

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2026] NZERA 377
3456524

BETWEEN	JOHN KEOGH Applicant
AND	CIVIL AVIATION AUTHORITY Respondent

Member of Authority:	Alyn Higgins
Representatives:	Applicant in person Bronwyn Heenan and Matthew Maitland, counsel for the Respondent
Investigation Meeting:	3 June 2026 in Wellington
Submissions received:	Up to 29 May 2026 from the Applicant Up to 29 May 2026 from the Respondent
Determination:	12 June 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Mr John Keogh is employed by the respondent, the Civil Aviation Authority (CAA) and has held various roles recently as Principal Advisor Investigations based in Wellington. Mr Keogh commenced with the CAA in 2018 and his Principal Advisor Investigations role was disestablished effective 1 June 2026.

[2] Mr Keogh claims that his disestablishment was unjustified both in terms of the process carried out and the decisions reached by the CAA. Mr Keogh has also claimed

a disadvantage as a result of an alleged breach of good faith in relation to the consultation process CAA followed and information provided.

[3] Mr Keogh seeks reinstatement (along with other relief) on the substantive claims. Mr Keogh has also sought interim reinstatement to the now disestablished Principal Advisor Investigations role while his substantive claims are investigated and determined.

[4] CAA opposes Mr Keogh's claims, including the application for interim reinstatement. CAA further says that as Mr Keogh has, since being advised of the disestablishment of the Principal Advisor Investigations role, voluntarily accepted redeployment into an equivalent permanent alternative role such that any claim to reinstatement is nugatory.

[5] This determination is confined to the issue of whether Mr Keogh should be reinstated on an interim basis while the Authority's substantive investigation into Mr Keogh's claims occurs. It does not determine whether Mr Keogh was unjustifiably dismissed. Nor does it determine whether, if Mr Keogh was unjustifiably dismissed, he will be reinstated on a permanent basis to the Principal Advisor Investigations role or what additional or other relief he might be entitled to.

The Authority's Investigation

[6] Mr Keogh lodged a Statement of Problem on 8 April 2026 with an affidavit supporting an application for interim reinstatement. An undertaking as to damages as required by section 127 (2) of the Employment Relations Act 2000 (the Act) was also lodged.

[7] A case management conference took place on 20 April 2026 and the parties were directed to urgent mediation. The Statement in Reply and affidavit in opposition was filed on 24 April 2026. Mediation did not resolve matters. Submissions were received from Mr Keogh on 20 May 2026 and from the CAA on 29 May 2026.

[8] Affidavits were lodged from Mr Keogh and for CAA affidavits were received from Mr Wyatt Purdon and Ms Gayle Holmes. The background is set out from the affidavit evidence and the documents attached to the affidavits, which are untested at

this stage. There is no requirement for the Authority at this stage to resolve any disputes or conflicts that are apparent in the affidavit evidence.

[9] As permitted by s 174E of 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 but all information provided in the course of the investigation has been considered.

Relevant Background

[10] In 2023, CAA commissioned an external review of its management systems, practices, and processes from which a number of recommendations were made.

[11] Mr Keogh's Principal Advisor Investigations role was established in 2024 as part of the Investigation Change Programme, which has since formally closed. Since 2024, other significant operational changes have occurred within the investigations team and its operating context, including establishing a dedicated triage function and adopting a new safety oversight and regulatory management software system alongside implementation of the recommendations from the external review.

[12] In 2025, CAA also introduced a new organisational strategy that included a requirement for CAA to "drive efficiencies and deliver value", with a focus on cost and FTE count.

[13] From November 2025 to 6 April 2026, Mr Wyatt Purdon held the role of Acting Deputy Chief Executive (DCE) of the Regulatory Enablement and Response Group (RER Group), which includes the investigations team where Mr Keogh's Principal Advisor Investigations role was located until a new permanent DCE, Ms Holmes, commenced in April 2026.

[14] On 11 March 2026, Mr Keogh was provided with a consultation letter advising that a change proposal would be presented to the investigations team and that feedback on this proposal would be accepted from 12 March 2026 to 26 March 2026. Mr Keogh was also advised that, if following feedback, the proposal was confirmed then Mr Keogh's Principal Advisor Investigations role would be disestablished with a likely effective date of 1 June 2026. The letter also said that if Mr Keogh's role was disestablished that CAA would discuss options with Mr Keogh including redeployment.

