

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 316
3453985

BETWEEN

MUJAHID KHAN
Applicant

AND

THE CHIEF EXECUTIVE OF
THE MINISTRY FOR
PRIMARY INDUSTRIES
Respondent

Member of Authority: Simon Greening

Representatives: Ronald Jones, advocate for the Applicant
Stephen Wakem, counsel for the Respondent

Investigation Meeting: On the papers

Submissions received: 11 May 2026 by AVL

Determination: 22 May 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mujahid Khan was employed by the Ministry for Primary Industries (MPI) in the position of senior quarantine officer for 18 years.

[2] Mr Khan was employed under the terms of a collective agreement between MPI and the New Zealand Public Service Association (PSA) (CA).

[3] Mr Khan's employment with MPI was terminated on 6 October 2025. Mr Khan raised a personal grievance for unjustified dismissal with MPI on 15 October 2025.

[4] Two employees made complaints about Mr Khan. The first complaint was in regard to Mr Khan taking a colleague with him to a friend's house for lunch on 10 June

2025, during work hours. The second complaint was in regard to Mr Khan speaking in a loud manner towards one of his colleagues, on 12 June 2025.

[5] On 25 June 2025, MPI invited Mr Khan to an investigation meeting to discuss the complaints.

[6] MPI investigated the complaints. On 10 September 2025 invited Mr Khan to a further meeting, to explain its preliminary view that he had engaged in behaviour that amounted to serious misconduct in regard to the first complaint, and misconduct in regard to the second complaint.

[7] On 6 October 2025, MPI wrote to Mr Khan advising him that, after considering all of the material and the responses he had provided throughout the investigation process, it decided to terminate his employment with immediate effect.

[8] On 27 March 2026, Mr Khan made an application to the Authority seeking interim reinstatement.

The Authority's investigation

[9] For the Authority's investigation, affidavits were lodged by Mr Khan, Mr Michael Inglis, Ms Sarah Tuihalangingie, and Mr Tim Funaki. An investigation meeting, conducted by AVL, was convened to provide an opportunity for legal counsel for the parties to speak to their written submissions.

[10] An application for interim reinstatement proceeds on the basis of untested affidavit evidence, the evaluation of that evidence is therefore made on a provisional basis.¹

[11] 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.

¹ *Stellar Elements New Zealand Limited v Amesbury* [2024] NZEmpC 136 at [20].

Application for non-publication orders

[12] MPI seeks non-publication of the names and identifying details of the complainants, and the witnesses identified in MPI's affidavits.

[13] The approach to non-publication in the Authority and the Court is set out in the full court judgement in *MW v Spiga Ltd*.²

[14] In summary, the Authority will only consider non-publication where there is reason to believe that specific adverse consequences could reasonably be expected to occur which justify a departure from the principle of open justice.³

[15] The assessment in each case requires two steps. The first step is an assessment of whether there is reason to believe that specific adverse consequences could reasonably be expected to occur. The Authority may be required to draw reasonable inferences based on the evidence, circumstances and context of the case.⁴

[16] The second step involves the Authority considering whether the adverse consequences that could reasonably be expected to occur justify a departure from open justice in the circumstances of the case. A number of factors are relevant as part of this weighing exercise, which I have considered.⁵

[17] In regard to the first step of the assessment, I accept MPI's submission that the material before the Authority traverses sensitive workplace matters, and there is a public interest in ensuring individuals can participate in employment processes without fear of public exposure, which would be undermined if their identities were published.

[18] Mr Khan opposes the application for non-publication orders, however he has not advanced grounds in support of his opposition to the application.

[19] In regard to the second step of the assessment, I note that although the complainants are not parties to the litigation, they have a legitimate interest in preserving their privacy.⁶ The interests of third parties is a key factor which is relevant to the weighing exercise.

² *MW v Spiga* [2024] NZEmpC 147.

³ *FDE v UWW* [2024] NZEmpC 179 at [8].

⁴ Above n 3 at [9].

⁵ Above n 2 at [89].

⁶ *Scott v Damar Industries Limited* [2025] NZEmpC 215 at [9].

