

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2026] NZERA 260
3436704

BETWEEN

DARIN JONKER
Applicant

AND

WAINUIOMATA HIGH
SCHOOL BOARD
Respondent

Member of Authority: Claire English

Representatives: Darin Jonker in person for the Applicant
Paul Robertson and Dew James-Powys, counsel for the
Respondent

Investigation Meeting: On the Papers

Submissions received: Up to 31 March 2026 from Applicant
Up to 23 April 2026 from Respondent

Determination: 29 April 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Mr Darin Jonker, was employed by the respondent Wainuiomata High School Board (WHS) from 19 February 2025 through to his dismissal on 16 January 2026.

[2] Mr Jonker originally applied for a permanent position as a Physical Education Teacher. He was not successful in being appointed into that role, as WHS took the view that his previous work experience was not sufficient. Instead, WHS offered Mr Jonker

a fixed term position for the 2025 year, teaching Hard Materials and Hospitality subjects, as they were satisfied with his experience in those areas.

[3] A formal letter of offer dated 17 February 2025 was given to Mr Jonker, offering him employment as a “Teacher – Fixed Term, Full Time”, from 19 February 2025 ending on 27 January 2026. The terms of the current Secondary Teachers’ Collective Agreement applied.

[4] The reason given for the fixed term of employment was “to provide coverage during a period of role growth, as well as a rebuild and redevelopment”.

[5] Mr Jonker accepted this role, by signing and returning the letter of offer on 18 February 2025, commencing employment in accordance with its terms approximately one day later.

[6] Mr Jonker initially worked teaching Hard Materials, Hospitality, Food Technology, Maths/English and Science/Maths subject areas. At the end of April 2025, he was asked to perform some teaching in Physical Education on a temporary basis. This was in addition to, rather than instead of, his teaching in other areas. He agreed to do this on a temporary basis.

[7] On 1 May 2025, Mr Jonker emailed staff at WHS, referring to his employment as “only on a year contract”, and that he had mentioned this to his wife as well.

[8] On 15 September 2025, Mr Jonker emailed the Deputy Principal, seeking further appointment after the expiry of his fixed term employment, saying:

I have been happy at the school, even with various challenges which are not worth noting specifically. As such, I do not want to leave....

I am therefore requesting that my fixed term contract be continued for 2026 with provisions which I also know are possible, on the grounds of my current Leader of Learning being accommodated in much the same way for her current contract. I am therefore requesting for consideration and discussion; the follow [sic] contract conditions for my next fixed term contract following January 2026...

However, of my own free will, having seen the complex situation Wainuiomata High was dealing with in terms of staffing, I jumped in and offered to help with hard materials and hospo.

[9] Also on 15 September 2025, Mr Jonker's manager (the Leader of Learning PE) raised a concern with the then-Principal that Mr Jonker was threatening and harassing her. She had become concerned with his work performance, and sought to raise this with him. He then communicated with her by email in such a way and in such a volume, that she raised a complaint with WHS that his behaviour towards her was threatening.

[10] On 16 September 2025, Mr Jonker complained to the then Presiding Member of the School Board that the Principal and his manager were bullying him.

[11] WHS engaged an independent investigator to investigate both sets of concerns. This was conveyed to Mr Jonker by email on 3 October 2025. Terms of reference were prepared, which were put to Mr Jonker for his feedback before being finalised. Those terms provided for the concurrent investigation of all complaints. Mr Jonker provided feedback, and agreed to the proposed process.

[12] On 4 November 2025, a finalised version of the terms of reference was provided to Mr Jonker.

[13] The investigator conducted interviews with Mr Jonker, his manager, the Principal, and other staff. The interviewer also reviewed email correspondence.

[14] In November 2025, WHS was successful in hiring a permanent Physical Education teacher for the 2026 year.

[15] On 11 November 2026, WHS emailed Mr Jonker and other fixed term staff, with a standard letter reminding them of the ending of their fixed term agreements. WHS says that it was only after this letter was sent that Mr Jonker began to say that he was a permanent employee.

[16] The investigator prepared a draft report. The draft conclusions were that Mr Jonker's behaviour and communication style amounted to harassment, and that his claim of bullying had no merit. The draft report was sent to Mr Jonker, and he was asked for his feedback on it.

[17] Mr Jonker wrote to the investigator withdrawing from the process on 18 November 2025, saying: "I must disengage from the investigation we initially got underway. I am therefore requesting that the original recording of our meeting, as well as transcripts to be deleted".

