

[2] Ms Mandich says there is an arguable case her dismissal was unjustified. She raised concerns about safety in the workplace and does not consider these have been addressed adequately. After raising concerns Ms Mandich says she was disadvantaged by a number of CAA's unreasonable decisions and actions that were retaliatory in nature.

[3] This culminated in an investigation into the employment relationship that concluded there had been a complete breakdown in the relationship which ultimately resulted in Ms Mandich being dismissed for incompatibility. CAA say Ms Mandich could not let go of historical concerns that had been addressed. She had made further complaints against individuals and her direct line manager including threats to involve them personally in her employment concerns with CAA. Two CAA employees also made counter complaints about Ms Mandich's conduct in the workplace.

[4] Ms Mandich says what has eventuated is not a one-sided story and refers to a number of things including a covertly recorded meeting with a manager, breaches of her privacy, a request for her to undergo a medical assessment, removal of meaningful work and a failure to address her concerns about bullying in the workplace.

[5] CAA does not accept Ms Mandich has an arguable case that she was unjustifiably dismissed or that reinstatement would be awarded should she be successful with her personal grievance claims. The state of the employment relationship was such that it was irretrievably broken down based on the cumulative history involving numerous incidents. The decision to terminate Ms Mandich's employment was based on a careful assessment of the situation which existed between Ms Mandich, her people leaders and others at CAA. That decision was not rushed and followed a fair and reasonable process and there is no arguable case for unjustified dismissal.

[6] CAA also takes the position Ms Mandich does not have reinstatement available to her as a remedy under the recent amendments to the Employment Relations Act 2000 (the Act) which came into force on 21 February 2026. If that was the case there could be no arguable case for reinstatement. Even if that was not correct CAA does not accept Ms Mandich's arguments regarding interim reinstatement and say the balance of convenience and overall justice of the case also favour it.

The Authority's investigation

[7] The parties were directed to urgent mediation but were unsuccessful in resolving the matters between them. Affidavits were filed in support of, and in opposition to, the application for interim reinstatement. The affidavit evidence is untested. There is no requirement for the Authority at this stage to resolve any disputes or conflicts that are apparent in the affidavit evidence. The background is set out from the untested affidavit evidence and the documents attached to the affidavits and lodged with the Authority.

[8] Affidavit evidence was lodged from Ms Mandich, Dianne Cooze, Bryon Mandich and Stephen Pawson. On behalf of CAA affidavits in reply were lodged from Keith Manch, Paul Fantham, Michelle Chandler, Dean Winter, Kym Kiri and Keith McGregor.

The Amendments to the Act

[9] On 21 February 2026, ss 123B and 123C were inserted into the Act and either limit or remove the remedies of compensation and interim reinstatement if an employee has contributed to the situation that gave rise to their personal grievance. Specifically, s 123C of the Act removes reinstatement and compensation as remedies if there is contributing behaviour by the employee regardless of whether it reaches a threshold of seriousness. The effect of s 123B is that no remedies are available if an employee's contributing behaviour amounts to serious misconduct.

[10] Ms Mandich was dismissed on 4 February 2026. The amendments came into force on 21 February 2026 after her dismissal. On 16 February she raised a personal grievance with her employer and on 26 February 2026 she lodged her grievance claims and an application for interim reinstatement in the Authority.

[11] CAA's submissions are twofold as to why the remedy of reinstatement is not available to Ms Mandich because of the amendments to the Act. The first is that the amendments were in force before Ms Mandich commenced her proceeding which means reinstatement had already been removed in circumstances where there is contributing conduct. When considering amendment or repeal of legislation it was submitted the relevant event for Ms Mandich is the date the Authority or court

determines the dismissal was unjustified (because reinstatement is a discretionary remedy) or in the alternative the date the proceeding was lodged.

[12] The relevant date is key to CAA's submission because that determines whether there is an existing legal position prior to the amendment because under s 33 of the Legislation Act 2019 an existing "right" or "interest" or "legal position" is not affected by repeal or amendment of legislation. CAA says Ms Mandich did not have an existing right or legal position prior to the amendments coming into force which means the amendments in ss 123B and 123C apply to her.

