

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 259
3448184

BETWEEN SMITA NALAWADE
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, Smita Nalawade, under s 127 of the Employment Relations Act 2000 (the Act).

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

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

[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 Nalawade and from Kimberley Moss, an Organiser for the PSA.

[12] 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

[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.

Principles

[15] I granted Ms Nalawade'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

[16] 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 Nalawade 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?

[17] 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

[18] 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.

Events 24 October 2025

[19] 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.

[20] 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.

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] Ms Nalawade's Team Lead forwarded the email to her and other CSO's at 2.31p.m. that same day stating, "FYI everyone".

[22] At 2.32 p.m. Ms Nalawade accessed the account of Taxpayer A:

- a) At 2.32 p.m. Ms Thompson searched for Taxpayer A by IRD number in START (the IRD taxpayer database);
- b) Entered the account Springboard;
- c) Entered CRM/Notes;
- d) Entered CRM/web notices;
- e) Exited to CRM/Web messages;
- f) Exited the account at 2.36 p.m.

[23] In her untested affidavit evidence Ms Nalawade stated that she had accessed Taxpayer A's account to see if it was the same customer she had previously dealt with and to see if she needed to follow up on previous actions. She stated that if a task on a customer's account was not completed, it did not show on an employee's completed tasks to check.

[24] Ms Nalawade stated in her affidavit that she had entered the account and checked notes and web messages. Once she had established that she had not previously dealt with the customer, she exited the account. She did not use or share the data.

[25] At 2.52 p.m. the Domain Specialist, Complaints Management Customer sent a further email to the Tewam 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.

[26] At 2.54 p.m. Ms Nalawade's Team Lead sent a Teams message to all Families Management team staff, including Ms Nalawade stating:

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.

[27] On 28 October 2025 at 2.26 p.m., Ms Gillies sent an email to all Families Management team staff, including Ms Nalawade, 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.

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

[29] The IRD became aware of the potential access by Ms Nalawade to Taxpayer A's account as part of active monitoring of START by the Integrity and Internal Assurance Team.

An internal review of Ms Nalawade's user ID identified that there appeared to be no apparent business reason for Taxpayer A's account to have been accessed by her.

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

[31] Ms Nalawade was offered the opportunity to take special paid leave and she accepted the offer. She was also given the opportunity to review a 'flyby' of what exactly she had done on Taxpayer A's account prior to the meeting.

[32] The investigation meeting took place on 2 December 2025. It was attended by Mr Thomson, and an HR Advisor for the IRD, and Ms Nalawade was supported by her union representatives. The meeting was recorded and a transcript provided to Ms Nalawade.

[33] Ms Nalawade stated in her affidavit that during the meeting on 2 December 2025 and in her written feedback she had explained that she had received a teams message from the Domain Specialist advising that she was taking a task from her to be managed by the complaints team. That customer had had similar issues to those referred to in the 24 October 2025 email and the same customer complaint manager had been involved, so she had thought she might have outstanding work to complete on that customer and wanted to check that.

[34] After the meeting Ms Nalawade was provided with an opportunity to provide any further comments in writing. On 5 December 2025 Ms Nalawade provided written statements from herself and her union representative. These included:

- a) Her acknowledgement that she had accessed Taxpayer A's account on 24 October 2025. At the time she believed she had a legitimate business reason to do so;
- b) She had thought it was the same customer she had been asked about previously, but after accessing Taxpayer A's account, she realised it was not;
- c) She did not see the reminder email from her Team Lead because she left work early that day, and did not realise she had made a mistake until the team meeting held on 28 October 2025; at which her Team Lead stated he hoped no one had accessed Taxpayer A's account;
- d) She had felt too embarrassed and scared to disclose her access in front of her colleagues, or to disclose it to her Team Lead at a subsequent one-on-one meeting;
- e) Due to significant and very stressful personal situations at the time, she had been distracted and experienced shame and embarrassment at both her personal circumstances and the mistake she had made at work;

f) She had been employed by IRD for three years with a good work record.

