

**Attention is drawn to the order prohibiting publication of certain information in this matter.**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2025] NZERA 684  
3402244

BETWEEN                      HNX  
   Applicant  
  
AND                                LAU  
   Respondent

Member of Authority:        Antoinette Baker  
  
Representatives:              Mary-Jane Thomas, counsel for the Applicant  
   Sherridan Cook, counsel for the Respondent  
  
Investigation Meeting:        10 October 2025 by AVL  
  
Submissions received:        On the day  
  
Determination:                28 October 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The applicant was employed from November 2023 by the respondent as a ‘Ramp Supervisor’ at an airport. He had worked in this role or similar for a previous employer for about 12 years at the same airport. The role was part of the loading and unloading of planes for the respondent’s client airlines in an area referred to as a ‘Ramp’ at airports (the Ramp).

[2]     The respondent communicated the end of the applicant’s employment by redundancy on 27 June 2025 (effective 30 June 2025) giving contractual four weeks’ notice on pay with the respondent choosing this to be in lieu of working. The respondent

chose to pay the applicant a further six week payment for the redundancy, not a term in the applicant's individual employment agreement (IEA).

[3] On 11 July 2025 the applicant raised a grievance for unjustified dismissal challenging the genuineness of the dismissal based on the lack of redeployment to one of four 'new roles' in the restructuring outcome that replaced the applicant's role and the roles of three others. One role, similar to the one he had, remained vacant and was advertised externally subsequent to his dismissal. The applicant says the respondent breached its duty of good faith towards him.

[4] The above grievance was then added to on 22 July 2025 (second grievance) as including a link to a breach of s 103(1)(i) of the Employment Relations Act 2000 (the Act) which includes a situation where the employee is subject to detrimental treatment due to a refusal to perform certain work<sup>1</sup>.

[5] The second grievance claimed there was a 'clear nexus' between the applicant's previous disadvantage grievance [which was just before the restructuring process commenced] and the decision to end the applicant's employment. The disadvantage grievance was based on an apparent dispute focused on a single rostered instance causing the applicant to claim that he was being required to work early starts when other senior staff weren't, and/or that the request did not allegedly accord with any availability to work that he had agreed to in his employment. This he claimed was from a time when the airport operated less hours due to local restrictions.<sup>2</sup> The respondent through the Port Manager had maintained there was an agreed availability across 24 hours seven days per week.

[6] The applicant has further claimed in these proceedings that there is additional support that the end of his employment was based on 'fault' because the respondent affidavits in support of opposition to interim reinstatement include that his conduct and behaviour in the workplace was so adverse that he should not be returned to his employment. It is not in dispute that there had been no disciplinary process during employment for these things.

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<sup>1</sup> Under 67F(2)(b) of the Act this can include being dismissed under the definition of 'treats an employee adversely'.

<sup>2</sup> Email exchanges between the applicant and the respondent's Port Manager in late April 2025 at appendixes "6" to "9" Statement of Problem and as accepted as part of a grievance raised.

[7] The applicant seeks remedies including interim and permanent reinstatement, interim and permanent nonpublication.

[8] The respondent opposes the substantive claims and remedies. It says it followed a fair process for good reason which was to clarify the confusion of roles in the hierarchy of the Ramp operation because of feedback from those in the four roles (that were eventually disestablished) including from the applicant. The respondent says that the applicant knew about and did not put forward an 'expression of interest' (EOI) for one of the four 'new roles' and after this did not want to have a final face to face meeting about the outcome of the restructuring after which the respondent concluded that he would be terminated from his employment. The respondent says it decided to provide the applicant with a six week redundancy payment in recognition of his years of service at the airport based on good faith.

[9] The respondent opposes the interim reinstatement as not practicable and reasonable because there is no role to return to and that others in the workplace would be adversely affected by the return of the applicant as included in the above referenced affidavits. It opposes the applications for interim and permanent nonpublication saying there are no grounds for this based on the principle of 'open justice'.