[13] The second part of CAA's submissions is that under new amendments, it can be shown Ms Mandich contributed to her dismissal meaning she would not be eligible to be reinstated. Therefore, there can be no arguable case for interim reinstatement.

[14] Submissions for Ms Mandich were brief. If CAA's submissions were accepted a new process of assessing contribution at a preliminary stage would be introduced and that could not be what Parliament intended. It was submitted the Authority has absolute jurisdiction in relation to both interim reinstatement and reinstatement and the law is clear on how contribution is assessed.

Analysis

[15] The issue is whether Ms Mandich's interim reinstatement application is affected by the recent amendments to the Act. There is nothing in the legislation to indicate ss 123B or 123C of the Act were intended to have a retrospective effect or that the date they were intended to come into force is any date other than 21 February 2026.

[16] Section 32 of the Legislation Act 2019 provides for the general rule that legislation does not have retrospective effect and does not affect an existing right:

32 Effect of repeal or amendment generally

- (1) The repeal or amendment of legislation does not –
 - (a) affect the validity, invalidity, effect, or consequences of anything done or suffered:
 - (b) affect an existing right, interest, title, immunity, duty, status, or capacity:
 - (c) affect an amendment made by the legislation to other legislation:

- (d) affect the previous operation of the legislation or anything done or suffered under it:
- (e) revive anything that is not in force or existing at the time the repeal or amendment takes effect.

...

[17] Section 33 of the Legislation Act 2019 addresses the effect of legislative amendments on existing rights and proceedings:

33 Effect of repeal or amendment on existing rights and proceedings

- (1) The repeal or amendment of legislation does not affect –
 - (a) the completion of a matter or thing that relates to an existing right, interest, title, immunity, duty, status, or capacity (a legal position); or
 - (b) the commencing of a proceeding that relates to an existing legal position; or
 - (c) the completion of a proceeding commenced or in progress under the legislation.
- (2) Repealed or amended legislation continues to have effect for the purposes stated in subsection (1) as if the legislation had not been repealed or amended.

[18] The meaning of “right” under ss 32 and 33 of the Legislation Act 2019 has been previously addressed.¹ The “right” or cause of action need not have matured into formal legal relief and it is an established rule that the point in time when a “right” or cause of action accrues is when the thing happened that gives rise to the legal proceeding, so long as all the facts are present. As was noted in *Bacon v New Zealand Post Ltd*:²

[93] In general, a cause of action accrues when every fact exists which it would be necessary for the plaintiff to prove in order to support the plaintiff's right to a judgment. This definition was formulated as long ago as 1897 in *Coburn v Colledge* [1897] 1 QB 702 as followed by the Court of Appeal in New Zealand in *Williams v A-G* [1990] 1 NZLR 646 (CA) at p 678 and *Williams v A-G* [1999] 2 NZLR 709; (1999) 13 PRNZ 420 (CA), at p 738; p 449. It was applied by this Court in *Leask v Air NZ Ltd* unreported, Colgan J, 3 October 2000, AC25A/00. This Court in *Leask* also relied upon the following passage from *28 Halsbury's Laws of England*, Limitation of Actions, at para 622:

“a cause of action normally accrues where there is in existence a person who can sue and another who can be sued, and when there are present all the facts which are material to be proved to entitle the plaintiff to succeed”

¹ See for example: *Dental Council of New Zealand v Bell* [1992] 1 NZLR 438 and more recently *Halse & Anor v Hamilton City Council* [2026] NZEmpC 100 at [26] citing *Bacon v New Zealand Post Ltd* [2003] 2 ERNZ 570 at [93] and *McMillan v Qube Ports NZ Ltd* [2026] NZERA 262 at [30] – [32].

² Above n1, at [93].

[19] CAA's submission that the relevant event for determining whether the amendments apply is either when the Authority or court determines the matter or when proceedings were commenced is not accepted. Termination is an essential element of the cause of action of unjustified dismissal. Ms Mandich's cause of action accrued when she was dismissed. Also relevant is the fact her dismissal personal grievance claim was raised with her employer on 16 February 2026 and four disadvantage grievances had also been raised at various stages in 2025, also all prior to the amendments.