[35] Mr Thomson stated in his untested affidavit evidence that he carefully considered Ms Nalawade's responses. His considerations included:

- i. Ms Nalawade admitted her had accessed Taxpayer A's account on 24 October 2025;
- ii. While she had stated that she considered the email forwarded by her Team Lead had been unclear, she had not sought clarification or advice before accessing the account;
- iii. While Ms Nalawade had explained that she believed Taxpayer A was the same customer she and the Domain Specialist had discussed previously and considered this gave her a business reason to access the account, she had not sought clarification on this assumption;
- iv. The Team lead had forwarded the email with a 'FYI' indicating it was informational in nature and not directed to Ms Nalawade personally or to a customer for whom she was responsible;
- v. The obligation to only access confidential information and systems for legitimate work purposes is not a complicated or unreasonable obligation;
- vi. IRD employees are held to a very high standard with regard to the access of taxpayer information;
- vii. Whilst he acknowledged the personal circumstances Ms Nalawade was experiencing at the time, he was not persuaded that these circumstances explained or justified her belief that she had a valid business reason to access the account.

[36] By letter dated 11 December 2025 Mr Thomson wrote to Ms Nalawade setting out his concerns, Ms Nalawade's 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 Nalawade's conduct amounted to serious misconduct and proposed that summary dismissal as the appropriate outcome.

[37] 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.

[38] On 17 December 2025 Ms Nalawade provided feedback on Mr Thomson's preliminary views together with further submissions from her union representative. These included that:

- a) Ms Nalawade believed she had a valid business reason to access Taxpayer A's account based upon her recognition of the Domain Specialist's name and her belief that the email related to a customer she had previously dealt with;

- b) The preliminary view overstated the seriousness of the conduct and did not adequately account for the intent, context, mitigation, or IRD's contribution through unclear communications;
- c) Ms Nalawade accepted she should have disclosed her access once she realised her mistake, but was too influenced by personal stress and discomfort to do so;
- d) She had accessed the account before any subsequent reminders or warning were issued, or was not aware of, reminders referenced in the preliminary views letter;
- e) summary dismissal was disproportionate given there was no misuse, disclosure or personal gain, and her strong employment record; the incident was isolated, influenced by personal stress and a lack of prior guidance. A lesser penalty was appropriate;
- f) Ms Nalawade said the situation had reinforced the importance of seeking clarification and she was confident it would not be repeated.

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

[40] Mr Thomson stated in his untested affidavit evidence that he carefully considered the feedback, views and information provided by and on behalf of Ms Nalawade. In particular Mr Thomson stated in his affidavit his considerations had included:

- i. Ms Nalawade had not been holding any work relating to Taxpayer A, was not expecting any reply or follow-up, and had not interacted with the customer in the preceding 12 months. The email did not ask her to access the account, and the Domain Specialist had not contacted her to request she did so;
- ii. Once read, the email made it clear that CSOs were not to engage with the customer. In those circumstances there was no need to access the account;
- iii. After Ms Nalawade's Team Lead had spoken in a team meeting about unauthorised access, Ms Nalawade understood she had made a mistake, but even with that understanding, she chose not to disclose her access at that time or subsequently;
- iv. Although experiencing a difficult period, Ms Nalawade's personal circumstances did not mitigate a breach of the Code of Conduct, particularly where Ms Nalawade chose not to disclose the access after becoming aware it was an error.
- v. The access occurred prior to subsequent reminder communications being issued. However, Ms Nalawade's failure to disclose the access even after those reminders significantly limited the extent to which timing could mitigate the conduct.

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

[42] Mr Thomson stated in his affidavit that he considered there was an insufficient basis to mitigate Ms Nalawade's conduct down from serious misconduct. Her conduct involved a breach of fundamental obligations relating to the confidentiality of taxpayer information.

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

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

A Serious Question?

[45] As a matter of principle, Ms Nalawade 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

[46] 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

[47] 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

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

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].

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

... 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

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

[50] It is submitted for Ms Nalawade that she had been employed for almost three years at the date of dismissal. She had accessed Taxpayer A's account because she wanted to check if the difficult client referred to in the Domain Specialist's email on 24 October 2025 was the same person who had been transferred from her in August that year. Further to check if she needed to follow up on any previous actions.

[51] That was the reason for her access of Taxpayer A's account, and that access was very brief.

[52] It was submitted Ms Nalawade had explained what had occurred and why. There was no finding or allegation of any bad motive on her part.