[10] This determination deals only with the application for interim reinstatement and interim nonpublication. The matter has been granted urgency.

### **Non Publication**

[11] The Authority may order<sup>3</sup> 'that all or any part of any evidence given or pleadings filed or the name of any party or witness or other person not be published, and any such order may be subject to such conditions as the Authority thinks fit.'

[12] There is a fundamental principle that justice should be administered openly.<sup>4</sup> The Employment Court has observed that damage to future career prospects was a factor to be balanced in considering publication of identity but that a party seeking to

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<sup>3</sup> Employment Relations Act 2000, clause 10, Schedule 2

<sup>4</sup> *Erceg v Erceg* [2016] NZSC 135; *Courage v The Attorney- General* [2022] NZEmpC 27.

depart from the principle of open justice needs to provide evidence identifying adverse consequences.<sup>5</sup>

[13] The Court has also considered that the open justice principle in relation to nonpublication may have greater weight importance at the stage when evidence is properly tested, and the Authority is in a position to make findings.<sup>6</sup>

[14] The applicant seeks nonpublication because he is concerned about his reputation particularly in terms of future employment in the context of claims through affidavits lodged in this interim matter. These include that his behaviour and communication has adversely affected staff emotionally in the workplace and that he has exhibited ‘bullying’ behaviour towards, as well as undermined and disrespected, his manager who, in an affidavit deposes that their mental health could be affected if the applicant returns to work, and they may resign if the applicant returns.

[15] The applicant denies the above descriptions about his behaviour and submits the affidavits are ‘vague, light on specifics’ and that at this ‘early juncture’ premature unfair assumptions could be made about him given the ease with which prospective employers may research Authority Determinations and draw conclusions.

[16] The respondent objects to nonpublication because it says that nonpublication should not be granted just because of the usual situation that an employee is concerned about a prospective employer seeing they have come to the Authority and thereby taking this as a reason not to employ; that the applicant has not shown that publication would result in ‘adverse consequences’ that could ‘be reasonably expected to occur’ in relation to his future employment and reputation; that these things do not move from the starting point of ‘open justice’ when considering nonpublication. The respondent says the affidavits it has submitted from individuals in the workplace are legitimately in response to the applicant saying in his affidavit that he should be reinstated because he had ‘a good working relationship with all of my colleagues.’

[17] Having considered the helpful submissions from counsel, I determine that interim orders are appropriate because the situation shifts from what I agree is the usual

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<sup>5</sup> *Chief of New Zealand Defence Force v Darnley* [2021] NZEmpC 27.

<sup>6</sup> *JGD v MBC* [2020] NZEmpC 193

starting point of 'open justice.' There is considerable adverse and untested comment about the applicant's manner of communicating and behaviour in the workplace as contained in the affidavits put forward by the respondent. Little is specified as to when and where the conduct occurred. What is specified are two examples attached to an affidavit in relation to a 'sarcastic' response over the radio and comments about getting others to get permanent marker pens when the applicant was asked to do so. While I have no opportunity at this interim stage to test what is being said about the applicant's communication and behaviour towards his colleagues, the examples seem to fall short of convincing me of a serious safety risk if the applicant returns to work. I also note that the applicant has lodged affidavits which also are from the respondent's current employees together with one from a former manager as well as an international pilot (Captain) flying large passenger craft, using the Ramp over the years and observing the applicant.

[18] The above affidavits provided by the applicant are positive about the applicant's work ethic in the workplace including from the above referred pilot, the applicant's skills and reliability on the ramp.

[19] I consider that interim orders will ensure that if in the substantive matter the respondent is shown to have not ended the employment with justification there will be considerable unfairness to the applicant in that reference to personalised claims about his way of interacting with others in the workplace would by then have been referenced in this determination and could reasonably be expected to be seen and have caused a presumption that the applicant may not be employable in a similar workplace or potentially any workplace. At a stage when such things are untested and where, as presented, they were never raised at all during the employment, publication now of the applicant's identity would have a much greater unfairness to him than any compromise to 'open justice'. To the latter, the way that this matter has been dealt with in this interim determination still provides for public reading of how such a matter has been dealt with.