[20] The fact that reinstatement is a discretionary remedy or that a remedy only flows once a personal grievance claim has been determined also does not change the position. The long standing and well-established position regarding when a cause of action accrues is set out above. The emphasis is on the point in time when the material facts exist that would allow a plaintiff to succeed with their claim, not the point at which the claim is found to be made out or proven or when a proceeding is commenced.

[21] Therefore, the remedies available for Ms Mandich's unjustified dismissal are those that were in force at the time Ms Mandich's right to the cause of action of an unjustified dismissal and unjustified disadvantages. occurred. The relevant date for the dismissal grievance is the date of Ms Mandich's dismissal on 4 February 2026.

[22] The only event that occurred after the 21 February 2026 was the commencement of Ms Mandich's proceeding in the Authority. In accordance with the well-established position in law set out above Ms Mandich's dismissal personal grievance cause of action accrued on 4 February 2026. The new amendments were not in force at that time and reinstatement is available to her as remedy in accordance with the Act as it was prior to 21 February 2026.

Interim reinstatement

[23] The approach to interim injunctions is well-established.³ Ms Mandich must establish there is a serious question to be tried in relation to the claim her that her dismissal was unjustified and the claim for permanent reinstatement.

³ *NZ Tax Refunds v Brooks Homes Ltd* [2013] NZCA 90.

[24] The Authority is also required to consider where the balance of convenience between the parties lies. This involves consideration of the impact on the parties of the granting of, and the refusal to grant, the interim order. Finally, the overall interests of justice are considered, standing back from the detail required by the earlier steps.

[25] Reinstatement is the primary remedy under s 125 of the Act. Section 125(2) of the Act applies if the remedies sought by an employee include reinstatement and it is determined that the employee has a personal grievance. In those circumstances the Authority must provide for reinstatement wherever practicable and reasonable, irrespective of whether any other remedy is provided.

[26] While the power to order interim reinstatement is discretionary the assessment of whether there is a serious question to be tried requires evaluation by the decision maker. When considering whether to make an order for interim reinstatement, the Authority must apply the law relating to interim injunctions having regard to the object of the Act.⁴ The object of the Act is to build productive employment relationships through the promotion of good faith in all aspects of the employment environment and of the employment relationship.

Arguable case for unjustified dismissal

[27] Ms Mandich says her dismissal was both procedurally and substantively unjustified. She had genuine and serious concerns about workplace safety that were not addressed adequately by CAA. From late 2024 she became increasingly concerned by what she says was CAA's unreasonable actions towards her including privacy breaches, suspension from duties, removal of entitlements and retaliatory complaints raised against her. She says she was entitled to invoke formal procedures to challenge CAA and members of its management team. The fact that she did so does not provide the basis for a finding for incompatibility.

[28] Ms Mandich's concerns about her safety in the workplace arose after two senior leaders were publicly associated in the media with allegations of bullying. She says those concerns remained unresolved at the date of termination as did a number of additional issues that had arisen

⁴ Employment Relations Act 2000, ss 3 and 127.

[29] Around the same time CAA was discussing Ms Mandich's return to the workplace with her. She had been working from home for an extended period. CAA raised concerns about Ms Mandich's health at the same time it was discussing return to the workplace with her. A conversation with a manager was covertly recorded and she says she was suspended from work with no consultation. Prior to suspension she was either on special leave or was not being assigned any meaningful work. This is denied by CAA but it accepts it made changes to Ms Mandich's on call work. She says she was also no longer being deployed to accidents.

[30] Ms Mandich was and remains very aggrieved about a privacy breach after a colleague was included in communications relating to her being stood down. She points to disparity in the way CAA dealt with her concerns regarding her safety at work when compared with the concerns raised by two of its managers about her.

[31] CAA says it has investigated Ms Mandich's initial concerns regarding whether the workplace was safe and found nothing to substantiate them. CAA says this occurred at a point when employees have been instructed to return to the office to work after the Government's directive regarding public servants working from home. CAA says in retrospect it appears to have been a pre-emptive attempt by Ms Mandich to avoid having to return to the office by relying on the complaints to claim that she did not feel safe in the workplace.

