

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2026] NZERA 329
3278839

BETWEEN ELSIE MIDDLETON
 Applicant

AND ACCIDENT COMPENSATION
 CORPORATION
 Respondent

Member of Authority: David G Beck

Representatives: Jenny Beck and James Sawers, counsel for the Applicant
 David Traylor, counsel for the Respondent

Investigation Meeting: 17 July 2025 and 16 and 17 December 2025 in Dunedin

Submissions Received: 5 February 2026 and 2 March 2026 from the Applicant
 13 March 2026 from the Respondent

Date of Determination: 28 May 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Elsie Middleton is currently employed by the Accident Compensation Corporation (ACC) in Dunedin as a senior workflow and triage co-ordinator. Ms Middleton is alleging three personal grievances, that:

- i. Ms Middleton was unjustifiably disadvantaged by the actions and/or omissions of ACC in assessing her 2022 application for a vacant workforce planner role;

- ii. Ms Middleton was unjustifiably disadvantaged by the performance rating given to her for the 2021/2022 period in her technical triage role;
- iii. Ms Middleton was unjustifiably disadvantaged when ACC allegedly induced Ms Middleton to change roles within the triage team without being provided sufficient and relevant information about the likelihood her previous technical triage role was under the threat of being disestablished.

Ms Middleton seeks separate compensatory remedies for each of her identified grievances and legal costs.

The Authority's investigation

[2] The pathway to this determination is briefly described below as illustrative of the complexity of presentation this matter has entailed. Overall, delays have been unfortunate and for a variety of genuine reasons. Throughout the dispute it is acknowledged that the parties have maintained an ongoing employment relationship in which Ms Middleton's performance in her current role has latterly been recognised as 'excellent'.

[3] Ms Middleton made an initial application to the Authority on 15 February 2024, and the parties were directed to mediation after a teleconference on 29 April 2024. The mediation occurred in late June 2024. The matter was not resolved in mediation as advised by Ms Middleton's counsel on 21 August. The Authority then scheduled a further teleconference on 16 September for 5 November to progress the matter, but Ms Middleton was unable to confirm witness numbers and the matter was initially adjourned until 26 November but the parties were unable to agree on a number of witness issues and a further teleconference did not occur until 9 December in which the Authority directed that Ms Middleton prepare a memorandum detailing witnesses she intended to call or be summoned. Unfortunately, this led to further delays as relevancy of witnesses was disputed. The Authority scheduled a further teleconference on 12 February 2025, but this did not proceed due to Ms Middleton's counsel's availability.

[4] A further delay ensued over witness summoning issues. This led to the Authority resolving in a communication of 12 March, to signal an investigation meeting needed to be set down and in the interim, both parties witnesses needed to be identified. After some further

delay of the parties, an investigation meeting was scheduled on 16 and 17 July 2025 in Dunedin. Unfortunately, due to an unforeseen flight issue delaying the respondent's counsel, 16 July was vacated and the investigation meeting started on 17 July. Ms Middleton's evidence was not completed until late afternoon, and the investigation meeting was adjourned part heard.

[5] Scheduling the reconvened investigation meeting to deal with ACC's evidence was problematic and did not occur until 16 and 17 December 2025. Thereafter at the parties' requests, submissions and further information provision was timetabled. The last submission was provided on 13 March 2026.

[6] Elsie Middleton provided a written brief of evidence and attended the investigation meetings in Dunedin to elaborate on her written evidence and answer questions. For ACC, six of Ms Middleton's managers likewise provided written evidence and attended the investigation meeting (two by audio visual links) to answer questions. I identify the co-workers by the general positions they held in relation to Ms Middleton at the time the personal grievances arose.

[7] Pursuant to s 174E of Employment Relations Act 2000 (the Act), I make findings of fact and law and outline conclusions to resolve the disputed issues and make orders, but I do not record all evidence. I, likewise, have carefully considered the submissions received from both parties and refer to them where appropriate and relevant.