[20] The respondent asks for all 'witnesses' to be anonymised. I intend to anonymise the identities of all involved at this interim stage. The workplace and the respondent's business activity is in a geographical area that could potentially link to the applicant.

[21] Accordingly, the names of the parties and any information leading to the applicant party's identity including the location, region of the employment, as well as the identity of all witness deponents are subject to interim nonpublication. Random letters are used for the names of the parties, or they are simply referred to as applicant and respondent. Affidavit deponents are referred to by an anonymous label of employment or professional status or by their otherwise relationship to the applicant.

[22] These are interim nonpublication orders only. They apply until further order of the Authority or the Employment Court. The parties should not assume they will automatically continue and should be prepared to make further submissions in the substantive proceedings as to whether permanent nonpublication orders should then be made.

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

[23] Following the lodging of the application for interim reinstatement on 29 August 2025 and requisite undertakings made, the Authority directed the parties to urgent mediation and held a case management conference to set a timetable for the application. The parties have complied with timetabling directions including attending mediation, which was unsuccessful. By consent the investigation meeting was held by AVL<sup>7</sup> to hear from representative counsel only in relation to their lodged written submissions.

[24] In determining this matter I have received and considered affidavit evidence. I have also considered the parties initiating and responding documents with attachments and the parties' submissions through counsel.

[25] Evidential matters in dispute between the parties will not be resolved by this determination because the evidence is untested. In applying the relevant tests for interim reinstatement, the Authority is not required to resolve any disputes.

### **The relevant law**

[26] The Authority may order interim reinstatement while pending the outcome of a personal grievance on any conditions it thinks fit. When determining an interim

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<sup>7</sup> Audio Visual Link.

reinstatement application ‘the Authority must apply the law of interim injunctions having regard to the object of the Act’.<sup>8</sup>

[27] This means that in the context of the Act’s object<sup>9</sup> of using good faith to maintain and promote productive employment relationships, I must decide based on well-established principles whether the applicant has shown there is an arguable case in the substantive matters being brought; whether there is an arguable case for permanent reinstatement; where the balance of convenience lies, that is, a weighing of any detriment that either party may incur because of granting or not granting interim reinstatement; and where the overall justice lies in granting the interim reinstatement until the matter can be substantively resolved.<sup>10</sup>

[28] It is with the above in mind that I consider this application.

**Does the applicant have an arguable case for disadvantage and unjustified dismissal?**

[29] Whether a case is arguable is based on asking whether it has a serious or arguable case that it is not based on a claim that is ‘frivolous or vexatious’.<sup>11</sup> This is sometimes called the threshold test. I accept both parties’ submissions that the threshold is not high.

*Background*

[30] On 28 April 2025 by email the respondent invited the applicant and others in his workplace to a meeting to discuss an upcoming restructure on the Ramp.

[31] The applicant attended the meeting. It is common ground that a ‘PowerPoint’ document called ‘Ramp Services Consultation’ (the proposal document) was presented at the meeting which was then emailed to the applicant and others after the meeting. What was said or explained at the meeting remains subject to the testing of evidence

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<sup>8</sup> Employment Relations Act 2000, s127.

<sup>9</sup> Employment Relations Act 2000, s3.

<sup>10</sup> *NZ Tax Refunds v Brooks Homes Limited* [2013] NZCA 90, at [12] and [13]; *Western Bay of Plenty District Council v McInnes* [2016] NZEmpC 36, at [8]

<sup>11</sup> *X v Y Limited v New Zealand Stock Exchange* [1992] 1 ERNZ 863; *Western Bay of Plenty District Council v McInnes* [2016] NZEmpC 36 at [9].

and this includes whether things were explained more fully in relation to applications for ‘new roles’ proposed. The proposal document included that:

The purpose of this meeting is to discuss proposed business changes that may impact certain positions within the ramp team. These changes are a result of informal feedback/comments made over the passing [sic] months regarding the Ramp team structure at [the airport]. Upon receiving this, it has become apparent that there firstly may be too many hierarchical levels, particularly where roles have overlapping responsibilities which causes [sic] confusion. The feedback suggests that streamlining the hierarchy by removing one layer could enhance communication flow within the department, more concentration to be given to training and additionally, this adjustment would help to clarify roles and responsibilities, ensuring each position has a more clearly defined scope of work. Overall improving our compliance and service we give to our customers.