[32] CAA says Ms Mandich has never been bullied or mistreated by either of these managers, did not directly report to either of them and it investigated her concerns and found nothing to substantiate them.

[33] Regardless of that finding CAA points out Ms Mandich continued to make allegations up until the point of termination. A series of complaints Ms Mandich made about managers and a CAA lawyer were of particular concern to it. These people were doing their jobs but were subject to serious complaints being made about them, including one threat to make a complaint to a professional body.

[34] The complaints about its managers were a key part of the rationale for CAA raising its concerns with Ms Mandich about incompatibility. It identified a pattern in

that virtually all managers who were involved in some way in trying to resolve the situation had complaints made about them. CAA was not able to investigate the two managers' complaints about Ms Mandich because they did not consent to copies of the complaints being provided to Ms Mandich, or to engaging in an alternative dispute resolution process.

[35] On 4 February 2026, Ms Mandich's employment was terminated on the grounds of incompatibility and she says no full and fair investigation was undertaken into the matters said to have underpinned that conclusion. It was asserted that she had failed to take full responsibility for a number of matters CAA says contributed to the breakdown of the relationship. However, she points to a number of her employer's actions (for example, covert recording, CAA's and acknowledgements regarding the recording and its communications prior to removing her from her on-call duties), to show the breakdown in the relationship was not one sided.

[36] Ms Mandich also commissioned an independent employment review of the workplace issues that reached conclusions the workplace was not safe and this was not taken into consideration by CAA.

[37] A number of process errors are also alleged. While CAA is confident those can be addressed, and it will have an opportunity to address these at the substantive investigation meeting, Ms Mandich refers to a Memo about her to the decision maker which she had no knowledge of prior to lodging this proceeding, that the opportunity to provide feedback was limited during the process leading up to her dismissal and says there is an issue as to whether the decision maker had the correct delegations when he made the decision to terminate her employment.

[38] CAA says Mr Manch, who was the decision maker, finalised the employment process and made the dismissal decision after he had stepped down as Chief Executive but remained on in a fixed term transitional role. CAA says Mr Manch's current People and Financial delegations continued to 6 February 2026 and points to the letter extending Mr Manch's employment which referred to his delegations and an email explaining this position in relation to the policy documents from the new CEO. CAA is confident it would be able to address the delegation issue at the substantive investigation meeting.

[39] Documents pertaining to the delegation issue were provided to the Authority and it transpired Ms Mandich had made requests for copies of the delegation to Mr Manch under the Official Information Act 1982. She says what has been provided does not contain evidence that the required delegation was conferred on Mr Manch after he was no longer the Chief Executive.

[40] Ultimately Ms Mandich says the evidence does not support a conclusion that she was primarily the cause of the breakdown of the employment relationship, the delegation issue is a significant flaw and the high threshold required to justify termination on the grounds of incompatibility has not been reached. Her submission is that the test for whether there is an arguable case is comfortably reached and she has a strongly arguable case regarding her claim for unjustified dismissal.

[41] CAA says there is no arguable case for unjustified dismissal. The first ground advanced concerned amendments to the Act and that has been addressed above. CAA accepts termination for incompatibility is rare, but says there were compelling reasons for it in this case. It went through a lengthy and transparent process with Ms Mandich and carefully considered her feedback. The test was more than made out and Ms Mandich's conduct does not have to be found to be serious misconduct in order for a dismissal for incompatibility to be justified.

[42] CAA is correct in that incompatibility may justify a dismissal in the absence of misconduct.⁵ The employee's behaviour has to cause a degree of conflict and disharmony that results in continued employment becoming untenable and the case law refers to dismissals for incompatibility being rare.⁶

[43] The issue concerning the delegation cannot be resolved at this point on the untested evidence. It would be unlikely CAA's decision to dismiss Ms Mandich could be justified if it could not be demonstrated the correct delegation was in place. The issue in relation to Mr Manch's delegations is his change in position and moving from a role where powers were conferred on him under the Civil Aviation Act 1990 in the role of Chief Executive and Director of CAA as opposed to a delegation to him from

⁵ *Reid v New Zealand Fire Service Commission* [1999] 1 ERNZ 104 (CA).

