

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 258  
3448164

BETWEEN	PUNIPUAO FATU 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

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

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

[2] Ms Fatu, a member of the New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi Incorporated (the PSA), was dismissed on 19 December 2025 for serious misconduct by the Respondent, The Chief Executive of The Department of Inland Revenue (IRD).

[3] Ms Fatu claims that she was unjustifiably dismissed from her position as a Customer Services Officer (CSO) in the Customer and Compliance Services – Families Management segment and is seeking reinstatement on both an interim and a permanent basis.

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

[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 Ms Fatu, 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 Ms Fatu.

[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 Ms Fatu and from Kimberley Moss, an Organiser for PSA.

[13] Affidavits were lodged on behalf of the IRD from Christopher Thomson, Group Lead (and fourth tier manager for IRD, 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 Ms Fatu in light of the Employment Relations Amendment Act 2026.

[17] Mr Cranney disputes on behalf of Ms Fatu 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 Ms Fatu'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.<sup>1</sup>

[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.<sup>2</sup> Those principles fall to be addressed by the answers to the following questions:

- (a) whether or not Ms Fatu 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?

[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.

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<sup>1</sup> Employment Relations Act 2000 s 3.

<sup>2</sup> *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.

## **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] Ms Fatu's Team Lead forwarded the email to Ms Fatu and other CSO's at 2.31 p.m. that same day stating: "FYI everyone".

[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 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 2.54 P.m. Ms Fatu's Team Lead sent a Teams message to her and other CSO's which stated:

A quick note – if you don't have business being on someone's account, do not access it (I.E. the email I sent out earlier). Just a reminder for you all.

[28] At 3.45 p.m. Ms Fatu accessed the account of Taxpayer A: conducting a comprehensive search in the START database viewing a large amount of sensitive and confidential information by taking a significant number of deliberate actions.

[29] In her untested affidavit evidence Ms Fatu stated that she accessed Taxpayer A's account because she was concerned that she may have spoken to him previously and transferred him to the child support line. She decided to check the account to see if it was the same customer and whether by transferring him to the child support line, she may have been using the wrong process.

[30] Once she had checked the account and established, she had not previously spoken to him, Ms Fatu stated that she had exited the account stating in her affidavit that she did not take any action on the account other than viewing it and did not share any information.

[31] On 28 October 2025 Ms Fatu's Team Lead sent an email to all Families Management team staff, including Ms Fatu, 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.

[32] Ms Fatu did not raise her access of Taxpayer A's account with a leader.

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

[34] On 24 November 2025 the IRD wrote to Ms Fatu, 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 Fatu to a meeting to respond to the concerns raised in the letter.

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

[36] The investigation meeting took place by Teams on 3 December 2025. It was attended by Mr Thomson, and an HR Advisor for the IRD, and Ms Fatu was supported by her union representatives. The meeting was recorded and a transcript provided to Ms Fatu.

[37] Ms Fatu stated in her affidavit that during the meeting on 3 December 2025 she explained why she had accessed Taxpayer A's account and that she had been dealing with a number of difficult family situations at the time. Ms Fatu stated that she had 36 years' service with the IRD, during which time she had worked diligently and in good faith.

[38] Following the meeting Ms Fatu was given an opportunity to provide any further comment in writing and on 5 December 2026 the PSA wrote to the IRD on her behalf attaching a written statement from Ms Fatu. Ms Fatu's response included her acknowledgement that she had accessed Taxpayer A's account. If Taxpayer A had been the same customer she had been thinking of, she would have advised her Team Lead.

[39] Her judgment at the time was clouded due to difficult family issues with which she was dealing. The reason she had not disclosed her access of Taxpayer A's account to a leader was because she felt ashamed and a failure for having made the mistake.

[40] Mr Thomson wrote to Ms Fatu 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. His responses included:

- i. Ms Fatu admitted accessing Taxpayer A's account, but was not holding and/or working on any active work relating to him at the time she accessed the account;
- ii. Ms Fatu was not being asked to engage with Taxpayer A, whether she may previously have transferred a similar customer to another team was not relevant to the instructions that were given to staff at that point in relation to Taxpayer A;
- iii. When Ms Fatu became aware that she should not have accessed Taxpayer A's account, she did not disclose her earlier access to her Team Lead. Whilst she said she was embarrassed to do so, she had also stated she had a good relationship with her Team Lead, and this did not therefore provide a satisfactory explanation for not admitting her access;
- iv. In accordance with s 6 of the Tax Administration Act IRD employees are to use their best endeavours to protect the integrity of the tax system and must be held to a very high standard with regard to access to taxpayer information.
- v. Ms Fatu's long service, whilst potentially providing some mitigation, also meant she was very aware of her obligations as an employee, and did not diminish the requirement to uphold the Code of Conduct.
- vi. Ms Fatu's difficult personal circumstances did not justify her belief that she had a valid business reason to access the account or explain her actions.

[41] He advised that his preliminary view was that Ms Fatu's conduct amounted to serious misconduct and proposed that summary dismissal as the appropriate outcome.