[32] The proposal document included two diagrams which I replicate below in words and spatial position if not in the same format as the proposal document. The changes that were proposed are italicised by me for emphasis.

<b>Current Ramp Team Structure</b>	<b>Proposed Ramp Services Team Structure</b>
[Airport] Port Manager	[Airport] Port Manager
Ramp Team Leader/Trainer x 2 [New roles established the prior year]	<i>Ramp Trainer x 1 &amp; Ramp Duty Manager x 1</i>
Ramp Supervisor x 2	<i>Ramp Team Leader x 2</i>
Ramp Lead x 6	Ramp Lead / OSD x 6
Ramp Agent <sup>12</sup> x 38	Ramp Agent x 38

[33] For context, in the previous April 2024, the ‘Ramp Team Leader/Trainer’ roles had been put in place as new roles creating a hierarchical level between the ‘Ramp Supervisor’ roles (one of which was the applicant’s role) and the Port Manager. There are communications before me penned by a colleague of the applicant who did the other ‘Ramp Supervisor’ role where they raise issues about how this structure was not working well in relation to those new roles established in April 2024. The applicant’s

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<sup>12</sup> Also commonly known as ‘baggage handlers’.

affidavit includes that he considered the new positions were taking over the 'Ramp Supervisor' roles. The Port Manager role at the top of the above table has continued throughout to be performed by the same manager who has put forward an affidavit here to support why the applicant should not return to the workplace. They depose that because of the applicant's adverse behaviour of bullying, belittling and disrespect towards them, something they say changed around mid-2024 for reasons they do not understand the applicant should not return to the workplace. The Port Manager communicated with the applicant at times during, and was present at some meetings during the restructuring process.

[34] The proposal document included brief descriptors of the responsibilities for each of the proposed four 'new' roles:

- a. The 'Ramp Duty Manager' role was summarised as having operational responsibilities and concluded with, 'One person- less confusion.'
- b. The 'Ramp Trainer x 1' role was explained as 'currently [training is] built into a team leaders [sic] area of responsibility.' The split off of training to this new role was explained as 'ensuring all [airport] ramp and baggage employees receive appropriate training needed for their role and will ensure [various] compliance' ... .
- c. The 'Team Leader x 2' roles were explained as having a 'focus' on 'leadership for the shift they are in charge of, to ensure customer expectations are meet [sic] in accordance with SLAs'. Each of the two roles will have dedicated areas of responsibility for example:- GSE, Compliance and Process; Rostering Allocations; Resourcing.'

[35] The applicant provided feedback and attended meetings. There is a dispute in that he says no redeployment options were ever discussed with him during this time. The respondent says they were. Notes of a meeting on 15 May 2025 that the Human Resources Manager in an affidavit deposes show that EOI's were discussed only includes the applicant asking what would happen if the effected employees did not apply under an EOI. No response is recorded in those notes. The EOIs were posted by the Port Manager on an internal employee application sometime later on 3 June 2025 and were sent to 65 people. This was the date in the proposal document for 'recruitment' after an earlier date timetabled a 'selection process' for the four affected employees.

[36] On 5 June 2025 the respondent wrote to the applicant alleging he had missed tagging two baggage buggies correctly. The applicant responded by raising a personal grievance about these allegations. He also feedback to the respondent that he had raised issue with baggage buggy tags being ripped and missing for some time and gave examples. The outcome of this process resulted in a 'letter of expectations' dated 12 June 2025 where the applicant's explanations were noted.