⁶ *Humphrey v Canterbury District Health Board, Te Poari Hauora O Waitaha* [2021] NZEmpC 59 at [40].

the new Chief Executive and Director once he moved to a tier two role and reported to the new Chief Executive.

[44] The threshold required for establishing an arguable case or serious question to be tried is not high. Ms Mandich need only establish that her claims are not vexatious or frivolous.⁷ Ms Mandich denies she is the cause or that the breakdown in the relationship is one sided such that the blame can be attributed solely to her.

[45] The threshold to establish an arguable case is not high. There is a hurdle for CAA at this stage given the nature of the dismissal. Proving there was an irreconcilable breakdown in the relationship when there are complaints and counter complaints and allegations of bullying by both parties against the other will require careful assessment as to the cause of the breakdown. Where there is contribution by an employer to the breakdown of the employment relationship a dismissal will only be justified in an “unusual and rare case”.⁸

[46] That is not to suggest that CAA has or has not contributed to the breakdown of the relationship but at this stage as far as the matter can be considered based on the untested evidence, together with the delegation issue that would have to be resolved at the substantive hearing, Ms Mandich has an arguable case she was unjustifiably dismissed.

Arguable case for permanent reinstatement

[47] The next step is to consider whether Ms Mandich has an arguable case for reinstatement. Section 125 of the Act provides that if the remedy sought by an employee includes reinstatement and it is determined the employee did have a personal grievance, the Authority or Court must provide for reinstatement wherever practicable and reasonable.

[48] Ms Mandich highlighted the importance to her of interim reinstatement. Due to the specialist nature of the work she says the longer she is away from work the higher

⁷ *Brooks Homes Ltd v NZ Tax Refunds Ltd* [2013] NZCA 90.

⁸ Above n6 at [40].

the risk of losing skills and that she has suffered reputational loss. She says compensation would not be adequate to address these issues.

[49] It is submitted on her behalf that she has a strongly arguable case for unjustified dismissal and this counts towards her case for reinstatement and the purpose of interim reinstatement is to hold the position for the dismissed employee while their proceedings are progressed to a substantive hearing.

[50] CAA say to an extent Ms Mandich is relying on the financial consequences to her following dismissal despite her evidence to the contrary, financial circumstances are only one factor to be taken into account and on its own is not enough to justify reinstatement.

[51] CAA's primary reason for opposing interim reinstatement is the impact on other employees, being the managers Ms Mandich has interacted with and other staff at CAA who say they have been and would continue to be impacted should she return. This is particularly so because of the pattern CAA says it identified of staff members who became involved becoming the subject of further complaints from Ms Mandich.

[52] More specifically CAA points to the extent of the impact on these employees, in particular, the threats to involve them personally in matters. They say Ms Mandich's conduct has affected them greatly and CAA says Ms Mandich's threats and willingness to take action against individuals doing their jobs is directly relevant to the question of reinstatement. Her return to the workplace is now untenable because of safety concerns relating to other employees affected by Ms Mandich's conduct.

[53] Furthermore, CAA says even if Ms Mandich was ultimately successful her conduct significantly contributed to the circumstances giving rise to the grievance making reinstatement unreasonable.

[54] It is accepted the courts have on more than one occasion commented on the purpose of reinstatement noting it is the primary remedy. In the recent decision in *Vegepod NZ Limited v Andrew Lowe*⁹ the Chief Judge recorded the following:

⁹ *Vegepod NZ Limited v Andrew Lowe* [2025] NZEmpC 76 at [62].

[113] Jobs are important and money is often a poor substitute. In this regard the Act has both an educative and regulatory function, which the Court recognises when dealing with applications for reinstatement, both interim and permanent. The point is that, while a claim for reinstatement is to be assessed against its own factual context, attention must also be paid to the impact of such orders more generally in the overall interests of justice. As the Court pointed out in *Ashton v Shoreline Hotel*: "...to award routinely compensation for the job loss instead of reinstating is to create a system for licensing unjustified dismissals." The same point applies to orders of interim reinstatement.