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

[43] 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. The points made on behalf of Ms Fatu included:

- a) She believed she had a valid business reason to access the account;

- b) She accessed the account before any reminder emails were sent;
- c) The original email from Complaint Management was unclear and did not expressly instruct staff not to access the account, and subsequent communications demonstrated a need to clarify the original message;
- d) There was no misuse or personal gain from Ms Fatu's access and no harm caused to the taxpayer;
- e) Ms Fatu's dismissal was disproportionate given her long and previously unblemished service, and that reasonable alternative outcomes should be considered.

[44] On 17 December 2025 the PSA wrote to Mr Thomson providing a written response to the preliminary views attaching a statement from Ms Fatu.

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

[46] Mr Thomson stated in his untested affidavit evidence that he carefully considered the feedback, views and information provided by and on behalf of Ms Fatu and reached the conclusion that the concerns were substantiated, Ms Fatu's behaviour amounted to serious misconduct, and the appropriate outcome was the summary termination of her employment.

[47] On 19 December 2025 Mr Thomson and an HR Advisor met with Ms Fatu and her PSA representatives. During the meeting Mr Thomson went through his final decision letter which had been sent to Ms Fatu prior to the meeting. His reasons for his decision included:

- i. Ms Fatu accepted she had accessed Taxpayer A's account, the email did not ask her to do so, and she did not seek clarification from her Team Lead before doing so;
- ii. Ms Fatu was not holding or working on any active matter relating to Taxpayer A at the time she accessed the account and a valid business reason to access this account did not exist;
- iii. Although Ms Fatu said she had skim read the email and recalled the instruction about transferring calls to Complaints Management, the substance of the communication was brief and contained on the first page. It unlikely she would have read the instruction about transferring calls but not the instruction that staff were not to engage with the customer;
- iv. On recognising that she should not have accessed the account, Ms Fatu did not disclose her access to her Team Lead. Given her length of service, embarrassment was not accepted as a sufficient explanation for failing to promptly disclose unauthorised access;

- v. The letter dated 19 December 2025 confirmed that the final decision that Ms Fatu's conduct amounted to serious misconduct and that dismissal on the grounds of serious misconduct was the appropriate outcome.

#### *A Serious Question?*

[48] As a matter of principle, Ms Fatu 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.<sup>3</sup>

[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 ...<sup>4</sup>

[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:

- 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.<sup>5</sup>

[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.<sup>6</sup>

[52] My findings expressed in this preliminary determination are solely for the purpose of resolving Ms Fatu'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 Fatu that she wanted to check Taxpayer A was the same person she had dealt with previously. Ms Fatu, who had 36 years' service with IRD committed an

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

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

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

<sup>6</sup> Above n 5 at [8].

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 36 years and having received extensive training and ongoing reminders about the Code of Conduct, Ms Fatu must reasonably have been aware of her obligations in that regard. Ms Fatu's claim that she made a mistake and that she had no intent to breach the Code of Conduct is not sufficient to excuse the behaviour given the nature of the obligations imposed on her and the nature and circumstances of the breach.

[55] In regard to the disparity of treatment submission on behalf of Ms Fatu, 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 Fatu did not do so.

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

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

#### *Reinstatement?*

[58] Ms Fatu 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.

[59] 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.<sup>7</sup>

[60] It is submitted by Ms Fatu that she was a loyal employee of long service with no background of disciplinary or performance issues in her employment with IRD. She had

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

admitted she had made a mistake. However, it is submitted that what she did was not a breach of the Code of Conduct.

[61] It is submitted that Ms Fatu 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.

[62] IRD submits that it found Ms Fatu 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 her that she would manage similar situations appropriately in future.

[63] IRD submits that mentoring would not be possible as Ms Fatu 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.

[64] 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 Fatu 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.

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

### **Balance of convenience**

[66] 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 Fatu until the substantive case is heard, against the inconvenience to Ms Fatu who may have a just case, of having to bear the detriment of unjustifiable action until the case is heard.<sup>8</sup>

[67] It is submitted for Ms Fatu that the balance of convenience heavily favours her. She had lost her position in the midst of a profound economic crisis. As stated in her affidavit evidence, Ms Fatu is experiencing difficult personal and emotional family situations and has lost her job in what was already a very stressful time in her life.

[68] Ms Fatu is a sole income family and without her income the family is struggling financially. She is also concentrated that given her age, finding another job may be difficult.

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

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

[70] IRD submits that whilst on the face of it, Ms Fatu 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.

[71] Ms Fatu has worked for a CSO for 36 years and will not lose specific technical expertise or up to date knowledge in the short time between the interlocutory and substantive hearing.

[72] 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 Fatu 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.

[73] 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.

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

### **Overall Justice**

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

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'

[76] It is submitted on behalf of Ms Fatu 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 Fatu is severe.

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

[77] IRD submits that the overall justice rests with it. Ms Fatu breached a fundamental business rule and the seriousness of this action was her dismissal which was the appropriate outcome.

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

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

### **Next Steps**

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

### **Costs**

[81] 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