[20] It is also relevant to my assessment that MPI only seeks non-publication in respect of the identifying details of the complainants and employees involved in the investigation, on the basis that this type of application is a proportionate and targeted measure limited to the identities of third parties and no broader than necessary to prevent harm.

[21] I order at this interim stage, the names of the complainants and witnesses involved in the investigation and/or named in MPI's affidavits are not to be published. They will be referred to by initials bearing no relationship to their actual name.⁷

Amendments to the Employment Relations Act 2000

[22] This determination resolves an application for interim reinstatement. Therefore, I pause to consider the application of the recent amendments to the Act in light of the facts of this particular case.

[23] On 21 February 2026 a new provision, s 123C, was inserted into the Act.

[24] This new section of the Act states that if the Authority determines that an action of an employee contributed to the situation that gave rise to the personal grievance, then the Authority must not provide for any of the remedies in described in sections 123(1)(a) and 123(1)(c) of the Act, including reinstatement.

[25] The application for interim reinstatement was brought to the Authority on 27 March 2026, after the amendments to the Act had been made.

[26] In the context of this case, the effect of s 33 of the Legislation Act 2019 is that the amendments to the Act do not affect the completion of a matter or thing that relates to an existing right.⁸

[27] The issue turns on whether Mr Khan had an existing right before 21 February 2026.⁹ Mr Khan did not have the right to bring a dismissal claim until his employment was terminated.¹⁰

[28] Mr Khan's employment with MPI was terminated on 6 October 2025.

⁷ Employment Relations Act 2000, sch 2, cl 10(1).

⁸ Legislation Act 2019, s 33(1)(a).

⁹ *Ramkissoo v Commissioner of Police* [2018] NZCA 304 at [53].

¹⁰ Above n 8 at [54].

[29] On 6 October 2025 Mr Khan had a right to bring a dismissal claim. Therefore, because the application for interim reinstatement relates to an existing right, this application will be considered under the repealed legislation.¹¹

Legal principles – interim reinstatement

[30] In an application for interim reinstatement, Mr Khan must first establish that there is a serious question to be tried. Then the balance of convenience must be considered. This requires a consideration of the impact of, and the refusal to grant, an interim order until Mr Khan's claims are resolved following a substantive hearing.

[31] Finally, an assessment of the overall justice of the making of an interim order is required.¹²

Is there a serious question to be tried?

[32] In a claim for interim reinstatement, the question of whether there is a serious question to be tried raises two sub-issues:¹³

- (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.

[33] MPI submits Mr Khan does not have an arguable case for unjustified dismissal for the following reasons:

- (a) In deciding to dismiss Mr Khan, MPI acted as a fair and reasonable employer and complied with the statutory procedural tests before making its decision.¹⁴
- (b) MPI sufficiently investigated the allegations, and established Mr Khan had engaged in behaviour that amounted to misconduct and serious misconduct.
- (c) MPI complied with the principles of natural justice throughout the investigation process.

¹¹ Above n 8 at [52].

¹² *NZ Tax Refunds Ltd v Brooks Homes Ltd* [2013] NZCA 90 at [12].

¹³ *Humphrey v Canterbury District Health Board* [2021] NZEmpC 59 at [7].

¹⁴ Employment Relations Act 2000, s 103A(3).

(d) MPI complied with its disclosure obligations pursuant to s 4 of the Act.

[34] On 25 June 2025 MPI wrote to Mr Khan to advise that two complaints had been received about his conduct, and MPI were investigating these complaints.

The first complaint

[35] The first complaint was made by RTH, a female employed by MPI in the position of quarantine officer. RTH alleged that on 10 June 2025, while undertaking inspection work at various transitional facilities in West Auckland, she felt “highly uncomfortable”, “uneasy”, “gross”, and “nervous” because:

- (a) Mr Khan made inappropriate and borderline homophobic comments.
- (b) Pressured RTH to clear a prohibited item for release to an importer.
- (c) Pressured RTH to go to Mr Khan’s friend’s house for lunch after she repeatedly told Mr Khan that she did not want to go, and she needed to go back to the office and continue working.
- (d) Mr Khan pressured RTH not to report his alleged conduct to MPI.