Issues

The broad issues the Authority must determine arising from Ms Middleton's claims are:

- i. Whether any actions; omissions or unfair behaviour of the Accident Compensation Corporation, have caused Ms Middleton to be unjustifiably disadvantaged in her employment and/or did the employer breach any ongoing duties of good faith owed to Ms Middleton.
- ii. If any remedies are awarded, should they be reduced under s 124 of the Act, if it is found Ms Middleton contributed to the situation giving rise to her personal grievance claims.
- iii. How costs are to be dealt with.

What caused Elsie Middleton's employment relationship problems?

[8] Ms Middleton who formerly worked for: a leading bank (latterly as a client business manager) and then in the aged care sector; commenced employment with ACC in July 2013. Initially Ms Middleton worked in ACC's Dunedin office call centre and then progressed to a position in the treatment and support team before joining the triage team in November 2021, as a senior workflow and triage co-ordinator (STWC).

[9] The STWC technical role was unique and managed initially by the workforce management team who at the time oversaw workforce planners and similar STWC clinical roles. In June 2022, Ms Middleton applied for and was interviewed for a vacant workforce planner role (one of four vacancies) but her application was communicated as being unsuccessful on 13 June.

First personal grievance

[10] Utilising a lawyer, in a letter of 8 September 2022, Ms Middleton identified two broad personal grievances alleging she had been unjustifiably disadvantaged by ACC in her application for the workforce planner role and that ACC had 'failed to accurately or thoroughly to justify' her 2021/2022 performance rating. The latter concerned a 22 June 2022, ACC manager's communicated evaluation: that Ms Middleton had overall "successfully achieved" in the tasks she had been allocated. Ms Middleton challenged this assessment and made a submission to an internal moderator. The moderator upheld ACC's original rating and on 21 July, Ms Middleton's says her manager communicated the decision and indicated she was not rated higher because she needed to demonstrate an additional contribution to the wider workforce management team. Ms Middleton challenged this decision and sought a further detailed, explanation. This was provided by the manager on 25 July, giving examples of higher-level performance factors not yet demonstrated and concluding with:

You have done a good job in your role and have delivered a great result – something that is wanted from someone in the role. The difference is that there has not been higher than that or anything above and beyond (which is also perfectly fine given your tenure within this role not even being 12 months).

[11] In first summarising Ms Middleton's concerns about the unsuccessful workforce planner application, the personal grievance letter asserted that ACC had failed to:

- i. prioritise its core values that included a commitment to developing and supporting employees in their career aspirations;
- ii. provide sufficient training opportunities for Ms Middleton's career advancement;
- iii. adhere fully to its own recruitment process;
- iv. provide Ms Middleton with a safe, inclusive and respectful work environment.

[12] On the second personal grievance it was suggested ACC had improperly assessed Ms Middleton's individual performance and concerns were summarised as ACC:

- i. not accurately describing the reasoning behind their rating decision;
- ii. not providing adequate management support during the period leading up to the assessment;
- iii. not recognising the systemic changes Ms Middleton had suggested and implemented.

[13] Ms Middleton's lawyer also expanded on the above themes and sought mediation as a dispute resolution mechanism should ACC not concur with Ms Middleton's views.

ACC response

[14] In a contrasting response of 10 October 2022, denying that ACC's actions had disadvantaged Ms Middleton, ACC's senior employment relations consultant noted in summary, for the workplace planner application that:

- i. the workplace planning team manager had met with Ms Middleton prior to her application and described what the role entailed (emphasising stakeholder management was a critical factor);
- ii. the team manager was encouraging of Ms Middleton's attributes;
- iii. as the role was relatively new, the team manager highlighted it was important that candidates demonstrate people management skills.

[15] Ms Middleton was told she was competing with ten other candidates, and ACC was of the belief their recruitment process was in accord with ACC values; fair and transparent but, unfortunately Ms Middleton was unsuccessful in her application. The response noted that

following the interview, the team leader (who was on the interview panel) gave Ms Middleton frank and constructive feedback on the impression Ms Middleton had made to the interview panel. In response to Ms Middleton's concern about her lack of training and development for advancement, the ACC response noted Ms Middleton was yet to complete a year in her current role and that ACC had engaged in coaching sessions to provide a forum for discussion of her career aspirations.