[18] The investigator proceeded to finalise the report. In doing so, they decided to rely only on written correspondence, in light of Mr Jonker's withdrawal from the investigatory process.

[19] On 1 December 2025, the final report found that Mr Jonker's behaviour towards his manager when she attempted to raise performance concerns with him amounted to harassment, saying¹:

This investigation finds that communications from Mr Jonker to Ms Hullena between 28th August and 15th Sept 2025 more than meet the definition of harassment under the law. Furthermore, Ms Hullena experienced them as harassment and they adversely affected her ability to do her job.

[20] The report further found that the manager and the Principal had acted reasonably towards Mr Jonker (in other words, his complaint of bullying was not upheld), saying²:

While considerable assistance and personal guidance was provided to Mr Jonker a formal programme was not put in place as Mr Jonker went on leave from mid-September 2025.

An extensive review of communications and other documents along with interviews with all parties has revealed no evidence of bullying of Darin Jonker by the Principal or the Leader of Learning.

[21] Having received the report, WHS decided to commence a disciplinary process, and wrote to Mr Jonker on 17 December 2025 raising concerns of serious misconduct.

[22] Mr Jonker engaged with this process, objecting to the terms of reference and the investigation process, and objecting to the involvement of the then Presiding Member. While not accepting Mr Jonker's position, WHS ensured that the then Presiding Member was not a decision-maker on the matter.

[23] Additional time was provided to Mr Jonker seeking his response to concerns of serious misconduct.

[24] On 14 January 2026, Mr Jonker filed an application in the Authority, raising a claim of unjustified dismissal arising from WHS's "unlawful reliance on a purported fixed-term employment agreement that did not reflect the true nature of the employment

¹ The Independent Investigation into Complaints from Darin Jonker and Maddie Hullena, at page 16.

² Ibid, at page 16.

relationship”. Mr Jonker says that he applied for and was appointed to a full-time permanent teaching position, and that he commenced this role in Term 2 while waiting for his permanent full time role to start³. He further said that the Principal told him the “fixed term wording...was not intended to reflect the true nature of the role”.

[25] On 16 January 2026, Mr Jonker was dismissed on the basis of serious misconduct.

[26] Mr Jonker seeks interim reinstatement “while the Authority investigates the matter⁴”. He also seeks an order that the ending of his employment was an unjustified dismissal, and a declaration that the purported fixed-term agreement was unlawful and “did not validly define the employment relationship”, as well as other relief that the Authority considers just.

[27] Accordingly, I now need to consider if Mr Jonker should be reinstated to his employment on an interim basis while the Authority’s substantive investigation occurs.

The Authority’s investigation

[28] For the Authority’s investigation affidavits were lodged from Mr Jonker, and Ms Nicola Barr the current Presiding Member of the WHS Board. Mr Jonker and WHS’s representatives also provided submissions. By consent, this matter was determined “on the papers” without an in-person hearing.

[29] 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.

Analysis

[30] The approach to an application for interim reinstatement has been set out by the court as follows⁵:

The applicant must first establish that there is a serious question to be tried or, put another way, that the claim is not vexatious or frivolous. The balance of convenience must be considered with the impact on the parties of the granting

³ Affidavit of Darin Jonker dated 13 January 2026, paragraphs 3 and 4(a).

⁴ Mr Jonker does not seek permanent reinstatement.

⁵ Hussain v Auckland Transport [2025] NZEmpC 274 at paraps [6] and [7]

of, and the refusal to grant, an order. An assessment of the overall justice by standing back is required as a final check.

For interim reinstatement applications, the question as to whether there is a serious issue to be tried is considered as two questions:

“(a) Whether there is a serious question to be tried in relation to the claim for unjustified dismissal.

(b) Whether there is a serious question to be tried in relation to the claim for permanent reinstatement.”

[31] In the present case, the relevant questions for consideration are therefore as follows:

- a. Is there an arguable case that Mr Jonker was employed on a permanent basis?
- b. Is there an arguable case that Mr Jonker was unjustifiably dismissed?
- c. Does the balance of convenience support interim reinstatement?
- d. Does an assessment of the overall justice of the case support interim reinstatement?

Is there an arguable case that Mr Jonker was employed on a permanent basis?

[32] This question was the focus of the majority of Mr Jonker’s considerable submissions to the Authority.

[33] Mr Jonker accepted that he had received a formal letter of offer for fixed term employment from 19 February 2025 to 27 January 2026, and that he had accepted those terms by signing and returning that letter of offer. There are no contradictory documents.