[36] The second complaint was made by WSK, a male employed by MPI. WSK alleged that on 12 June 2025 Mr Khan had raised his voice at him.

[37] Following the investigation, MPI concluded the only aspect of the first complaint that had been established, was that Mr Khan had pressured RTH to go to his friend’s house for lunch after she repeatedly told Mr Khan that she did not want to go and that she needed to go back to the office and continue working.

[38] The key points in Mr Khan’s response to the allegations are set out below:

- (a) RTH agreed to visit Mr Khan’s friend’s house during their lunchbreak.
- (b) RTH was comfortable during the visit.
- (c) Witness statements provided by family members who were present during the lunch suggested RTH was comfortable during the visit.

[39] MPI concluded that Mr Khan had not complied with clause 8.7 of the CA, because RTH felt unable to decline the invitation to attend his friend’s house for lunch, and this was because she was a new officer who had just completed her training, and she was working with Mr Khan for the first time.

[40] Clause 8.7 of the CA reads:

MPI and the PSA are committed to and will abide by the objectives and intentions of safety and wellbeing as specified under the Health and Safety at Work Act 2015, including all relevant codes of practice under the Act and as may be issued by MBIE. It is recognised that safety (encompassing wellbeing) in the workplace is a moral and legal responsibility for all MPI employees and will be actively promoted throughout the organisation.

[41] MPI's guideline for dealing with misconduct, and MPI's Code of Conduct (CoC), defines serious misconduct as:

Acts or omissions that constitute breach(s) of employment obligations which are fatal to the relationship of trust and confidence.

[42] MPI concluded that because Mr Khan had breached clause 8.7 of the CA, this amounted to serious misconduct.

[43] MPI also concluded that Mr Khan had not complied with the core values of MPI. MPI says that Mr Khan's behaviour did not demonstrate the values of being trustworthy, respectful or responsive.

[44] Mr Khan drove an MPI vehicle to his friend's house during work hours, to have lunch with his friend. MPI established that Mr Khan breached the Fleet Vehicle Policy (FVP), by driving a MPI vehicle for a personal reason unrelated to work activities. The FVP provides:

Fleet vehicles must be used for the purpose they were provided and within their design capabilities.

[45] MPI concluded that because Mr Khan breached the FVP, Mr Khan had engaged in behaviour amounting to serious misconduct.

[46] Mr Khan's friend's house was located approximately 20 minutes (driving time) away from the last work-site Mr Khan visited, before attending his friend's house.

The second complaint

[47] XYZ made a complaint to MPI alleging that Mr Khan had raised his voice at him when he made a reasonable request that Mr Khan continue his work at Office QO at approximately 5.30pm on 12 June 2025.

[48] Following the investigation, MPI concluded that Mr Khan had raised his voice at XYZ, and this behaviour was not consistent with MPI's values.

[49] The key points in Mr Khan's response are set out below:

- (a) He did not raise his voice at XYZ.
- (b) XYZ was upset that day, and not “his normal self”.
- (c) Mr Khan was doing a job that was fairly new to him and was finding it challenging at times.
- (d) There was additional context about his working relationship with XYZ that MPI should have considered.

[50] MPI concluded that Mr Khan’s behaviour was not consistent with its values and therefore concluded that Mr Khan’s conduct towards XYZ amounted to misconduct.

[51] In reaching its decision to terminate Mr Khan’s employment, MPI took into account a warning that was issued on 14 August 2024. This warning was on Mr Khan’s record for a period of 12 months from the date it was issued to Mr Khan.

[52] MPI also took into account Mr Khan’s length of service, which was approximately 18 years at the time of his dismissal.

[53] In summary, MPI terminated Mr Khan’s employment based on its conclusion that Mr Khan had engaged in serious misconduct by taking RTH to his friend’s house for lunch during work hours, this in turn was a breach of the FVP which also amounted to serious misconduct, and Mr Kahn had raised his voice at XYZ which was misconduct according to MPI.

Discussion – arguable case

[54] The threshold required for establishing an arguable case or serious question to be tried is not high, Mr Khan only has to establish his claim is not vexatious or frivolous.¹⁵

[55] In relation to the first complaint, it is not clear on what basis MPI established that Mr Khan had engaged in behaviour that could amount to serious misconduct as described in MPI’s policies.