[37] After this, the applicant was invited to a meeting by the Port Manager to discuss the outcome of the restructuring. It remains unclear when the associated outcome document was provided to the Applicant. He responded that he wanted matters to be in writing rather than to meet. The Port Manager repeated the invitation and explained it was to allow for any questions the applicant may have. He declined again and wanted anything in writing.

[38] The day after the above, the decision maker, the CEO of the respondent, ended the employment in a letter dated 27 June 2025. The applicant's response was to ask the CEO if he realised that the applicant had not had any discussion about his 'options'. The response was that the decision maker checked with others and that he considered that the applicant had the opportunity to have a discussion about 'options'. As already noted above, the applicant then raised grievances about the end of his employment.

*Arguable case for claiming that the grievance raised relating to availability for rosters was linked to the decision to terminate the employment as an 'adverse' action by the employer?*

[39] I find the applicant has an arguable case but as noted under the balance of convenience below I find this is weak. This is because the applicant does not apparently dispute a need for changing the tasks of the four roles that were restructured. This matter remains for the substantive investigation and may involve a dispute regarding the interpretation of the terms and conditions of employment.

*Arguable case about alleged insufficient details to feedback on about the new roles?*

[40] To the extent that the applicant says he was not provided with sufficient details to feedback on about the specific change to his existing 'Ramp Supervisor' role, this is yet to be tested in evidence. However, there are communications before me showing the applicant asked for further details before giving feedback to the proposal about the 'new roles.' The applicant's written feedback on the restructure shows he referenced the 'Ramp Supervisor' alongside the same 'new role' 'Ramp Team Leader' in that document. There is nothing to show whether this was discussed further as to the detailed difference between the two name roles when he met to discuss his feedback other than his written comment about the lack of detail provided about the new role. That he did not receive a response to his query about the detailed difference before giving feedback, and that it seems not unreasonable for the applicant to want to understand the difference to what he was already doing if he needed to consider a 'new role' for himself, supports an arguable case that he was disadvantaged in the restructure process. This is particularly so when it was known to the respondent that the applicant had been one of the ones providing detailed feedback about how roles were working on the Ramp and this was a catalyst for the proposal.

*Arguable case for the lack of opportunity for re deployment?*

[41] To the extent that the above may have influenced the applicant's next engagements with the restructure process remains to be tested as does the reasonableness of the respondent's position that because the applicant had been given an opportunity to express interest in a 'new role' and allegedly did not, his employment was over despite a 'new role' remaining vacant at the time. However, the decision to terminate came rapidly (the next day) after the applicant responded to the Port Manager's brief communication to invite him to a meeting to discuss the outcome of the process by saying he wanted anything further in writing and did not want to come to a meeting. This I note was also within the context of a short disciplinary process carried out just prior and resolved after hearing the applicant's explanations. There is nothing in the invite to meet to explain it was about redeployment or options. It remains unclear before me at this stage when if at all these matters were ever discussed with the applicant.

[42] Even if it cannot be ascertained for now the level of the applicant's understanding of the process regarding 'new roles', the applicant immediately challenged the CEO decision maker by email after receiving the termination letter by explaining that he did not consider he had been given 'options' about redeployment. It is arguable then, as submitted for the applicant, that the respondent insufficiently engaged with the applicant's concern and simply responded that it considered he had been provided the opportunity. The sequencing as noted above seems, even at this stage, rapid. Further, the EOIs were posted at a time when 'recruitment' was the proposed stage consistent in that the EOIs went to 65 people consistent with a competitive wider workplace process and not just one for the four effected employees. Again, while yet to be tested, there is nothing in the record of notes on the 15 May 2025 (the date the respondent says the EOIs were discussed) that references any discussion about the applicant's 'options' for redeployment other than the applicant asking a question about this.