[53] It is submitted for IRD that Ms Nalawade accessed taxpayer information without a genuine business reason to do so, and in direct contravention of clear business rules.

[54] Ms Nalawade was an employee of almost three years and had received extensive training and ongoing reminders about the Code of Conduct expectation, she could reasonably therefore be taken to have been aware of her obligations in that regard.

[55] Even if Ms Nalawade did consider she had a genuine business reason to access the account, she was wrong, and her mistaken belief did not legitimise or excuse her actions. She was not holding any work relating to Taxpayer A and was not expecting contact from him.

[56] It is also submitted that although Ms Nalawade subsequently recognised that she should not have accessed Taxpayer A's account, she failed to disclose her access to a leader. This failure amounted to a lapse of judgement at best and a deliberate deception at worst.

[57] Ms Nalawade's access of taxpayer information was in breach of her employment obligations, IRD's Code of Conduct, the State Services Standards of Integrity and Conduct, and s 6 of the Tax administration Act 1994. Access to taxpayer information is limited to authorised business needs and this is a fundamental business rule that is made clear to all employees from the stated of their employment with IRD and is regularly repeated and monitored.

⁶ Above n 5 at [8].

[58] In regard to the disparity of treatment submission on behalf of Ms Nalawade 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 that they should not have done so. Mr Nalawade did not do so.

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

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

Reinstatement?

[61] Ms Nalawade 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.

[62] 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

[63] It is submitted by Ms Nalawade that she was an employee with almost three years' service with a good employment record who had made a mistake. This could be remedied by counselling, letters of explanation or warnings, which could rectify any shortcomings in that regard.

[64] Ms Nalawade is capable of being reintegrated into work, noting that IRD is a massive organisation. Ms Nalawade has offered to undergo additional training, mentoring or counselling.

[65] IRD submits that it found Ms Nalawade 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

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

and following all of her training, had the effect of destroying the trust and confidence it should have in her.

[66] Ms Nalawade's actions took place against a background in which she had been trained on her obligations under the legislation, the Code of Conduct and in her employment agreement.

[67] IRD carefully considered Ms Nalawade's situation and all relevant facts before reaching a decision that was measured and appropriate to the specific circumstances.

[68] It is submitted it was open to IRD as a fair and reasonable employer to conclude that Ms Nalawade's conduct amounted to serious misconduct. IRD suffered a lack of trust in Ms Nalawade given her access to sensitive revenue information without a valid business reason and then her equivocation as to whether a valid business reason did in fact exist.

[69] Further Ms Nalawade's failure to act in an open and transparent way by disclosing the fact of her access, after recognising that she should not have accessed the account, compounds the lack of trust.

[70] IRD submits that mentoring would not be possible as Ms Nalawade would, in her 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.

[71] 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 Nalawade 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.

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

Balance of convenience

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

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

[74] It is submitted for Ms Nalawade 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 Nalawade was going through a difficult personal situation at the time the dismissal occurred and facing the sale of the family home., this adversely impacted her mental health at the time.

[75] Ms Nalawade stated in her affidavit evidence that she was dealing with a number of difficult family situations at the relevant time. She has no family support in New Zealand and was under immense pressure and stress during the time of her access of Taxpayer A's account.

[76] Ms Nalawade states that her daughter is financially reliant on her income and losing her job would be financially devastating.

[77] It is submitted for Ms Nalawade that her employment opportunities are severely abridged because she is subject to the Workforce Assurance Standards for a period of three years.

[78] IRD submits that whilst on the face of it, Ms Nalawade 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.

[79] Ms Nalawade has worked for a CSO for 3 years and will not lose specific technical expertise or up to date knowledge in the short time between the interlocutory and substantive hearing.

[80] 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 Nalawade 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.

[81] 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.

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

Overall Justice

[83] 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'

[84] It is submitted on behalf of Ms Nalawade that she had no improper motive for what she did, and IRD is easily capable of dealing with reinstatement in circumstances which carry no risk. In contract the continued dismissal of Ms Nalawade is severe.

[85] IRD submits that the overall justice rests with it. Ms Nalawade 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 information.

[86] 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.

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

Next Steps

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

Costs

[89] 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].