[15] The proposal document issued to Mr Keogh with the consultation letter stated that the Principal Advisor Investigations role was no longer required because the work had been developed and embedded and could be absorbed by the Manager, Investigations and Head of Investigations roles. The proposal document also stated that all submissions would be considered before any final decisions were made, that feedback would be considered from 27 to 31 March 2026 and any implementation would begin from 7 April 2026 and that the new structure would be implemented by 1 June 2026.

[16] During the consultation period Mr Keogh sought further information and was told there had been no formal workload or capacity assessment and that the proposal had been informed by discussions, position descriptions and management observations.

[17] On 13 March 2026, and at Mr Keogh's request, CAA paused recruitment for a vacant Investigator, Queenstown role on the basis that it could constitute suitable redeployment for Mr Keogh if his Principal Advisor Investigations role was disestablished.

[18] Mr Keogh provided written feedback on the restructure proposal expressing a number of concerns. In summary, these concerns included the absence of any formal workload or capacity assessment, the lack of prior consultation with Mr Keogh and the investigator cohort before the proposal was developed, the failure to conduct due diligence regarding the change proposal that had been created less than 18 months earlier when the role was created, the inconsistency with the external review in 2023, the failure to properly consider alternatives including deferral pending the incoming DCE and the overall rationale relied on in the proposal.

[19] On 1 April 2026, Mr Keogh attended a meeting with Mr Purdon and HR where he was told the decision had been made to disestablish his role. Mr Keogh was then sent a final decision letter dated the same day confirming disestablishment of the Principal Advisor Investigations role and that he was now an affected employee and that if Mr Keogh was unsuccessful in being offered or appointed to a suitable alternative position then his employment would likely end on 1 June 2026. The letter also stated that the Queenstown based Investigator position had been held open and would be discussed with Mr Keogh.

[20] On the evening of 1 April 2026, Mr Keogh formally raised a personal grievance, requesting that CAA maintain the status quo and sought disclosure of the material relied upon in making the final decision. In that email, Mr Keogh stated that he did not accept that the process or outcome had been justified alleging unjustifiable action and breach of good faith, that he would allege unjustified dismissal if implementation proceeded to termination, and that he remained willing to engage constructively in redeployment discussions on a without prejudice basis.

[21] On 2 April 2026, CAA acknowledged the grievance but refused to pause or suspend the change process and later circulated the final decision document. The final decision document confirmed the disestablishment of Mr Keogh's Principal Advisor Investigations role and stated that implementation would begin from 7 April 2026.

[22] After the decision to disestablish Mr Keogh's role had been made, CAA explored potential redeployment opportunities with Mr Keogh. Two roles were identified including the vacant Queenstown Investigator role and a temporary twelve-month fixed term role of Assessor, Investigator based in Wellington while the incumbent was on a secondment. CAA offered Mr Keogh both roles at his same salary.

[23] After some correspondence between Mr Keogh and Ms Holmes (CAA's new DCE of the RER Group) Mr Keogh chose to accept redeployment into the permanent Queenstown Investigator role on 25 May 2026 on clearly outlined terms and conditions, including a three month transition period to assist his transfer to Queenstown where the role is required to be undertaken by 31 August 2026. CAA did not require either option to be accepted by Mr Keogh.

[24] In summary, Mr Keogh says that CAA's actions and how it acted were not what a fair and reasonable employer could have done in the circumstances. Mr Keogh further says that the process and decision are unjustified because no proper analysis was undertaken of the capabilities, specialist functions and developing work presently carried by the role. Mr Keogh says the proposal and final decision proceeded on the assumption that the role's work can be absorbed, but there is no documented analysis showing that the current management cohort has the capability, capacity, or specialist licensing and operational competence to do so.

[25] In summary, CAA says that the decision to disestablish Mr Keogh's role was substantively justified and procedurally fair and that the CAA acted fairly and reasonably and in good faith toward to Mr Keogh. CAA says that it followed a full and fair consultation process and that the decision to disestablish Mr Keogh's role was made for genuine business reasons that support CAA's organisational strategy.

[26] CAA further says that as Mr Keogh has accepted permanent redeployment into an equivalent role that there is no longer any dismissal for which any reinstatement can be granted.