[56] In relation to the second complaint, MPI said this behaviour amounted to misconduct. According to MPI’s disciplinary guide, normally a finding of misconduct would not result in dismissal.

¹⁵ *Jung v Asian Savour World Pty Limited* [2026] NZEmpC 82 at [22].

[57] In the termination letter, MPI states that Mr Khan breached the CoC by not behaving in a manner consistent with the values of being trustworthy, respectful and responsive. In the same letter, MPI also states that Mr Khan breached clause 8.7 of the CA.

[58] However, in the termination letter MPI does not refer to the categories of serious misconduct described in its policies or explain Mr Khan's behaviour in reference to the categories of serious misconduct.

[59] In the termination letter, MPI did not explain why a breach of the FVP amounted to serious misconduct or why other categories of misconduct (which generally would lead to a warning) were not considered.

[60] For example, behaviours described as misconduct in MPI's policies include:

...disrupting the workplace by acts of undesirable behaviour and/or intentional misuse of time and resources which prevent an employee from carrying out their duties; and any act or omission which impacts on an employee's ability to carry out their function and duties of their position.

[61] According to MPI's disciplinary guide, a prior warning can be considered as part of a decision to dismiss an employee, but only if there is an active warning addressing previous conduct of a similar nature, or an active warning of previous serious misconduct.

[62] The conduct in question at the time, involved an allegation of bullying with reference to an inappropriate comment directed towards another employee.

[63] There remains a live issue as to whether the previous conduct, which was subject to a warning, was conduct of a similar nature. MPI says the previous conduct also breached the CoC because Mr Khan did not abide by MPI's core values.

[64] MPI specified and classified certain categories of misconduct and serious misconduct in its policies, and therefore it was obliged to analyse objectively what it had concluded about Mr Khan's behaviour against these categories.¹⁶

[65] At this interim stage, the evidential basis and category of serious misconduct, as described in MPI's policies and relied upon by MPI in concluding Mr Khan's behaviour amounted to serious misconduct, remains unclear.

¹⁶ *Clark v Idea Services Limited* [2013] NZEmpC 155 at [122].

[66] It remains a live issue, to be addressed at the substantive investigation meeting, as to whether MPI, acting as a fair and reasonable employer, could terminate employment if the behaviour of Mr Khan did not amount to serious misconduct. Another relevant factor, as part of this assessment, is whether according to MPI's policies Mr Khan's behaviour amounted misconduct, and therefore a warning may have followed.

[67] Therefore, Mr Khan has an arguable case for unjustified dismissal.

Is there an arguable case for permanent reinstatement?

[68] Where an employee who succeeds in their claim of unjustifiable dismissal seeks reinstatement, that must be provided for wherever practicable and reasonable.¹⁷

[69] For permanent 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 achieved successfully.¹⁸

[70] When assessing reasonableness, the Authority must consider the effects of permanent reinstatement on relevant parties, including Mr Khan, MPI, other employees and any relevant third parties.

- [71] MPI says permanent reinstatement is not reasonable and practicable because:
- (a) There has been a breakdown in trust and confidence between MPI and Mr Khan.
 - (b) Mr Khan has made allegations of prejudice, discrimination, collusion and conspiracy against MPI staff, further undermining any prospect of rebuilding professional confidence.
 - (c) Mr Khan is in a high trust role, involving biosecurity in a public facing role.
 - (d) There are no alternative duties to which Mr Khan could be assigned.
 - (e) Mr Khan's skills are role-specific and cannot be readily redeployed.
 - (f) Mr Khan cannot lawfully perform the core functions of his role without a statutory warrant, which has been revoked.
 - (g) Reinstatement would be distressing for employees involved in the events leading up to the dismissal.

¹⁷ Employment Relations Act 2000, s 125(2).

¹⁸ *Christieson v Fonterra Co-Operative Group Limited* [2021] NZEmpC 142 at [39].

(h) Public and reputational risk to MPI if Mr Khan was to be reinstated to his position.

(i) The period of time between the dismissal and Mr Khan's application to the Authority for reinstatement.

[72] I consider each of these submissions in turn.