[34] Mr Jonker says that, despite this, he was a permanent employee as his fixed term employment did not meet the requirements of s 66 of the Act in the following ways:

- a. There was no genuine reason for the fixed term;
- b. He was working as a permanent PE teacher from April 2025 onwards and this was the true nature of the relationship; and
- c. When he met with the Principal to discuss the letter of offer, the Principal said words to the effect that the fixed term offer did not reflect the true nature of the role.

[35] WHS takes issue with this. It says that the letter of offer accurately set out the practical challenges faced by WHS at that time, namely that it had been undergoing significant changes to its infrastructure and curriculum management brought about by a redevelopment that was effectively a full rebuild of the school. One of the impacts of this was limited or no access to specialist learning spaces, which required ongoing staff and curriculum adjustment⁶. I do not understand Mr Jonker to dispute this, rather I understand him to dispute that the impacts were severe or that they created sufficient uncertainty to justify the employment of fixed-term staff.

[36] WHS says that Mr Jonker was never employed as a PE teacher. It says that he interviewed for this role, and was not successful. He was then, after discussion, offered a different role based on his past experience, as a teacher in hard materials and hospitality, on a fixed term basis. It was this role he accepted. While Mr Jonker later agreed to perform up to two classes focusing on PE, this does not mean that he was appointed to the role of a permanent PE teacher.

[37] There is no contemporaneous evidence as to what the Principal supposedly said to Mr Jonker that would be sufficient to undermine the fixed term employment actually offered, so I discount this.

[38] The contemporaneous documents and correspondence show that Mr Jonker was offered and accepted a fixed term role in a limited field. Throughout his employment, he referred to the fixed term nature of his employment, showing that he was aware that his employment would come to an end and was not of permanent duration. The correspondence also shows that he was aware that WHS wanted and needed a staff member who could be flexible in their teaching and that his role was not limited to the PE field.

[39] I find it significant that it was only after he had been sent a reminder letter about the approaching end of his fixed term employment, that Mr Jonker began to correspond about being a permanent employee. All of the above suggest that Mr Jonker understood that he was employed for a fixed term only, and accepted this at the time he accepted the letter of offer on 18 February 2025.

⁶ Paragraphs 10 and 11 of Ms Barr's brief of evidence dated 9 March 2026.

[40] I am not persuaded by Mr Jonker's submissions that the reason given by WHS for his fixed term employment does not meet the statutory requirements of s 66 of the Act. On its face, the letter of offer referred to the employment ending on a specified date, and appears to be a genuine reason based on reasonable grounds, that is, an existing and ongoing redevelopment project was causing both staffing and delivery issues for the employer.

[41] It is no answer to say as Mr Jonker does, that WHS later employed a full-time PE teacher. This was not the role he had been employed to fill, and nor was it the role he was working in. I find this does not support Mr Jonker's position on the matter.

[42] After considering the documents before me, I conclude that it is not strongly arguable that Mr Jonker was a permanent employee.

Is there an arguable case that Mr Jonker was unjustifiably dismissed?

[43] Mr Jonker was dismissed for serious misconduct, namely that he harassed his manager after she attempted to raise concerns about his teaching with him.

[44] In finding that Mr Jonker committed serious misconduct, WHS relies on the findings of an independent investigation to establish key facts. It then carried out a disciplinary process. Although Mr Jonker engaged, WHS says that at no point did Mr Jonker address or dispute the alleged conduct.

[45] Mr Jonker's objections to his dismissal may be summarised as objections to the terms of engagement of the independent investigation, objections to the involvement of the then-Presiding Member in the process, and objections to having his own contemporaneous complaint of bullying against his manager dealt with in the same investigation.

[46] I have considered the investigation report, and correspondence between the parties in the disciplinary process phase. Mr Jonker was actively involved and provided substantive feedback to the investigator about the terms of engagement for the investigation. He then participated willingly in that investigation before withdrawing fully (and asking that his interview and notes thereof be deleted) immediately after being provided with the draft investigation report which proposed findings against him.

[47] Mr Jonker does not attempt to reconcile the contradiction between his prior involvement with and acceptance of the terms of engagement and investigation process with the complaints he now makes about those matters. He also does not appear to have engaged with the substance of the disciplinary process, including commenting on the behaviour that was the cause of WHS's concern, or commenting on the proposed sanction, rather than commenting on prior processes.

[48] Having considered the matter with a focus on correspondence only, I conclude that Mr Jonker's unjustified dismissal claim is only weakly arguable, but cannot be discounted.