Principles applicable to interim reinstatement

[27] Reinstatement is the primary remedy for unjustified dismissal. If the Authority determines an employee has a personal grievance (and they have sought reinstatement), then it must provide for reinstatement wherever practicable and reasonable, irrespective of whether it provides for any other remedy.¹ This includes the employee's former position or the placement of the employee in a position no less advantageous.²

[28] 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.³ One of the objects 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.⁴

[29] The approach to interim reinstatement is also well established.⁵ Mr Keogh must establish that there is a serious question to be tried in relation to his claim that his dismissal from his Principal Advisor Investigations role was unjustified and to the claim for permanent reinstatement. The balance of convenience must also be considered with the impact on the parties of the granting of, or the refusal to grant, an interim reinstatement. An assessment of the overall justice of the case is also required is required as a final check.⁶

¹ Employment Relations Act 2000 s 125

² Employment Relations Act 2000 s 123(1)(a)

³ Employment Relations Act s 127 (4)

⁴ Employment Relations Act s 3 (a)

⁵ See *Humphrey v Canterbury District Health Board* [2021] ERNZ 153 at [6]-[9], citing *NZ Tax Refunds Ltd v Brooks Homes Ltd* [2013] NZCA 90

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

[30] In the present case, the relevant questions are as follows:

- (a) is there an arguable case?
- (b) does the balance of convenience support interim reinstatement?
- (c) does an assessment of the overall justice of the case support interim reinstatement?

[31] The first question can be broken down into two parts:

- (a) is there an arguable case for unjustifiable dismissal or unjustified disadvantage; and if so,
- (b) is there is an arguable case for permanent reinstatement.

[32] As is usual in interim applications of this nature, evidence was produced by way of affidavits and the Authority proceeded on the basis of untested evidence. The evidence will be tested at the substantive hearing.

Does Mr Keogh have an arguable case?

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

[33] In summary, Mr Keogh says that a serious question to be tried exists because there was no formal workload or capacity assessment and the consultation was not genuine including a short feedback period of 14 days. Mr Keogh also says that the external review undertaken in 2023 did not support CAA's rationale for the disestablishment.

[34] CAA says its decision to disestablish Mr Keogh's role was one a fair and reasonable employer could have made in the circumstances. Although I acknowledge the untested evidence, there is no dispute that CAA undertook an external review of the RER Group where Mr Keogh's role was situated and adopted a new organisational strategy. There is also no dispute that CAA carried out consultation with impacted employees before making any final employment decisions.

[35] CAA also says that it explored all potential redeployment opportunities with Mr Keogh, including a vacant Queenstown based permanent Investigator role and a twelve-

month fixed term role of Assessor, Investigator based in Wellington. CAA offered Mr Keogh both roles and agreed to retain the same salary as Mr Keogh had in the Principal Advisor Investigations role. CAA also advised and Mr Keogh accepted, that he would have preferential status for any other vacancies during the period of the fixed term role if accepting the Assessor, Investigator based in Wellington.

[36] On 25 May 2026 Mr Keogh chose to accept redeployment into the Investigator, Queenstown role on clearly outlined terms and conditions, including the transition period to accommodate his transfer.

[37] Mr Keogh said that he opted for the Queenstown role because it was a permanent role over the uncertainty of the fixed term Wellington based Assessor role. Mr Keogh further says that the acceptance of the Queenstown role does not resolve his claim that his dismissal from the Principal Advisor Investigations role was unjustified or the disadvantage claimed including the alleged lack of evidential basis and consultation for the disestablishment.

[38] CAA says that there is no basis to grant Mr Keogh's application for interim reinstatement to the disestablished Principal Advisor Investigations role, pending his substantive personal grievance being heard and determined by the Authority.

[39] While the threshold for an arguable case is low, which CAA acknowledge, it is not for the Authority to substitute its decision for what a fair and reasonable employer could have done in the circumstances. On the untested evidence I am satisfied that CAA carried out a change process in a way that a fair and reasonable employer acting in the circumstances could have done. Mr Keogh has also accepted an offer of redeployment into a permanent role that, again on the untested evidence but for a different location, appears to be suitable alternative employment and as such his employment is ongoing and this significantly weakens the claim for unjustified dismissal.