Loss of trust and confidence

[73] It is not uncommon for employers to record a loss of trust and confidence as a reason for not reinstating an employee.¹⁹

[74] It is important that claims regarding loss of trust and confidence are carefully considered.

[75] The basis for this loss of trust and confidence in Mr Khan, according to MPI, is his ongoing failure to accept responsibility for what occurred.

[76] Mr Khan accepts that he took RTH to his friend's house for lunch. He denies that this amounts to a breach of clause 8.1 of the CA or that he has breached any relevant MPI policy.

[77] Mr Khan does not accept responsibility, because he genuinely believed that RTH was agreeable to attend the lunch with him.

[78] Standing back objectively, I find MPI's claim that they had lost trust and confidence in Mr Khan, to not be made out on the facts.

[79] Mr Khan made an error of judgement, and he should have reflected further on his decision to attend his friend's house for lunch. However, Mr Khan's genuinely held belief regarding RTH being agreeable to attend the lunch does not establish a reasonable basis for MPI's conclusion that it has lost trust and confidence in him.

Mr Khan's claims of collusion by staff members

[80] During the investigation, Mr Khan raised concerns about the timing of the two complaints, and whether staff members had colluded with each other.

¹⁹ *Scott v Damar Industries Limited* [2025] NZEmpC at [84].

[81] Context needs to be considered. Mr Khan provided witness statements to MPI from three other family members who attended the lunch, all of which supported Mr Khan's view that RTH was comfortable during the lunch.

[82] Furthermore, it seems Mr Khan had difficulties in his working relationship with XYZ, and this is why he suggested that perhaps XYZ and RTH had discussed a complaint being made by RTH following the lunch trip.

[83] In summary, Mr Khan's comments need to be considered in context. He raised his concerns during an investigation, and these concerns were legitimate given the timing of the complaints.

[84] The impact on third parties is an important factor to consider when determining a reinstatement application, because it invariably involves a challenging process for all concerned and needs to be navigated carefully.²⁰ Parliament can be taken to have understood this when mandating reinstatement as the primary remedy.²¹

[85] I also note the rotational nature of Mr Khan's role. Mr Khan's role is mobile in nature and involves working at different facilities including the airport, other ports, mail inspection facilities, and on vessels.

[86] This is a factor which suggests there would less be impact on the two complainants if Mr Khan were reinstated to his role, because the role which is mobile and varied in nature might result in less interaction with the complainants on a daily basis.

[87] I accept Mr Khan's position with MPI involves a significant amount of trust and autonomy.

[88] MPI says the trust in the employment relationship has been eroded because Mr Khan did not take responsibility for his actions.

[89] On the way to Mr Khan's friend's house, RTH asked if they could stop at a café so she could purchase her own lunch. Mr Khan obliged. Mr Khan understood from this, that RTH was agreeable to attend his friend's house for lunch.

²⁰ *DQJ v The Commissioner of Inland Revenue* [2025] NZEmpC 10 at [56].

²¹ Above n 20 at [56].

[90] It doesn't follow that MPI can conclude that Mr Khan is not trustworthy on the basis of his belief about RTH being comfortable attending the lunch with him.

Mr Khan's skill set and his statutory warrant

[91] In his submissions, Mr Khan said he would be agreeable to working in another position and/or working from home, in the event he was reinstated.

[92] MPI makes the submission that redeployment into another role, to lessen the impact on the complainants if Mr Khan were reinstated, is not possible because of his specific set of skills.

[93] The starting point for a reinstatement application, is whether it is reasonable and practicable for the employee to be reinstated into the role they occupied prior to the dismissal.²²

[94] On that basis, redeployment is not a relevant consideration because Mr Khan is capable of returning to the role he held prior to the dismissal.

[95] MPI submit that Mr Khan is unable to perform his duties as a quarantine officer because he needs a statutory warrant in order to perform certain aspects of his role, and because Mr Khan is not "a fit and proper person", the Chief Quarantine Officer is unable to recommend Mr Khan's warranted appointment to the North Commissioner, Mr Inglis.