[55] Reinstatement must be both practicable and reasonable and they are two separate considerations.¹⁰ There may also be considerations that are separate from the reasons for dismissal that are "germane" to this question.¹¹

[56] Noting, in particular, the impact on other employees, I conclude it is only weakly arguable Ms Mandich would be permanently reinstated. While the veracity of their statements about the impact on them would be a matter for further investigation at the substantive investigation, at this interim stage the evidence is not tested and a brief from a psychologist was lodged and supports the positions set out in their affidavits.

[57] While the psychologist's affidavit reaches conclusions about three staff members who he interviewed, Ms Mandich was not interviewed. There was little evidence about whether the impacts on CAA's staff could be ameliorated by interventions and supports in the workplace. CAA's position is that her return to the workplace is now untenable because of safety concerns relating to other employees affected by Ms Mandich and the relationship is irretrievably broken down.

[58] It is submitted on Ms Mandich's behalf that the psychologist's evidence should be given little weight and a number of challenges to his affidavit are set out. Significantly at least one staff member who provided an affidavit setting out the direct impact on them personally has left CAA. The remaining three however would have a role in management of Ms Mandich if she was to return to the workplace.

[59] Ms Mandich's direct line manager has said they would resign should Ms Mandich return because they would not be able to safely work with her. The other two

¹⁰ *Hong v Auckland Transport* [2019] NZEmpC 54 at [66] to [67].

¹¹ Above n [66].

say they would have to seriously consider resignation because they do not feel safe working with Ms Mandich. All staff who provided affidavits referred to a fear of Ms Mandich in the workplace resulting in part from either actual or perceived threats to involve them personally in claims against CAA.

[60] For Ms Mandich it is said to be unfair that two of those who provided affidavits about their safety concerns should she return to the workplace also each raised counter complaints against Ms Mandich which have not be investigated. This is due largely to their refusal to allow Ms Mandich to receive copies of their complaints. CAA's response to that was to explain Ms Mandich was shown the complaints but accepts it did not agree to allow copies to be provided to her to be taken away. It says a process was gone through to balance the risk of information being published in media with Ms Mandich being provided with copies of the complaint so a fair and reasonable investigation process could be carried out. In the end after exploring the possibility of an alternative restorative process it decided not to investigate the complaints about Ms Mandich.

[61] It is generally accepted that reinstatement raises challenges for all parties but the fact it is challenging is not sufficient to render it impractical or unreasonable. In the case of *Vegepod* this was explained in these terms:¹²

[72] ...Reinstatement of a dismissed employee is invariably a challenging process for all concerned – the employer, the employee and co-workers. Reinstatement generally only arises as an issue in circumstances where an employer has decided to terminate the employment relationship. Reinstatement requires, by its nature, a walking back. That walking back is often not what an employer wishes to do (hence an order of the Authority of the Court is required) and the walking back is almost always difficult. Nonetheless, Parliament has expressly stated that reinstatement is the primary remedy and can be taken to have understood the difficulties generally associated with such a step.

[73] All of this is relevant to the threshold that must be met when seeking to argue that reinstatement is not practical and/or reasonable, including on an interim basis.

[62] Nonetheless the strength of feeling and impact on CAA's employees is such that it is likely reinstatement is neither practicable nor reasonable at this time when the evidence is untested. The team is small and Ms Mandich has made complaints about

¹² *Vegepod NZ Ltd v Lowe* [2025] NZEmpC 76.

her manager and vice versa. The manager's complaint has not been investigated. The investigation and then dismissal for incompatibility appeared to have overtaken the resolution of the complaints. CAA says it has been and remains reluctant to involve additional employees in managing Ms Mandich to prevent any additional staff being complained about. It says a return to the workplace would be setting both Ms Mandich and CAA up for failure.

[63] While CAA provided significant amounts of information to show why it does not have trust and confidence in Ms Mandich, a dismissal for incompatibility is a high threshold to meet. I have found Ms Mandich has an arguable case for unjustified dismissal and reinstatement is the primary remedy.

[64] At this preliminary stage there is caution about how much weight can be given to the evidence of CAA's employees on both sides of this dispute and the parties deep unhappiness with each other but I note Ms Mandich's manager says she will resign if Ms Mandich returns to the workplace and CAA is reluctant to engage other employees not already involved to minimise further impact on both individuals and the organisation.