[43] In the context of what is before me and with evidence remaining to be tested I find the applicant has an arguable and not a frivolous case that he was disadvantaged in his employment by not being given more specific information about the 'new roles' to feedback on particularly the new 'Ramp Team Leader' role which appears similar to the 'Ramp Supervisor' role that the applicant was already working in. I find he has an arguable and not a frivolous case that the sequence of events and communications just prior to the end of his employment shows there is an arguable case that the applicant was unjustifiably dismissed because of a procedural failure more than minor which had the sudden effect of termination of any employment. I will consider the strengths of the arguable case below but for now it is arguable.

### **Does the applicant have an arguable case for permanent reinstatement?**

[44] Under section 125(2) of the Act, if the Authority finds in the substantive matter that the applicant has a personal grievance the Authority must provide for reinstatement wherever practicable and reasonable, irrespective of whether it provides for any other remedy. This has been described as being practicable if a reinstatement of the employment relationship is able to be carried out and achieved successfully. This includes that there may be consideration separate from the reasons for the dismissal

including the effect of reinstatement on other affected employees of the same employer and, in some cases, perhaps third parties who would be affected by reinstatement.

[45] It is also considered that an employer needs to work hard to show reinstatement is not practicable and reasonable given that reinstatement is a primary remedy under the Act, and that money can be a poor substitute for the loss of a job. In other words, the threshold is a high one.

[46] I am not satisfied that what is before me in terms of affidavits for the respondent including mostly non specified allegations of poor communication and behaviour towards others in the workplace satisfies me that I can find that there is not a serious case for permanent reinstatement. I have found above that there is a serious substantive case to be tried particularly in relation to the justification<sup>13</sup> for the end of the employment. It is arguable that what is described in the affidavits reflect interpersonal relationship issues in the workplace. Any permanent reinstatement could make reinstatement conditional on these being worked on if necessary. This should be achievable in a workplace that is resourced enough to have in house human resources. I say this acknowledging also that there are affidavits in support of the applicant's behaviour in the workplace including the applicant's affidavit attaching a handwritten 'petition of names' (albeit unverified beyond the handwritten names) of those in the workplace supporting his return.

[47] Whether a less advantageous role still remains for the applicant I will consider below under the balance of convenience. For now, I find that having found a seriously arguable case for unjustifiable dismissal and disadvantage and not ones that are frivolous I find there is a seriously arguable case for permanent reinstatement.

**What detriment would either the applicant or the respondent incur because of granting or not granting interim reinstatement and in whose favour does the balance of convenience lie?**

*Merits of the arguable case?*

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<sup>13</sup> Employment Relations Act 2000, s103A.

- *Disadvantage regarding rostered availability*

[48] I have found above that the applicant has an arguable case here. He says the end of his employment by redundancy was linked to his challenge about the respondent's requirement that he was to work certain early start shifts unlike others. There is likely a substantive matter to resolve about the interpretation of terms and conditions of employment as a stand apart grievance. I make no comment on the strength of that claim, but I find the arguable case that it links to the end of employment is weak because the applicant does not apparently dispute a need for changing the tasks of the four roles that were restructured.

- *Disadvantage regarding lack of sufficient information to feedback on*

[49] I find the applicant's claim to have been disadvantaged in the restructuring process due to not being provided (when he asked) with more details of the 'new roles' to be strongly arguable. The applicant's evidence shows that he was of the view that the 'new' 'Ramp Team Leader' roles proposed were the same as what he was already doing in the 'Ramp Supervisor' role. My ability now (unlike the applicant during the consultation) to compare the job descriptions for both roles shows me there is strong merit in this position. Whether this then influenced any lack of opportunity taken by the applicant to put forward his EOI (which he disputes) for at the very least a 'Ramp Team Leader' role remains to be tested. However, given what then came next (the alleged lack of redeployment and the end of employment) I find some arguable strength that the lack of detail in the proposal to 'clarify' role hierarchy and tasks likely left the applicant with little to go on but to assume the 'Ramp Team Leads' were what he was already doing. To this extent it is strongly arguable he was put at a disadvantage by not being able to clarify this.

