] Mr Thomson stated that he had reached the conclusion that the concerns were substantiated, Mr Sharma's behaviour amounted to serious misconduct, and the appropriate outcome was the summary termination of his employment.

[47] On 22 December 2025 Mr Thomson and an HR Advisor met with Mr Sharma and his PSA representatives. During the meeting Mr Thomson went through the decision letter emailed to Mr Sharma's PSA representatives prior to the meeting.

[48] The letter dated 22 December 2025 confirmed that the final decision was that Mr Sharma's conduct amounted to serious misconduct and dismissal on the grounds of serious misconduct was the appropriate outcome.

A Serious Question?

[49] As a matter of principle, Mr Sharma must establish that there is a serious question to be tried in respect of his claim of unjustifiable dismissal and for permanent reinstatement. A serious question was described in *Brooks Homes Ltd v NZ Tax Refunds Ltd* as an arguable case.³

[50] The threshold for a serious question or arguable case as stated in *Brooks Homes* and *Western Bay of Plenty District Council v Jarron McInnes* is that the claim is not frivolous or vexatious:

... However, as *Brooks Homes Ltd* makes clear, an applicant must establish that there is a serious question to be tried, in that the claim is not vexatious or frivolous. The merits of the case (insofar as they can be ascertained at an interim stage) may be relevant in assessing the balance of convenience and overall interests of justice ...⁴

³ *Brooks Homes Ltd v NZ Tax Refunds Ltd* [2013] NZSC 60 at [6].

⁴ *Western Bay of Plenty District Council v McInnes* [2016] NZEmpC36 at [9].

[51] In *Humphrey v Canterbury District Health Board, Te Poari Hauora O Waitaha* the Chief Judge confirmed that whether there is a serious question to be tried raises two sub-issues, these being:

- a) Whether there is a serious question to be tried in relation to the claim of unjustified dismissal; and, if so,
- b) Whether there is a serious question to be tried in relation to the claim of permanent reinstatement.⁵

[52] In *Humphrey* the Employment Court noted that once the relatively low threshold as identified in *Brooks Homes Ltd* had been met:

... the merits of the case (insofar as they can be ascertained at an interim stage) may be relevant in assessing the balance of convenience and the overall interests of justice.⁶

[53] My findings expressed in this preliminary determination are solely for the purpose of resolving Mr Sharma's application for interim reinstatement. At the substantive hearing there will be opportunity to fully test the relevant evidence and disputed questions of fact and law.

An arguable case?

[54] It is submitted for Mr Sharma that the information provided to him in relation to the Customer account was unclear and imprecise, and he had a valid business reason for accessing Taxpayer A's account i.e. to better inform himself in the event of questions from his team.

[55] In addition, the Code of Conduct which was relied upon, authorises access to customer information, the test being whether access is "for the purposes of carrying out your IRD duties". Whilst the disciplinary letters referred to the concept of a 'valid business reason' that phrase is not contained in the Code of Conduct.

[56] It is submitted for Mr Sharma that he may not have exercised good judgment, but a fair and reasonable employer would not have dismissed in circumstances in which he was carrying out his IRD duties and did not breach s 6 of the Tax Administration Act 1994 or clause 11.2 of the Collective Agreement, or the Code of Conduct.

[57] It is further submitted that the decision that Mr Sharma's conduct amounted to serious misconduct and warranted summary dismissal was inconsistent with another employee who received a final warning for misconduct in substantially similar circumstances with no material differences.

⁵ *Humphrey v Canterbury District Health Board, Te Poari Hauora O Waitaha* [2021] NZEmpC 59 at [7].

⁶ Above n 5 at [8].

[58] It is submitted for IRD that Mr Sharma does not have an arguable case for unjustifiable dismissal or permanent reinstatement, or if he does, it is very weakly arguable.

[59] It is submitted that Mr Sharma was subject not only to the Code of Conduct, but to the Administration Act 1994, s 6 of which mandates protecting the integrity of the tax system, and this requirement is mirrored in clause 11 of the Collective Agreement between the IRD and the PSA. As an employee with over eight years' service who had received extensive training, it is highly improbable that he would not have been aware of his obligations under statute and the Code of Conduct.

[60] It is submitted that Mr Sharma ,after receiving the email from the Domain Specialist at 2.29 p.m., conducted a search of Taxpayer A's account by taking a series of steps to view a large amount of confidential information despite having a clear obligation not to do what he did, and it being clearly set out in the Code of Conduct, his training and reminders.

[61] It is submitted that despite Mr Sharma being sent the email by Ms Gillies at 2.26 p.m. on 28 October 2025, reminding him (and others) that they must not access Taxpayer A's account unless he contacted them directly and his identity had been verified, and/or there was a clear business reason to do so, Mr Sharma did not disclose his access. It is submitted that Mr Sharma's failure to disclose his access amounts to a lapse of judgment at best and a deliberate deception at worst.

[62] It is submitted that Mr Sharma had received training on his clear obligations under statute, the Code of Conduct and in his employment agreement. Mr Sharma's claim that he had made a mistake and had no intent to breach the Code of Conduct is not sufficient to excuse his behaviour.

[63] Further it is submitted that Mr Sharma acknowledged he should not have accessed Taxpayer A's account during the investigation but now asserts that he had a valid business reason for so doing. This raises serious credibility and judgment concerns.

[64] In regard to the disparity of treatment submission on behalf of Mr Sharma, it is submitted in the case of other individuals who accessed Taxpayer A's account after receiving the communications they proactively reported their access to their Team Lead as soon as they realised, they should not have done so. Mr Sharma did not do report his access to a leader.

