

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2026] NZERA 66  
3320260

BETWEEN	GEOFFREY FOX Applicant
AND	THE CHIEF OF THE NEW ZEALAND DEFENCE FORCE Respondent

Member of Authority:	Claire English
Representatives:	Christopher Griggs, counsel for the Applicant Jordan Boyle, counsel for the Respondent
Investigation Meeting:	On the Papers
Submissions received:	23 October and 27 November 2025 from Applicant 17 November 2025 from Respondent
Determination:	11 February 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The applicant, Mr Geoffrey Fox, works for the respondent (NZDF) as the Team Leader Research and Entitlements. He brings a claim against NZDF, saying that he has suffered an unjustifiable disadvantage because he was not allowed to access comments made by his 1-up manager and 2-up manager when his remuneration was reviewed in the year 2024. He says the relevant policy is that a decision is made on an employee's salary adjustment without the employee having the opportunity to see and respond to the managerial comments.

[2] He says this policy is unlawful, and he seeks a recommendation be made by the Authority that NZDF modify its processes. In submissions filed some time later, Mr Fox adds in a claim for legal costs and disbursements.

[3] NZDF says that its policy is well-known and well established, complies with relevant law, and that employees including Mr Fox have fair and reasonable opportunities to engage with the yearly remuneration review process. It further says that Mr Fox suffered no disadvantage and in the year 2024 which he complains of, no civilian staff, including Mr Fox, received any remuneration increase at all. NZDF also states that Mr Fox could have further engaged with his remuneration review and appealed the initial decision communicated to by his manager, but he did not do so. NZDF seeks costs against Mr Fox.

### **The Authority's investigation**

[4] For the Authority's investigation written affidavits were lodged from Mr Fox himself, and from Ms Lynda Pascoe on behalf of Defence. The representatives also gave written legal submissions.

[5] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

### **The issues**

[6] The issues requiring investigation and determination were:

- (a) Was Mr Fox unjustifiably disadvantaged by NZDF's decision not to provide him with comments from his 1-up and 2-up manager at the initial stage of the review process in the 2024 year?
- (b) If any unjustified disadvantage is found, should any recommendations be made?
- (c) Should either party contribute to the costs of representation of the other party?

### **Facts**

[7] NZDF is a well-established large employer, with policies and procedures around both yearly performance reviews for its civil staff, and yearly remuneration reviews for civil staff.

[8] Ms Pascoe, who has worked for NZDF as an advisor for some 35 years, gave evidence as to this process, which I summarise as follows:

- a. First, employees undergo a performance review process. After discussion between each employee and their manager, a performance development report is completed.
- b. Following the completion of the performance development report, each employee's 1-up manager and 2-up manager provide an annual remuneration review recommendation, and justification for their recommendation.
- c. Employees may choose to make their own comments as to remuneration also, but do not have to do so.
- d. The recommendations (and any employee submissions) are considered by both a Moderation Panel and a Salary Review Panel.
- e. An initial remuneration review decision is made by the Salary Review Panel.
- f. The manager then conveys this to each employee, together with relevant discussion.
- g. If the employee is not satisfied, they are advised that they can seek to have the initial decision re-considered, eg reviewed.
- h. If the employee asks for a review, they will be provided with the comments made by the 1-up and 2-up managers, and asked to make submissions to the Salary Review Panel.
- i. The Salary Review Panel then considers all information, before making a final decision.

[9] Both the remuneration review and the remuneration policy are incorporated into the standard employment agreement for civilian staff, including Mr Fox's employment agreement.

[10] I understand that Mr Fox did not make any initial submissions to the Salary Review Panel in the 2024 year. In the event, neither he nor any civil staff received a salary increase in that year, as the Panel made the decision to award no remuneration increases to any civilian staff that year, due to a constrained operating environment. Mr

Fox did not seek to review that decision, therefore the initial decision was effectively confirmed.

### **Mr Fox's Position**

[11] It is submitted on behalf of Mr Fox that: “a failure to consult with an employee on the assessment and recommendations of that employee’s immediate supervisor and that supervisor’s superior is not something that a reasonable employer could have done<sup>1</sup>”, and that Mr Fox has been “subject to an unjustified disadvantage by being denied the opportunity to consider and respond to the comments made by his superiors as part of the respondent’s Annual Remuneration Review process<sup>2</sup>”.