[40] Having considered the matter on the untested evidence and correspondence only, I am not at this stage persuaded that there is a strongly arguable case that Mr Keogh was unjustifiably dismissed.

Is there an arguable case that Mr Keogh was unjustifiably disadvantaged?

[41] In summary, Mr Keogh says that there is a serious question to be tried whether CAA sufficiently investigated and evidenced the stated business reasons for the restructure and the sufficiency of CAA's assessment and the genuineness of its consultation.

[42] Mr Keogh also refers to his Official Information Act 1982 and Privacy Act 2020 requests and says that there is substantial unavailable material that is potentially relevant and that CAA is withholding this information and may show that there was predetermination before formal consultation began.

[43] CAA says that they have not withheld any information relevant to the decision to disestablish the Principal Advisor Investigations role and will respond to the requests but that the requests will take time to collate and are not limited to the decision to disestablish Mr Keogh's role. In any case, the information request process can still run its course notwithstanding the interim application and if Mr Keogh still considers CAA's response to the information requests relevant this can be raised in the substantive investigation of his claims along with supporting grounds.

[44] CAA further says that Mr Keogh has not suffered a disadvantage because Mr Keogh has not lost any status or salary and has chosen to accept suitable redeployment. Mr Keogh can still pursue a disadvantage claim in the substantive application but for interim purposes there is no disadvantage in Mr Keogh's employment for which interim reinstatement is appropriate and neither is there any evidence of any predetermination to end Mr Keogh's employment given that two alternative employment opportunities were offered one of which has been accepted by Mr Keogh.

[45] Taking this untested evidence into overall consideration, I am not persuaded that an arguable case exists that Mr Keogh has been unjustifiably disadvantaged.

Is there an arguable case for permanent reinstatement?

[46] The next step is to consider whether Mr Keogh has an arguable case for reinstatement.

[47] In his submissions Mr Keogh highlighted the importance of his work to the CAA and in his view that some of the specialist nature of the work he undertook in his Principal Advisor Investigations role is now either not being undertaken sufficiently or at all.

[48] Essentially CAA says that Mr Keogh has no arguable case for permanent reinstatement for the following reasons:

- (a) the restructure of the RER Group centred on genuine operational need in light of CAA's new strategy and expectations including a requirement to make savings efficiencies and demonstrate value for money as well as achieve fiscal sustainability;
- (b) changes over time to a new triage function and safety and regulatory management software system;
- (c) disestablishment of Mr Keogh's and one other Principal Advisor role as a recalibration or refinement of the structure to reflect the new operating context; and
- (d) the Manager and the Head of Investigations roles can absorb any residual functions that were previously performed by the Principal Advisor Investigations role.

[49] CAA further says that there is essentially no basis for reinstatement because Mr Keogh voluntarily and unconditionally accepted redeployment in the knowledge that in doing so rendered any reinstatement nugatory since there is no dismissal and his employment is ongoing.

[50] Taking the untested evidence into overall consideration, I do not consider that an arguable case exists for permanent reinstatement. In this case, albeit on untested evidence, I find that Mr Keogh's redeployment into what appears to be an equivalent role in terms of pay, expertise and standing counts against interim reinstatement.

Does the balance of convenience support interim reinstatement?

[51] This part of the analysis involves a weighing exercise and requires consideration of the impact on the parties of the granting or refusal to grant interim reinstatement. It also requires consideration of whether adequate alternative remedies exist. Mr Keogh and CAA both say the balance of convenience falls in their favour.

[52] Mr Keogh says the balance of convenience falls in his favour because the prejudice to him if interim relief is refused is “immediate and substantial” on the basis that he faces loss of a permanent senior role, the erosion of any realistic reinstatement remedy, pressure to accept materially inferior redeployment conditions, and the loss of specialist employment in a field in which reputation, continuity and operational credibility matter. Mr Keogh says that the burden of not reinstating is significant because without it he is required to relocate to Queenstown to stay in the role.

[53] Mr Keogh further says that the practical impact of any reinstatement on the CAA is limited because CAA has accepted that the Queenstown role can be undertaken from Wellington, albeit for a three month transition period.