[16] In respect of Ms Middleton's claim that ACC failed to provide a "safe, inclusive and respectful workplace", ACC countered they believed this was not the case, but they indicated a willingness for further dialogue on the issue.

[17] Turning to the 2021/2022 performance assessment, ACC noted Ms Middleton had only been in the role under scrutiny for eight months at the time of the assessment and was in their view, not experienced in all aspects of the role; they noted the assessment had been otherwise positive and Ms Middleton at the time had despite seeking moderation, not utilised a formal internal review process.

[18] While noting the significant difference in each other's views, ACC offered to directly meet with Ms Middleton or to utilise mediation as requested. I observe this was objectively a constructively worded response.

[19] The parties attended mediation on 30 November 2022, but from Ms Middleton's perspective matters remained unresolved. In a 1 December email to ACC's chief executive officer (CEO), Ms Middleton requested the CEO direct the people and culture team "to conduct a full and independent review of my case". The CEO responded on 6 December, affirming that she had asked ACC's manager of employment relations to review Ms Middleton's concerns and they would contact Ms Middleton "in due course".

[20] In a letter of 22 December, the manager of employment relations, first traversed the extensive material Ms Middleton had provided for her review (including a personal impact statement submitted during the recent mediation) and noted she had interviewed Ms Middleton during the review process. The reviewer concluded that:

My findings are that the process completed by ACC in response to your personal grievance, was appropriate, thorough and robust so that ACC could form a view and respond to the claims as presented in your personal grievance letter. ACC's response is set out in its letter to you dated 10 October 2022. At this stage in the process of

your personal grievance, there are no further or additional materials, documentation or information to provide you.

[21] In essence, ACC's own review upheld their position but acknowledged there were significant differences. The manager of employment relations noted ACC remained committed to resolving matters and suggested a return to mediation as an option. While acknowledging the review was not Ms Middleton's expected outcome, counselling or any other specialist support was also offered.

Ms Middleton switches roles

[22] Late in 2022, it had been announced that the STWC clinical roles would return to their former home in the clinical services management group, but Ms Middleton's technical role remained located as was.

[23] Ms Middleton says there was then a period of uncertainty and recalled being told in March 2023 that her STWC technical role may be disestablished. Fearing an outcome where she would be made redundant, Ms Middleton says she resolved to apply and was successful, in obtaining a STWC role in the clinical triage team, commencing on 12 July 2023.

Second personal grievance

[24] In a letter of 6 August 2023, Ms Middleton identified she was raising a further personal grievance of alleged unjustified disadvantage. The gist of the new personal grievance was Ms Middleton's belief that her managers' had as a "ruse", inappropriately without due process, orchestrated 'a ghost review' of her STWC technical role in order to persuade Ms Middleton to vacate the role so ACC could then proceed to review the vacant technical role without the need to formally disestablish it.

ACC's response

[25] In a letter of 18 September, addressing Ms Middleton's concerns, the same ACC manager of employment relations that conducted the review of ACC's handling of Mr Middleton's first personal grievance (now occupying the role of ER Lead People Excellence), provided a response to the second personal grievance. After first setting out ACC's disappointment that Ms Middleton viewed herself as being the subject of "an orchestrated ruse" to force her to apply for a new role to avoid disestablishment, the response sought to reassure

Ms Middleton this was not the case. However, this was prefaced by a frank view that ACC believed:

It is now increasingly clear to us that you have a significant lack of trust and confidence in ACC, given the way in which you now appear to be viewing and making connections between ACC actions and decisions. We are currently at a loss to understand whenever you might in future form a view that the organisation is out to get you how this can be effectively addressed, in a way that will avoid further claims from being raised whenever you might in future form a view that the organisation is 'out to get you' (which for absolute clarity is not the case).

[26] Despite further expressing a bleak view on potential resolution, ACC indicated they were willing to return to mediation “or to consider any other suggestions you have with regards to resolution.” Objectively, I observe the response was reasonable (comprehensively addressing detailed issues Ms Middleton raised) and patient in its approach to focusing on how the employment relationship could be improved.