[96] Section 103(4) of the Biosecurity Act 1993 provides:

A person shall not be appointed as an inspector or an authorised person unless the person has appropriate experience, technical competence, and qualifications relevant to the area of responsibilities proposed to be allocated to that person.

[97] On the face of it, there does not seem to be a statutory impediment to Mr Khan obtaining a statutory warrant.

Delay

[98] On 15 October 2025, Mr Khan was represented by his union and raised a personal grievance for unjustified dismissal.

²² Employment Relations Act 2000, s 123(1)(a).

[99] The parties then attended mediation. On 27 March 2026, Mr Khan lodged his application for interim reinstatement in the Authority.

[100] Mr Khan instructed a new representative, and organised legal aid. I accept Mr Khan's explanation for the delay in lodging his application for interim reinstatement. I also note there is no evidence to suggest MPI has been materially prejudiced by the delay. The delay was not significant in length, and I note Mr Khan attended mediation with MBIE before lodging his application for reinstatement.

[101] Based on the untested evidence before the Authority, it is both practicable and reasonable to reinstate Mr Khan.

Does the balance of convenience favour reinstatement?

[102] The balance of convenience is a question which is concerned with the relative positions of the parties during the interim period. The issues for consideration include the adequacy of damages, preservation of the status quo, and the relative strength of the parties' cases.²³

[103] I have considered the cases referred to in MPI's submissions which support the proposition that where employee detriment is remediable, and employer risk is not, interim reinstatement is inappropriate.

[104] However, *Scott v Damar Industries Limited*, can be distinguished from this case, because in *Scott* the case involved the employee's direct manager and a break-down in their working relationship. This broken working relationship was a key concern of the business, which tipped the balance of convenience in favour the employer.²⁴

[105] In this case there were two complainants, but there is no evidence before the Authority to suggest the complainants are not able to work with Mr Khan if he was reinstated to his role, or that the working relationship between the complainants and Mr Khan is broken to the extent discussed in *Scott*.

[106] *FHE v Auckland Transport* can also be distinguished from this case.²⁵ This is because the allegations involved a parking officer who used an email address to harass

²³ *Stellar Elements New Zealand Limited v Amesbury* [2024] NZEmpC 36 at [104].

²⁴ Above n 19.

²⁵ *FHE v Auckland Transport* [2026] NZEmpC 73 at [17].

a former employer of Auckland Transport (AT), misrepresented himself as other staff members of AT, and sent blank infringement notice templates to his personal address, breaching the privacy of a member of the public.²⁶

[107] The balance of convenience tipped in favour of AT because the reputational and safety costs to AT and the complainant, would outweigh FHE's temporary loss of income.²⁷

[108] In contrast, Mr Khan's case does not involve the public and does not give rise to a risk to potential reputational harm to MPI if reinstatement was ordered. Further to this, the point of an interim injunction is to preserve the status quo.²⁸

[109] Considering all of these factors, the balance of convenience lies with Mr Khan.

Where does the overall justice lie?

[110] There is arguable case for unjustified dismissal and an arguable case for permanent reinstatement.

[111] Mr Khan was employed for 18 years by MPI. The decision to terminate his employment has significantly impacted Mr Khan's financial situation. MPI acknowledges the potential financial impact of the dismissal on Mr Khan.

[112] Damages would not be an adequate remedy. Mr Khan has developed skills and experience as a quarantine officer. It is a reasonably unique role. Money is a poor substitute for the loss of a job.²⁹

[113] I am satisfied that overall justice favours interim reinstatement.

Summary and orders

[114] I order MPI to reinstate Mr Khan to the payroll within 5 working days of the date of this determination.

[115] I order MPI to reinstate Mr Khan to the position he was in prior to his dismissal, on an interim basis, within 7 working days of the date of this determination.

²⁶ Above n 25 at [17].

²⁷ Above n 25 at [87].

²⁸ *Vegepod NZ Ltd v Lowe* [2025] NZEmpC at [13].

²⁹ Above n 25 at [73].

[116] The parties are directed to mediation. Mediation is to occur within 21 days of the date of this determination.

[117] A case management conference is to be convened to progress this matter to a substantive investigation meeting.

[118] Costs are reserved.

Simon Greening
Member of the Employment Relations Authority