*Redeployment, EOI and selection process*

[50] It is submitted for the respondent that it is was reasonable to assume that with his knowledge of the EOIs the applicant made a choice not to apply for his role. As noted above, what is before me currently is that the EOIs were posted on an internal application accessed by employees and sent out to 65 people. Further, the date this step was taken was sometime after the respondent says there was discussion on of the

outcome of the restructuring but where the meeting notes provided give little indication about how redeployment was discussed. The applicant disputes he knew about the posting of the EOIs and/or that if he did not apply this would mean he would be without a job.

[51] I am satisfied that the applicant has a strongly arguable case that the end of his employment was unjustified. There were four effected employees in this restructure and the applicant's 'Ramp Supervisor' role seems at this stage to have been similar if not the same except for reporting lines and some possible removal of a training component to the 'new' 'Ramp Team Leader' role proposed. The second 'Ramp Team Leader' role remained vacant after the applicant's employment was terminated. The applicant communicated when he got the termination letter that he had not had 'options' provided to him. It is strongly arguable that this ought to have been a red flag to the respondent to have then done more than briefly respond and argue that the applicant had been consulted in the above context. The position needed to be filled, and the respondent's position is that the applicant could have filled any of the 'new roles.' It is submitted for the applicant that the respondent could have more reasonably then re-engaged when it was alerted to the applicant's thinking he had not been provided with 'options'. I agree that this is a strongly arguable point towards the termination being unjustified. To this extent the detriment in not returning the applicant to the workplace whenb this was not a restructure that disestablished roles surplus to requirements but only rearranged the tasks and reporting lines within them partially for the 'Ramp Team Leader' 'new roles' is greater for the respondent who arguably has suddenly lost his job in this context, a job I find it strongly arguable he enjoyed and cared enough about to propose of doing it better. I accept the submission for the applicant that an award of damages to compensate may not be sufficient here.

*Claims that the applicant should not be returned to the workplace due to his behaviour*

[52] As noted above there are affidavits supporting that the applicant should be returned to the workplace and those that do not.

[53] From the respondent I have affidavits from the CEO<sup>14</sup> and decision maker in the redundancy who while they say they were not aware until these proceedings about the applicant's behaviour they support what those in the workplace say about this in their affidavits (for the respondent) and that this means that the applicant should not return; from the Port Manager who says they have known the applicant in the workplace and outside of the workplace for some years, that the applicant 'bullied', 'undermined' and 'disrespected' them in the recent employment with the respondent and that their mental health would be affected if the applicant returned to work causing them to leave; from the respondent's in-house Human Resources Manager, that the Port Manager had told them about the above [before the restructuring proposal commenced] and wanted to make a complaint but did not, and that they were concerned for the Port Manager's mental health if the applicant returned to the workplace, and that to have the Port Manager leave would be detrimental to the respondent; from a respondent employee who left the respondent's employment because he says the applicant 'contributed significantly' to the 'negative culture' on the Ramp by saying the previous employer ran things better and saying this in front of younger impressionable staff and that this was why they left. This deponent then includes they returned to the respondent's employment in September 2025 and accepted the one 'new role' (from the restructuring) that was still vacant which was the 'Ramp Team Leader' role; and from another current respondent employee who was an affected employee in the restructuring but unlike the applicant was successful in obtaining one of the 'new roles' having been asked by management to put forward an EOI just after the date to do so had closed. This deponent includes that the applicant had good operational knowledge but was 'selfish' and would 'refuse to help' others and brought 'considerable negativity to the team' on the Ramp. This deponent gave two annexed examples of the complaints about the applicant's behaviour that they say they 'occasionally received'. One related to an employee emailing the deponent about a situation on 4 June 2025 with a concern that the applicant's tone in a response to a pilot requesting a progress report as 'very sarcastic' when the applicant said 'we good thanks' over the radio; and another on 16 June 2025 when the applicant was asked by a team leader to collect some permanent marker pens because he was unable to do so. The applicant then enquired on a workplace group chat if anyone was going to the area where the pens were, and could they collect them because 'I can't be assed [sic] taking my boots of.'