[27] Ms Middleton did not provide evidence that she formally responded to the above options and did not suggest any other resolution options but then engaged in significant correspondence seeking information related to a review of the appropriateness of her technical triage position remaining in place.

[28] As noted above on 12 July 2023, after a period of annual leave, Ms Middleton commenced a STWC role in the clinical triage team. In a farewell email to several technical triage team members of the same day, Ms Middleton expressed what she saw as the true reasons for having to depart the team being a perception she had been forced out. Of particular concern to Ms Middleton was that she had not been provided with statistical data and the rationale behind a proposal to disestablish her technical triage role that led to her perceiving the only way to preserve her income was to apply to join the clinical triage team.

[29] ACC accept there was an unfortunate failure to provide information to Ms Middleton but contends this did not disadvantage Ms Middleton as no proposal to disestablish the technical triage role proceeded and the exploration of removing the role while Ms Middleton occupied it, did not go beyond a preliminary discussion and information gathering stage. ACC contended that Ms Middleton’s then manager did discuss the possibility that the role may change with her but had emphasised such discussion was not at a formal stage and if firmed up into a proposal, formal consultation with Ms Middleton would have ensued. The manager involved gave compelling evidence to this effect, recalling she had specifically discussed with

Human Resources prior to approaching Ms Middleton in March 2023, what messaging she should engage in. This was, the manager recalled telling Ms Middleton it was likely that clinical triage roles would “sooner or later” return to the clinical triage team and that the technical triage role was under review for best placement options, but no proposal had been finalised.

[30] ACC says Ms Middleton was not disadvantaged (financially or otherwise) by her then choosing to opt for a vacant STWC role in the clinical triage team.

Directions of the Authority

[31] After Ms Middleton made an application to the Authority in February 2024, during a case management teleconference of 29 April 2024, the Authority identified that this matter concerned a complex and evolving, existing employment relationship problem and that the claims identified and remedies sought may not best resolve the employment relationship issues. Specifically, the Authority noted an initial predominant remedy seeking the establishment of a “Personal Grading” for Ms Middleton, was beyond the reach of remedies contained in the Employment Relations Act 2000 and that the residual grievances involved the exercise of employer discretions that may not be amenable to challenge on a substantive basis. As a result, with the consensus of both counsel, parties were directed to a second mediation. To assist the process of mediation I directed that counsel beforehand to prepare an agreed statement of issues to be discussed at mediation and ensure that all participants had the ability to resolve matters in good faith. However, matters remained unresolved.

[32] In her evidence Ms Middleton asserted the ongoing failure to resolve the matters she has identified has had a significant ongoing impact on her mental health and well-being. Unchallenged oral and documentary evidence did not displace this submission. I however note Ms Middleton only relatively recently (December 2024), sought professional assistance to enable her to cope with processing and dealing with the concerns she has raised with ACC and ACC has consistently offered to facilitate counselling support.

Assessment

[33] Despite the Authority expressing misgivings about the issues as initially framed, the statutory definition of a disadvantage grievance at s 103(1)(b) of the Act, allows an employee to bring a personal grievance if the employee can establish that their employment, or one or

more conditions thereof, is or are affected to the employee's disadvantage by some unjustifiable action of the employer. The issue of whether the action in question is unjustified requires an analysis of the test of justification set out in s 103A of the Act. The Court of Appeal in *Tranz Rail Ltd v Rail and Maritime Transport Union (Inc)* has noted "conditions" of employment is a well understood concept and includes all the rights, benefits and obligations arising out of the employment relationship and the concept is necessarily wider than just the terms of the employment agreement.¹

[34] In addition, the obligation contained in s 4(1A)(b) of the Act prevail, requiring the parties to be active and constructive in establishing and maintaining a productive employment relationship, in which they are, amongst other things responsive and communicative.² Within this legislative framework and having regard to the evidence and submissions provided, I determine the following in the order they were raised by Ms Middleton.