[12] It is further submitted for Mr Fox that “a decision is then made on the employee’s salary adjustment...without the employee having the opportunity to see and respond to the 1-up and 2-up comments<sup>3</sup>”, and that the relevant policy “does not permit employees to have access to the comments of their 1-up and 2-up prior to the [Salary Review Panel]”.<sup>4</sup>

### **Analysis**

[13] I have considered the evidence of the process provided by Ms Pascoe, which was not disputed by Mr Fox.

[14] The fundamental difficulty with Mr Fox’s claims is that they are not made out on the facts. Mr Fox was afforded multiple opportunities to have input into the remuneration review process, first, with his discussion with his manager at the performance development report stage, second, when he had a specific and separate opportunity to make his own submissions and recommendations on the salary review process, third, when he had a formal discussion with his manager about the initial decision of the Salary Review Panel and his options if he is unsatisfied, and fourth, upon the exercise of his right of objection and seeking that the initial decision be changed. He was consulted with throughout.

[15] It is apparent from a consideration of the process that Mr Fox was not denied an opportunity to consider and respond to the comments made about his remuneration

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<sup>1</sup> At paragraph 2 of submissions in reply for the applicant.

<sup>2</sup> At paragraph 1 of submissions for the applicant.

<sup>3</sup> At paragraph 3.2 of the submissions for the applicant.

<sup>4</sup> At paragraph 3.5 of the submissions for the applicant.

review by his superiors. This is provided for in the process, both when his manager discusses and explains the initial outcome with him, and if he chooses to object, when he receives a written copy of the comments made by his 1-up and 2-up manager and is required to provide his own written submission to the Salary Review Panel in support of the requested review.

[16] It is only after this process has been fully completed, either by the employee accepting the initial decision following the targeted discussion with their manager, or by having the final decision confirmed by the Salary Review Panel following an objection process, that the yearly remuneration decision can be said to have been properly and finally made.

[17] Mr Fox's complaint that he was not provided with the comments of his 1-up manager and 2-up manager prior to the final decision being made is therefore not correct. The process provides for an employee to be provided with these comments, and to comment on them in turn for the benefit of the Salary Review Panel, if the employee chooses to take these steps. A final decision is not made until after this has occurred, or if the employee wishes to accept the initial decision in the alternative, and affirms that initial decision.

[18] I find there is no failure to consult on these comments, rather the process provides for this explicitly if the employee chooses to continue with the remuneration review process after discussions with their manager. Mr Fox cannot properly complain that his employer's policy provides for him to only make the decision whether or not to continue with the process after being advised of his employer's initial thinking as to the outcome, which if anything tends to be beneficial to him.

[19] Mr Fox submits that he suffered an unjustified disadvantage by being denied the opportunity to comment and respond to comments made about his yearly remuneration review by his 1-up manager and 2-up manager. I find that this claim is not made out on the facts. An opportunity to comment and respond prior to final decision-making was provided. In doing so, NZDF acted in accordance with its own policies and the employment agreement between it and Mr Fox. I find that no unjustified action occurred.

[20] In addition, a claim of unjustified disadvantage also requires the employee is able to show that one or more conditions of their employment were affected to their

disadvantage, by the identified unjustifiable action of the employer. The uncontested evidence is that no pay rises were given to any civilian staff in the relevant year, and Mr Fox (correctly) accepts that he had no absolute right to a pay increase in any given year. In reaching that decision, NZDF followed its own policy and the terms of its employment agreement with Mr Fox. Insofar as submissions on behalf of Mr Fox suggested that a failure to properly consult on a yearly remuneration review was the disadvantage suffered, I have already found that this mis-states the process that is in place. Overall, I find Mr Fox has not been able to demonstrate that he suffered a disadvantage in the terms and conditions of his employment.

[21] For all the above reasons, his claim of unjustified disadvantage is not made out. Accordingly, no remedies are properly available and no orders are made.

### **Costs**

[22] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves, noting the Authority's past practice has often been to award costs in relation to 'on the papers' matters at the rate of half of the daily tariff.

[23] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the respondent may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Mr Fox will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[24] 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.<sup>5</sup>

Claire English  
Member of the Employment Relations Authority

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<sup>5</sup> For further information about the factors considered in assessing costs see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)