Does the balance of convenience support interim reinstatement?

[49] Mr Jonker states that he should be reinstated to his role while the Authority's substantive investigation occurs. He says that he is placed at an on-going disadvantage by being "excluded from access to employment systems, information, and processes that are directly relevant to my ability to respond to allegations, participate in any investigation, and pursue my personal grievances in a meaningful way". He further says interim reinstatement will "prevent the respondent from continuing to rely on a flawed and prejudicial process to my detriment"⁷.

[50] WHS says that there is no role for Mr Jonker to be reinstated to. His fixed term role has come to an end, and there is no further need for it. It points out that Mr Jonker is not "funded" so in order to meet any such order, it would effectively be required to take already allocated funds from existing staff and projects, leaving the school, teachers, and in the end, students, to bear the real cost of that shortfall.

[51] I have considered Mr Jonker's submissions. I find that he has already been provided with opportunities to participate in investigations, both the independent investigation and WHS's disciplinary investigation. Both of those investigations are now concluded and do not require further participation. There is no particular reason why Mr Jonker's interim reinstatement to his employment at WHS would have any bearing on the Authority's investigation process, and Mr Jonker's filing of a statement of problem in the Authority on its own cannot be a reason in support of interim reinstatement. Likewise, by raising a personal grievance claim, Mr Jonker has already

⁷ Affidavit of Darin Jonker dated 13 January 2026, at paragraphs 16 and 17.

taken steps to “prevent” WHS from continuing to rely on what he says is a flawed process. This is the very basis of his unjustified dismissal claim, but interim reinstatement is not required to effectively pursue this claim.

[52] Importantly, there is a real question as to what role Mr Jonker could be reinstated into, given that his role only subsisted until 27 January 2026 at the latest. I find that any interim reinstatement would have the effect of requiring WHS to create a role for Mr Jonker that does not otherwise exist, and this weighs against it being appropriate to impose such a requirement. The burden of interim reinstatement in such circumstances, particularly given WHS’s budget restrictions, would be disproportionate.

[53] The court has found that: “at the interim stage the parties legal or equitable rights are uncertain. At that time, the object is to preserve the Court’s ability to give effect to the parties substantive legal or equitable rights at trial...It does so by maintaining the status quo, which is the last settled position between the parties.”⁸

[54] In the present case, Mr Jonker’s employment was due to end on 27 January 2026 in any event. The balance of convenience favours WHS.

[55] I have also considered whether there is a seriously arguable case that Mr Jonker would be permanently reinstated. Mr Jonker has not sought permanent reinstatement, which points away from interim reinstatement being appropriate. In any event, I assess that the likelihood of permanent reinstatement in all the circumstances would be weak.

Does the overall justice of the case support interim reinstatement?

[56] Standing back and considering the matter overall, Mr Jonker was dismissed because his employer found that, following his manager raising concerns with him about his performance in his role, he then took action which amounted to harassing behaviour against her. This means that there are essentially unresolved performance concerns and unresolved conduct concerns.

[57] During the investigation and disciplinary process, Mr Jonker also raised concerns and complaints about the role of the Principal and the board. These also remain unresolved, and all these concerns would need to be at the least, managed, as

⁸ *Savage v Wai Shing Ltd* [2019] NZEmpC 141, [2019] ERNZ 370, at -32].

part of any reinstatement. Mr Jonker has made no comment or reflection about whether or how these matters might be managed in practice. While WHS has not put forward definitive answers to these questions either, it does submit that it would continue to have to manage these competing concerns including in terms of its employment obligations to other staff were Mr Jonker to be reinstated.

[58] The court has previously found that “all of the circumstances of a particular case must be taken into account in determining whether it is appropriate to order reinstatement. In some cases, particularly of alleged unjustified dismissal the relationship between the parties will preclude reinstatement.”⁹ I find that this is relevant in the present case, and tends to point away from interim reinstatement.

[59] I have also considered the nature of the substantive claims before the Authority. These are claims of unjustified dismissal and unjustified disadvantage. They are well within the normal run of claims commonly before the Authority, and do not suggest that additional steps are required to progress them.

[60] On balance, the overall justice of the case also points away from interim reinstatement.

Orders

[61] Mr Jonker’s application for interim reinstatement is declined.

Costs

[62] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.¹⁰

Claire English
Member of the Employment Relations Authority

⁹ *Port of Wellington Ltd v Longwith* [1995] 1 ERNZ 87 (CA), at 93.

¹⁰ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1