[65] I find there is a weakly arguable case for permanent reinstatement.

Balance of convenience

[66] This part of the analysis involves a weighing exercise and requires consideration of the impact on the parties of the granting of, and the refusal to grant, interim reinstatement. It also requires consideration of whether adequate alternative remedies exist. What would happen if the interim position is reversed in the later substantive determination must also be assessed.

[67] Ms Mandich and CAA both say the balance of convenience falls in favour of them and the impact on them would be great if the Authority granted or refused reinstatement.

[68] Ms Mandich says CAA has not established any misconduct on her part, the basis for the incompatibility finding is able to be challenged on a number of fronts and the

process followed by CAA is in issue. In these circumstances the just and equitable course of action would be to preserve the employment relationship.

[69] If reinstatement is not granted she will suffer ongoing financial loss, reputational harm and uncertainty, however, Ms Mandich is prepared to be reinstated to the payroll only pending the substantive hearing and says that position would address any concerns CAA has about workplace dynamics until the substantive matter was heard.

[70] CAA relied on a number of cases where applications for interim reinstatement have been refused on the basis of a previously dysfunctional employment relationship to support its submissions. The Authority was reminded interim reinstatement is a discretionary remedy and it is submitted there would be significant prejudice to CAA and the identified employees. The consequences of reinstatement are said to be significant and potentially immediate for CAA and its employees.

[71] Reinstatement would create a real risk that staff would resign and that was especially relevant because they are key senior staff and Ms Mandich's team is a small specialist group that undertake safety critical work. If interim reinstatement is granted and CAA ultimately succeeds CAA and its employees will have already suffered the consequences of organisational disruption, psychological safety and potential resignations which cannot realistically be unwound.

[72] The prejudice to Ms Mandich if interim reinstatement was refused and she ultimately succeeds with her substantive claim is principally financial and can be addressed by monetary remedies.

[73] With regard to reinstatement to the payroll CAA says this does not alter Ms Mandich's position on the balance of convenience because of the risk of recoupment and the difficulties associated with this. The fact there is no evidence of Ms Mandich's financial need also means reinstatement to the payroll would not be a proportionate measure in the interim.

[74] I note at this point that Ms Mandich is concerned about the financial consequences of her dismissal but also about her continued absence from the role in what is a specialist area. While impact can be addressed to an extent by an award of damages, I do not agree damages would address the reputational issues she raised or the difficulty in finding new work due to the specialised nature of her work.

[75] Ms Mandich has indicated she would accept reinstatement to the payroll and in those circumstances, the balance of convenience would favour Ms Mandich.

Where does the overall justice lie?

[76] Based on the untested evidence Ms Mandich has an arguable case for unjustified dismissal and a weakly arguable case for reinstatement to her role because of the asserted impact on other employees and the organisation. Reinstatement to the payroll makes her arguable case for interim reinstatement stronger.

[77] CAA says the breadth and depth of the dysfunction that exists between Ms Mandich, her people leaders and numerous other people across the organisation and the impact on it means the overall justice lies with it.

[78] The fact the dismissal was based on incompatibility is relevant to the assessment of where the overall justice lies. By virtue of this and the fact the employment relationship problems involve complaints the workplace is unsafe, and bullying complaints and counter complaints and assertions the employer did not do enough, the merits of Ms Mandich's claims are difficult to assess at this stage. I have found above she has an arguable case for unjustified dismissal and the concerns raised by CAA about the impact to its employees can be met by Ms Mandich being reinstated to the payroll.

[79] Standing back and considering the overall justice of this matter I consider that interim reinstatement to the payroll should be ordered. Ms Mandich's application for interim reinstatement succeeds pending the outcome of the Authority's substantive investigation but on a limited basis to the payroll only.

Outcome

[80] The Civil Aviation Authority of New Zealand is ordered to reinstate Siobhan Mandich to the payroll on an interim basis from the date employment ended pending the outcome of the substantive matter.

Next steps

[81] The Authority will contact the parties to convene a case management teleconference to confirm the investigation meeting date and timetable the evidence.

Costs

[82] Costs are reserved pending a final determination on the substantive matters.

Sarah Kennedy-Martin
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