

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 257
3448064

BETWEEN

GINA THOMPSON
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, Gina Thompson, under s 127 of the Employment Relations Act 2000 (the Act).

[2] Ms Thompson, a member of the New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi Incorporated (the PSA), was dismissed on 23 December 2025 for serious misconduct by the Respondent, The Chief Executive of The Department of Inland Revenue (IRD). Ms Thompson claims that she was unjustifiably dismissed from her position as a Customer Services Officer (CSO) in the Customer and Compliance Services – Families segment and is seeking reinstatement on both an interim and a permanent basis.

[3] The IRD claims that Ms Thompson's dismissal was warranted, it had legitimate concerns in relation to Ms Thompson's behaviour 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.

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

Note

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

The Authority's Investigation

[6] Following the initial application by Ms Thompson, the parties attended mediation, but this did not resolve the issue.

[7] The application for an interim injunction was accompanied by an undertaking as to damages and an affidavit by Ms Thompson.

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

[9] 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.

[10] 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.

[11] Affidavits were received for the Applicant from Ms Thompson and from Kimberley Moss, an Organiser for the PSA.

[12] Affidavits were lodged on behalf of the IRD by Christopher Thomson, Group Lead, and Susan Gillies, Customer Segment Leader, both from the Customer and Compliance Services Families segment.

[13] 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.

[14] 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.

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

[16] Mr Cranney disputes on behalf of Ms Thompson that the new legislation applies to the current situation.

[17] 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

[18] I granted Ms Thompson'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

[19] 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 Ms Thompson 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?

[20] 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

[21] 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

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.

revenue that the Government needs to fund its programmes and also administers a number of social support programmes.

[22] 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.

[23] 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.

[24] Ms Thompson's Team Lead forwarded the email to her and other CSO's at 2.44 p.m. that same day. The email stated

Please see details below regarding if you receive a call from this customer so you know what actions need to be taken.

This is a reminder that you are not to access this account unless you receive a call from this customer.

[25] At 2.46 p.m. on 24 October 2025, two minutes after receiving the email Ms Thompson accessed the account of Taxpayer A:

- a) At 2.46 p.m. Ms Thompson searched for Taxpayer A by IRD number in START (the IRD taxpayer database);
- b) Entered the account;
- c) Entered CRM/notes; and
- d) Exited the account at 32.47 p.m.

[26] In her untested affidavit evidence Ms Thompson stated that she accessed Taxpayer A's account because she was concerned that she may have done some work previously on the customer's account and wanted to check and clarify if that was the case. She had checked Taxpayer A's account to see if she had previously worked on it and to see if an international banner applied which would help determine which phone queue he might come through on.

[27] As no banners were applied to check and see whether a trace had been sent to Services Australia so she would be properly prepared if a call from Taxpayer A came through to her.

[28] Ms Thompson stated in her affidavit that she did not take any action on the account other than viewing it and did not share any information.

[29] On 28 October 2025 at 2.26 p.m., Ms Thompson's Team Lead sent an email to all Families Management team staff, including Ms Thompson, further 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] Ms Thompson did not raise her access of Taxpayer A's account with a leader.

[31] On 24 November 2025 the IRD wrote to Ms Thompson, raising concerns that she may have accessed Taxpayer A's account without a valid business reason and without authorisation. Further that if she had done so, she may have breached a number of policies including the Code of Conduct. The letter invited Ms Thompson to a meeting to respond to the concerns raised in the letter. Ms Thompson was given an opportunity to review a 'flyby' of what exactly she had done in the system prior to the meeting.

[32] Ms Thompson was offered the opportunity to take special paid leave, and she accepted the offer.

[33] The investigation meeting took place on 27 November 2025. It was attended by Mr Thomson, and an HR Advisor for the IRD, and Ms Thompson was supported by her union representatives. The meeting was recorded and a transcript provided to Ms Thompson.

[34] Ms Thompsons stated in her affidavit that during the meeting on 27 November 2025 she said she had not read the full contents of the email until after she had accessed Taxpayer A's account. She had done so because she thought she had done work previously on the account and checked for an international banner.

[35] Ms Thompson stated she had commented that she had six years' service and not had any previous employment issues.

[36] Following the meeting Ms Thompson was given an opportunity to provide any further comment in writing and on 2 December 2026 Mrs Thompson provided her written feedback. This included:

- a) She had received the email from her Team Lead but did not read it fully;
- b) Her purpose in accessing Taxpayer A's account was to see if she had done something on the account previously that was incorrect or impacted her in any way or the work she was doing;
- c) It is not usual to receive a customer's name ad IRD number in an email and she felt she needed to check for herself;
- d) The communication was confusing, and as a result, staff did not read it thoroughly,

- e) In accessing the account, she identified that Taxpayer A was not an international customer and checked his notes so she would be prepared if he called. She had a valid business reason to access the account and did not feel the need to report her access with a leader;
- f) She should have read the email from her Team Lead more thoroughly and would ensure she did so in the future; and
- g) She was willing to undertake any refresher training deemed appropriate.