The unsuccessful workforce planner application

[35] Conceptually, Ms Middleton faces significant legal barriers in establishing that her failure to be appointed to the workforce planning role can be remedied. The Authority and courts have consistently held that it is not normally their place to interfere in internal selection decisions unless it can be established that a fair and reasonable selection process and application of an unbiased selection criteria have been departed from or there is evidence of discriminatory practices.³

[36] Ms Middleton asserted her grievance had two elements:

- i. On being encouraged to apply for the role, there was insufficient coaching by management and incomplete advice about the requirements of the role;
- ii. The selection process adopted was flawed and procedurally unfair.

[37] On the first issue, I am not persuaded of the extent of the claimed obligation being transgressed can amount to a disadvantage grievance and the evidence proffered, although showing Ms Middleton expressed a desire to apply for the planning role, did not amount to anything tangible to suggest she was not encouraged to do so. I was particularly struck by

¹ *Tranz Rail Ltd v Rail and Maritime Transport Union (Inc)* [1999] 1 ERNZ 460 (CA) at [26].

² See for example *Spotless Facility Services NZ Ltd v Mackay (No 2)* [2017] ERNZ 44 at [51].

³ See for example *NZ Building Trades Union Hawkes Bay Area Health Board* [1992] @ ERNZ 897 at [93].

ACC management's evidence that at the time Ms Middleton apprised her manager of her aspirations, she was only eight months into her appointment in the STWC role which objectively in response, was not unreasonable for her manager's focus to be she develop in her core role first as well as encouraging her to apply for the vacant planner role.

[38] On the second issue of alleged deficiencies in the selection process, ACC contend they broadly abided by their own internal selection policies. Crucially without engaging in the minutiae of the policy concerned I was convinced from evidence proffered that all candidates were treated the same, asked identical questions; the interviews focussed on 'behavioural competence' matters and, while the approach adopted was necessarily heavy on subjective factors (including impressions gained during interviews), there was no indication of a biased or discriminatory approach being adopted. I also accept ACC's contention that not utilising a numerical scoring system to contrast candidates, did not transgress their own policy and that broadly their approach did consider the values of the organisation.

[39] I accept that there was evidence that a successful candidate's internal reference check may not have been completed but cannot see the relevance of this to the properly conducted employer inquiry as to whether Ms Middleton met the requirements of the role. I note the employer assessment was Ms Middleton did not at the time, meet the requirements of the role and they engaged with her subsequently to constructively and sensitively explain the reasoning behind that assessment.

[40] Here the evidence suggested that Ms Middleton was naturally upset by her perception of the successful candidates' attributes compared to her own. Such a comparative exercise however, is not something the Authority can fairly engage in when no evidence of bias or discrimination has been established. Ms Middleton's criticism of the assessment approach ACC undertook, and its perceived lack of rigour does not establish that she was treated differently to other candidates.

Finding

[41] I find on the evidence, ACC demonstrated they adopted a fair and reasonable selection process and Ms Middleton has not established she was disadvantaged by her employer's actions.

Ms Middleton's performance assessment

[42] Again, conceptually, Ms Middleton faces a greater hurdle to the one described above, in that the Authority interfering in an employer performance assessment rating, howsoever subjectively undertaken, is usually inappropriate unless there is evidence of unfairness in the application of known criteria.

[43] To be blunt, the evidence did not in all the given circumstances, disclose any unfairness in the way Ms Middleton was assessed. This included the predominant and objectively reasonable factor advanced by ACC, that Ms Middleton had been in the role under assessment for an insufficient period to demonstrate a higher rating. I find in providing feedback to Ms Middleton on the assessment scoring, ACC management succinctly set out the reasoning of their assessment and exercised caution in affirming and moderating their approach. In such a situation I am unable to 'step into the employer's shoes' and determine an alternative assessment.⁴ In the event I find the performance rating was objectively positive and appropriate in the circumstances.

Finding

[44] Ms Middleton was not disadvantaged by the scoring of her 2021/2022 performance assessment.

The communication of the potential disestablishment of Ms Middleton's technical role

[45] It is useful to state before determining the matter what Ms Middleton is claiming as conceptually there is more scope for the Authority to assess ACC's actions than the two previous matters. In submissions Ms Middleton's counsel asserted she was of the view that:

ACC deliberately withheld relevant information about the potential disestablishment of the Technical Triage Role with the intention of causing her to commit to a new role in Clinical Triage, as this suited ACC's plans for the future reorganisation of the business.