[65] It is submitted that IRD carefully considered the circumstances in each case and that affected the individual outcomes.

[66] It is a low threshold, and I find that Mr Sharma has an arguable case that he was unjustifiably dismissed.

Reinstatement?

[67] Mr Sharma must not only establish an arguable case for unjustifiable dismissal but must also establish that he would be reinstated if successful in such a claim.

[68] Reinstatement is the primary remedy and s125 (2) of the Act states the Authority must provide for reinstatement if it is practicable and reasonable. This was commented upon by Judge Holden in *Hong v Auckland Transport* in which she set out that practicality and reasonableness are two separate requirements:

Practicability ... means more than simply being possible. For reinstatement to be practicable, it must be capable of being carried out in action, be feasible, and have the potential for the re-imposition of the employment relationship to be done or carried out successfully. ...

Looking at reasonableness, the Court needs to consider the prospective effects of an order, not only upon the individual employer and employee in the case, but on other affected employees of the same employer, and in some cases, perhaps third parties who would be affected by the reinstatement.⁷

[69] It is submitted by Mr Sharma that he was a hard-working loyal employee with no previous disciplinary issues. He is capable of being reintegrated into work, noting that IRD is a massive organisation. He has stated he is willing to undergo additional training, mentoring or counselling.

[70] IRD submits that it found Mr Sharma had committed an act of serious misconduct after acting as a fair and reasonable employer following a fair process. It no longer has the requisite confidence in Mr Sharma that he would manage similar situations appropriately in future.

[71] IRD submits that mentoring would not be possible as Mr Sharma would, in his role, be accessing taxpayer accounts continuously throughout each day and mentoring would require appointing a person to monitor what he was accessing at all times.

[72] Reinstatement on an interim or permanent basis must be practicable and reasonable. Taking all the submissions into consideration, and on the basis of the untested affidavit evidence as presented to the Authority, whilst I find that Mr Sharma has an arguable case that he was unjustifiably dismissed, I am unable at this stage to conclude that he has a more than a weak arguable case that he would be reinstated permanently.

⁷ *Hong v Auckland Transport* [2019] NZEmpC 54 at [66] and [67].

[73] Accordingly, I do not find that Mr Sharma has a strongly arguable case for interim reinstatement.

Balance of convenience

[74] As set out in the Employment Court case *X v Y Limited* this principle requires that the Authority balance the relative inconvenience, in terms of detriment or injury, to the IRD who will have to bear the burden of an order reinstating Mr Sharma until the substantive case is heard, against the inconvenience to Mr Sharma who may have a just case, of having to bear the detriment of unjustifiable action until the case is heard.⁸

[75] It is submitted for Mr Sharma that the balance of convenience heavily favours him. He has lost his position in the midst of a profound economic crisis. As a result, his ability to earn has been severely impacted, he has a loss of income, and this has severely impacted his ability to meet day-to-day living expenses and support his elderly parents.

[76] In addition, it is submitted for Mr Sharma that his employment opportunities are severely abridged including because he is subject to the Workforce Assurance Standards for a period of three years. He states in his affidavit that although he has been actively seeking employment since January, his public sector applications have not progressed due to his serious misconduct record which is declared through the Workforce Assurance Standards.

[77] IRD submits that no evidence has been provided about Mr Sharma's financial position, his eligibility for a benefit from Work and Income NZ, or other steps taken by him to mitigate his loss. It is submitted that this is not a situation in which Mr Sharma would face a loss of his career.

[78] In regard to garden leave or a return to the payroll, it is submitted by IRD that this would not be an appropriate alternative to interim reinstatement because Mr Sharma may not be in a position to pay damages if he was placed on garden leave or the payroll on an interim basis, and then subsequently found by the Authority at a substantive hearing not to be entitled to this remedy. No evidence of his financial position has been provided to the Authority.

[79] Having taken into consideration the submissions put forward by the parties, balancing the potential prejudice to Mr Sharma of not reinstating him against the potential prejudice to IRD of so doing, I find that the balance of convenience favours not reinstating Mr Sharma on an interim basis.

⁸ *X v Y Limited* [1992] 1 ERNZ 863, at pg 10.

Overall Justice

[80] The Authority must assess the overall justice of the case from a global perspective. This has been described by the Court of Appeal as:⁹

The overall justice assessment is essentially a check on the position that has been reached following the analysis of the earlier issues of serious question to be tried and balance of convenience'

[81] It is submitted on behalf of Mr Sharma that there is no allegation of any bad or improper motive for what he did, and IRD is easily capable of dealing with reinstatement in these circumstances with no risk. In contrast the consequences of continued dismissal for Mr Sharma are severe.

[82] IRD submits that the overall justice rests with it. Mr Shram breached a fundamental business rule, and the seriousness of his action was his dismissal which was the appropriate outcome.

[83] It is submitted the circumstances preclude IRD having the requisite trust and confidence in Mr Sharma. This is very important because as an IRD employee Mr Sharma has constant access to vast amounts of sensitive taxpayer information. It is not possible to fully review or scrutinise access given the volume of work which makes trust essential that employees are acting in accordance with the Code of Conduct and the IRD's statutory obligations under the Tax Administration Act 1994.

[84] Having carefully considered the matter, I find that the overall justice of the case subsists in declining Mr Sharma's application for interim reinstatement.

Next Steps

[85] A case management conference will be held to progress the matter to a substantive investigation.

Costs

[86] Costs are reserved for determination following the substantive investigation meeting and its outcome or until this matter otherwise ceases to be before the Authority.

Eleanor Robinson

Member of the Employment Relations Authority

⁹ *NZ Tax Refunds Ltd v Brooks Homes Limited* [2013] NZCA 90 at [47].