[54] Under questioning Mr Keogh also raised the issue of the cost of living differences between Wellington and Queenstown but couldn't provide any evidence to support this as a significant burden. Mr Keogh also accepted that for the Queenstown role he need not live in the more expensive areas of the region and that more cost effective options in nearby locations such as Cromwell, Clyde, Alexandra and potentially Wanaka could deliver more affordable living while still being in commutable distance to the Queenstown worksite. Mr Keogh also knew the Queenstown office and had worked at it before.

[55] In terms of seniority the Queenstown role sits at the same organisational tier and is in the same remuneration band and CAA says, again on untested evidence, that there will be no skill decay as Mr Keogh continues to perform specialist investigative work of value to the overall organisation.

[56] CAA says that Mr Keogh's claim of financial hardship was predicated on the fact that he may lose his employment by reason of redundancy. CAA also says that the factual matrix has changed with Mr Keogh accepting redeployment and as Mr Keogh's employment is ongoing at the same salary there is no financial hardship.

[57] CAA further says that if Mr Keogh is successful at a substantive hearing, there are adequate alternative remedies (other than reinstatement) through which Mr Keogh could be adequately compensated including an award of financial damages for any loss he may have suffered.

[58] Finally, CAA says that any requirement to reinstate Mr Keogh to the Principal Advisor Investigations role would require CAA to re-establish a cost-ineffective and flawed structure in circumstances where there is readily available alternative work for Mr Keogh, i.e. the redeployment role that he has voluntarily accepted.

[59] Assessing the merits of each submission, I do not consider that significant detriment to Mr Keogh exists if interim reinstatement is not granted. In contrast CAA, who would have to in some respects revert to some of the structure that existed prior to the restructure impacting on its operations and other staff in circumstances where Mr Keogh has voluntarily accepted a suitable redeployment. I also accept that if Mr Keogh succeeds at the substantive stage then monetary remedies are likely to be more appropriate than reinstatement. The balance of convenience favours CAA.

Does the overall justice of the case support interim reinstatement?

[60] The overall justice assessment is a final check on the position reached following the analysis of the earlier steps and requires stepping back and considering the strengths of each party's case to ascertain where the overall justice lies.⁷

[61] In summary, CAA says that the overall justice of the case does not warrant granting interim reinstatement because:

- (a) Mr Keogh sought urgent interim relief to essentially try and preserve his position at a time where one possible outcome was the termination of his employment by reason of redundancy but now the factual matrix has materially changed as Mr Keogh has accepted permanent redeployment into a suitable alternative role that is no less advantageous. Therefore, interim reinstatement would serve no useful purpose;
- (b) there is no evidence that Mr Keogh will be prejudiced at a substantive hearing if interim relief is not granted. Mr Keogh will continue to utilise his skills and attributes, will be paid the same salary and has ongoing employment;
- (c) there is no business need for the now disestablished Principal Advisor Investigations role. In contrast interim reinstatement would require CAA to

⁷ See *NZ Tax Refunds Ltd v Brooks Homes Limited* [2013] NZCA 90, at [47].

reinstate a flawed and cost-ineffective structure to accommodate Mr Keogh in circumstances where Mr Keogh remains employed in a role that is operationally required within CAA's structure.

[62] Weighing the respective submissions I have not been able to find that Mr Keogh has a reasonably arguable case that he was unjustifiably dismissed or disadvantaged and should be permanently reinstated. I have also found that the balance of convenience favours CAA.

[63] Standing back overall, I consider at this point that the overall justice favours CAA and that Mr Keogh is not granted interim reinstatement to the disestablished Principal Advisor Investigations role.

Outcome

[64] Mr Keogh's application for interim reinstatement does not succeed and is declined.

[65] Mr Keogh is nevertheless entitled to have the substantive matters heard and determined, including the other remedies sought. The Authority will now progress the substantive matters towards an investigation meeting as soon as practicable.

Costs

[66] Costs are reserved for determination following the substantive investigation meeting and its outcome or until this matter otherwise ceases to be before the Authority.

[67] If the matter does not proceed further the parties are also encouraged to resolve any issue of costs between themselves. However, the parties can anticipate the Authority will determine costs, if asked to do so, on its usual "daily tariff" basis unless circumstances or factors, require an adjustment upwards or downwards.⁸

Alyn Higgins
Member of the Employment Relations Authority

⁸ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1