[46] Before assessing the above assertion, in terms of any actual disadvantage occurring, I do have to note that had ACC disestablished Ms Middleton's technical role they would have been obliged to redeploy her into a similar available role, which logically was the role STWC

⁴ See the Court of Appeal authority *Fletcher v Chief Executive, Statistics New Zealand* Unreported, CA 153/06 at [24].

clinical triage role she accepted. In terms of material disadvantage in this regard, none has occurred due to the remuneration range (and objectively career prospects) for the positions being unchanged. In the event, the position was not formally disestablished, and the sole focus of Ms Middleton's concern must be her claim that a 'ghost' review was conducted with ill intent.

[47] The evidence showed significant communication deficiencies including the non-provision of requested information on data gathered that led Ms Middleton to believe her technical role was under threat and that would naturally cause her anxiety about her ongoing job security. The distress caused objectively should have been transitory, but Ms Middleton has persisted in attributing ill motive to the actions of ACC management.

[48] On hearing the evidence of ACC managers involved in the initial thinking of a review of the STWC technical role it was clear that several confusing factors including the timing of the review (at the end of the year); the collection of unverified data; the number of managers involved; the co-existence of an opportunity for Ms Middleton to retain her role in the clinical team and that at the time Ms Middleton was engaged in two other personal grievances and evidently losing trust in her employer, came into play.

[49] A further factor was I accept two managers evidence that in bringing to Ms Middleton's attention at an early stage (21 March 2023), that there was a potential vacancy in clinical triage was motivated only by a genuine concern that Ms Middleton be given options in a comparable position to the one she occupied. The assertion that information was deliberately withheld from Ms Middleton was not established in evidence that showed ACC to be inadvertent rather than deliberately misleading.

[50] What seems to have occurred is Ms Middleton wrongly perceived that it was inevitable her role was to be disestablished and given the state of the employment relationship, imputed ill motive on her employer's behalf. Given the state of this relationship included ACC manager's acute awareness of communication difficulties, it was probably in hindsight more prudent to have communicated matters in writing rather than orally, but I accept ACC managers evidence that they were attempting to be transparent with Ms Middleton.

[51] Logically, I observe if ACC had an ill motive, they would not have given Ms Middleton the opportunity to move into clinical triage undertaking essentially the same role and then

disestablished the technical role Ms Middleton occupied, thus ending the employment relationship due to redundancy.

[52] In the event, as the disestablishment did not proceed and Ms Middleton opted for a comparable role, there is no detriment established. This also by contrast despite the tension in the relationship, evidenced that ACC recognised Ms Middleton's capability and remained committed to an ongoing employment relationship. This view is also reinforced by the tenor of correspondence I have viewed that concentrated on significant efforts to engage in dialogue with Ms Middleton to repair the ongoing employment relationship.

Finding

[53] Ms Middleton has not established that ACC deliberately withheld information with the purpose of compelling her to apply for an alternative role.

Conclusion

[54] As Ms Middleton has not established overall that ACC acted in an unfair or unreasonable manner or that they engaged in deliberately misleading conduct breaching good faith obligations, the Authority cannot grant any of the remedies sought.

Recommendation

[55] In view of the lengthy nature of this dispute and the fact that the parties are still in an existing employment relationship, the Authority utilising its discretion under s 123(1)(ca) of the Act, recommends that the parties engage in further mediation aimed at constructively establishing how the employment relationship will continue in the light of the above findings.

Costs

[56] Costs are reserved.

[57] The parties are encouraged to resolve any issue of costs between themselves. The Authority considers some thought should be given in all the prevailing circumstances, to agreeing to let costs lie where they fall.

[58] If the parties are unable to resolve costs, and an Authority determination on costs is needed, ACC may lodge, and then should serve, a memorandum on costs within 28 days of the

date of issue of this determination. From the date of service of that memorandum Ms Middleton will have 14 days to lodge any reply memorandum. Upon request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[59] The parties can expect the Authority to determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.⁵

David G Beck
Member of the Employment Relations Authority

⁵ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1