[37] Mr Thomson stated in his affidavit that he carefully considered Ms Thompson's response. His considerations included:

- i. The Team Lead's email consisted of two sentences, the first reminding team members to see the details below, the second reminding them not to access the account upon receiving a call from him; second reminding them not to access the taxpayer's account unless they received a call from him.
To find Taxpayer A's name and IRD number it was necessary to scroll down past the email. It was difficult to reconcile how Ms Thompson could have read and noted Taxpayer A's details further down the email yet overlooking the explicit instructions in the email not to access the account;
- ii. Including a customer's name and IRD number in an email did not entitle Ms Thompson to ignore her obligations under the Code of Conduct;
- iii. Ms Thompson's explanation that she had previously done work on Taxpayer A's account and wanted to be prepared to provide good customer service should she subsequently received a call was not credible;
- iv. Access to taxpayer information requires a valid business reason and having previously interacted with a customer is not a valid business reason; and
- v. The tax system relies voluntary compliance by taxpayers in relation to their legislative obligations and the integrity of the tax system. The taxpayers' confidence in that integrity is therefore vital.

[38] Mr Thomson wrote to Ms Thompson on 11 December 2025 setting out his concerns, her response to the concerns, his preliminary thinking relating to her response, and referring to her obligations as an IRD employee. He advised that his preliminary view was that Ms Thompson's conduct amounted to serious misconduct and proposed that summary dismissal as the appropriate outcome. Ms Thompson was invited to comment on the preliminary decision.

[39] 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.

[40] On 17 December 2025 Ms Thompson provided her written feedback which reiterated what had been previously submitted and included she:

- a) had been in the middle of investigating an account and doing account maintenance so she did not read the whole email and apologised for her lapse of judgment for not doing so;
- b) did not ignore her obligations under the Code of Conduct, it was an oversight;
- c) intended to prepare herself in case Taxpayer A contacted her so it was a valid business reason;
- d) did not inform a leader because there had been a genuine business reason, further her substantive and acting leaders were both away at the time; and she
- e) did not compromise the standards regarding access to taxpayer information, misuse information, or create harm. There was no reason for IRD not to trust her to handle taxpayer information appropriately.

[41] On 18 December 2025 the PSA wrote to the Commissioner of the Inland Revenue requesting that Ms Thompson not be dismissed.

[42] Mr Thomson stated in his untested affidavit evidence that he carefully considered the feedback, views and information provided by and on behalf of Ms Thompson. In particular he considered amongst other things that:

- i. The communication sent to Ms Thompson on 24 October 2025 was not confusing. It was clear and direct. There was no need for Ms Thompson to access the account to understand if Taxpayer A was an international or domestic customer and/or prepare herself for any future contact;
- ii. Wanting to check if she had previously done work for Taxpayer A does not amount to a valid business reason to look at his account, particularly when she had been told what to do if he called;
- iii. Ms Thompson's reasons for accessing the account were not credible;
- iv. The Team Lead's email contained an express instruction not to access Taxpayer A's account, that was not confusing or ambiguous; and
- v. It was difficult to reconcile her view that she did not share, misuse or create harm on accessing Taxpayer A's account with the Code of Conduct which makes clear there is to be no access without a valid business reason. As set out in the Code of Conduct, unauthorised access alone is sufficient to amount to a breach, and that information does not need to be shared or used in any way to constitute a breach.

[43] Mr Thomson reached the conclusion that the concerns were substantiated, Ms Thompson's behaviour amounted to serious misconduct, and the appropriate outcome was the summary termination of her employment.

[44] He stated in his affidavit evidence that he had considered whether a lesser outcome than dismissal may be appropriate. However, he reached the view that as Ms Thompson had breached fundamental obligations of her employment, the trust and confidence necessary in the employment relationship had been destroyed.

[45] In addition, Ms Thompson even after she received the additional communication making it clear that she should not have looked at the information, did not raise her access with a leader.

[46] At a meeting held on 23 December 2025 Mr Thomson and an HR Advisor met with Ms Thompson and her union representatives. Mr Thomson took Ms Thompson through his decision letter dated 23 December 2025 which had been sent to her prior to the meeting.

[47] The letter dated 23 December 2025 confirmed that the final decision was that Ms Thompson's conduct amounted to serious misconduct, and dismissal on the grounds of serious misconduct was the appropriate outcome.

A Serious Question?

[48] As a matter of principle, Ms Thompson must establish that there is a serious question to be tried in respect of her 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

[49] 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

[50] 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:

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].

- 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

[51] 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

[52] My findings expressed in this preliminary determination are solely for the purpose of resolving Ms Thompson'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?

[53] It is submitted for Ms Thompson that her access of Taxpayer A's account was minimal, she accessed his account to check if Taxpayer A was the same person she had dealt with previously. Ms Thompson, who had six years' service with IRD committed an error of judgement in accessing Taxpayer A's account, but the outcome of dismissal was an extreme punishment.

[54] It is submitted for IRD that as an employee of six years and having received extensive training and ongoing reminders about the Code of Conduct, Ms Thompson should have been aware of her obligations as regards the Code. Even if she did consider she had a valid business reason, she was wrong, and her mistaken belief does not legitimise her actions.

[55] Moreover, her failure to flag her access to Taxpayer A's account, even after receiving the Domain Specialist's email on 28 October 2025 amounts to a lapse of judgment at best, and a deliberate deception at worst. In either case, it is submitted there was no reasonable explanation for the failure to at least flag the access given the communications received about Taxpayer A.

[56] Regarding the disparity of treatment submission on behalf of Ms Thompson, 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. Ms Thompson did not do so.

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

⁶ Above n 5 at [8].

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

[58] It is a low threshold, and I find that Ms Thompson has an arguable case that she was unjustifiably dismissed.

Reinstatement?

[59] Ms Thompson must not only establish an arguable case for unjustifiable dismissal but must also establish that she would be reinstated if successful in such a claim.

[60] 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

[61] It is submitted by Ms Thompson that she was an employee with six years' service. She had no background of disciplinary or performance issues in her employment with IRD. She had admitted she had made a mistake. However, what had occurred could easily be remedied by counselling, letters of expectation, or warnings. which could rectify any shortcomings in that regard. There was no evidence of a bad motive, or dishonesty.

[62] It is submitted that Ms Thompson is capable of being reintegrated into work, noting that IRD is a massive organisation. She has stated he is willing to undergo additional training, mentoring or counselling.

[63] IRD submits that it found Ms Thompson had committed an act of serious misconduct after acting as a fair and reasonable employer following a fair process. Her actions in accessing sensitive taxpayer information without a genuine business reason, given her length of service and following all of her training, had the effect of destroying the trust and confidence it should have in her.

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

[64] Ms Thompson's actions were not just a breach of the IRD Code of Conduct and her employment agreement, but also of the Tax Administration Act 1994. This binds IRD to protect the integrity of the tax system. In light of Ms Thompson's action, IRD is no longer able to trust her to follow its express instructions and/or ensure the necessary protection of the sensitive information held by IRD and to protect the integrity of the tax system.

[65] Of further concern it is submitted is the fact that Ms Thompson admitted accessing Taxpayer A's account but has continued to claim what she was doing was legitimate and should not be viewed as serious misconduct. This raises serious concerns as to her judgment. IRD could therefore have no certainty that she would not undertake further such accesses if she were to be reinstated in her role.

[66] IRD submits that mentoring would not be possible as Ms Thompson would in her role, be accessing taxpayer accounts continuously throughout each day, and mentoring would require appointing a person to monitor what she was accessing at all times.

[67] 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 Ms Thompson has an arguable case that she was unjustifiably dismissed, I am unable at this stage to conclude that she has a more than a weak arguable case that she would be reinstated permanently.

[68] Accordingly, I do not find that Ms Thompson has a strongly arguable case for interim reinstatement.

Balance of convenience

[69] 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 Ms Thompson until the substantive case is heard, against the inconvenience to Ms Thompson who may have a just case, of having to bear the detriment of unjustifiable action until the case is heard.⁸

[70] It is submitted for Ms Thompson that the balance of convenience heavily favours her. She lost her position in the midst of a profound economic crisis. In her affidavit Ms Thompson states that the situation has been extremely emotional causing stress and anxiety, especially at a time of the year when she should have been celebrating with family and friends. It has placed

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

a large financial strain on her family, and it has been difficult to find new employment given the time of year the dismissal occurred.

[71] In addition, it is submitted for Ms Thompson that her employment opportunities are severely abridged including because she is subject to the Workforce Assurance Standards for a period of three years.

[72] It is further submitted for Ms Thompson that damages would not be an adequate remedy.

[73] IRD submits that whilst on the face of it, Ms Thompson has lost income as a result of her dismissal, no evidence has been provided about her financial position, her eligibility for a benefit from Work and Income NZ, or other steps taken by her to mitigate her loss.

[74] Ms Thompson had worked for a CSO for six years and will not lose specific technical expertise or up to date knowledge in the short time between the interlocutory and substantive hearing.

[75] 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 Ms Thompson may not be in a position to pay damages if she 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.

[76] In addition, IRD, like many other government agencies, has been instructed to identify cost savings and either garden leave or reinstatement to the payroll would not be a responsible use of taxpayer funds in this context.

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

Overall Justice

[78] 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 convenience⁷

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

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

[80] IRD submits that the overall justice rests with it. Ms Thompson breached a fundamental business rule, and the seriousness of this action was her dismissal which was the appropriate outcome. These circumstances make it impossible for IRD to have the requisite trust and confidence in her which is essential given her often unmonitored access to vast amounts of sensitive taxpayer information.

[81] Although IRD undertakes regular checking and auditing of system access, proportionally few accesses are able to be reviewed or scrutinised given the volume of work that occurs. Consequently, IRD must have a significant level of trust that employees are acting in accordance with the Code of Conduct.

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

[83] I find that the overall justice of the case subsists in declining the application for interim reinstatement.

Next Steps

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

[85] The substantive investigation is set down in October with an agreed timetable.

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