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<sup>14</sup> Reasonably taken to be Chief Executive Officer.

[54] The applicant has also provided affidavits which are from those still working on the Ramp for the respondent. These are all in support of the applicant's return to work or include positive comments about him in the workplace. These affidavits are from five existing respondent employees, four of whom have worked on the Ramp with the applicant for some time and one in a 'Front of House' role; from the applicant's domestic partner; from a former manager of the applicant at the same workplace but with a previous employer; and from an international airline pilot of a major airline client using the Ramp over some years. These affidavits reference the applicant's work ethic of firmly keeping to procedures and 'safety policies'; that he raises issues about this with management and that he will 'stick up for the team'. The front of house deponent employee refers to the applicant having a strong approach to a 'healthy work culture'. The international pilot deponent includes that:

... as a Captain of the Airbus A320, we must have total faith in the ground crew leading hand, making sure that the critical weight and balance of the aircraft is done in accordance with airline SOPs<sup>15</sup>, Airbus Loading/unloading procedures, and as importantly , the smooth efficient turn around that is sometimes very challenging in poor weather conditions, at night and adding to all of this, an overall good working ground team led by a professional experienced leading hand.' ... 'Each time I arrive into [the airport] and I see that I have [the applicant] approaching the aircraft when we park our aircraft at the gate, gives my first officer and I, an added layer of confidence and total faith, for a smooth, safe, efficient turnaround, without any issues whatsoever, as [the applicant's] professional leadership in this vitally important role, is second to none, that I have experienced in my 28,500 flying hours.'

[55] I have noted above, and the respondent submits that how others may be affected in the workplace can be considered here even if this is not the reason for the dismissal. However, in this case, the respondent's reason for dismissal by redundancy was 'no fault' and not for the level of serious risk expressed from some in the workplace in the respondent's provided affidavits, including the applicant's one up manager. As noted above, the only specific details are in the affidavit about the applicant's comment on the radio and a comment about collecting marker pens.

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<sup>15</sup> I take reasonably to mean 'Standard Operating Procedures'.

[56] On the other hand, there are more specific examples painting a different picture in the affidavits provided by the applicant that include an employee who acknowledges the assistance the applicant gave him as a young employee learning the job. That deponent had been working with the applicant for some time. As noted above, the statutorily declared statement from the pilot gives an outline from someone who undoubtedly would appreciate the importance of safety and procedures on the Ramp.

[57] My weighing of the content of the affidavits, as best I can at this stage, is to find less weight given to the respondent saying the applicant is a risk to the workplace if he was returned and more to the applicant as being someone who is concerned about procedures and safety in the workplace and serious about their job. I weigh this issue as favouring the applicant to be interim reinstated. Any interpersonal issues can be dealt with by the parties as in any employment relationship and especially in a workplace with in house human resource management.

*A position to return to?*

[58] It is submitted for the applicant that returning the applicant to a role similar if not identical to what he was doing would not be a significant change detrimental to the respondent because it is always advertising positions. It was submitted in response to the respondent saying that there is no job the same that is currently vacant.

[59] I find in favour of the applicant here. He is experienced and skilled in his role. There are multiple baggage handler roles (38 unchanged in the organisational structure diagrams in the proposal document) and Ramp Leads which at the very least are in the area of work the applicant is familiar and skilled in. I find a likelihood that the baggage handler roles may well turn over more quickly than others. I understand the airport to be busy as it likely comes into the tourist season.

[60] The respondent submits that the applicant could easily find some other similar roles in the same geographical area given there are no current similar roles with it. I accept based on the applicant's affidavit and that of his domestic partner that the applicant is settled with his family in the geographical area. I find the submission for the respondent about other types of roles available in that area to be highly speculative. There is one main international airport. The applicant has also worked in this role for

some time at this airport supporting he is settled in the area. His written proposals to improve the way the work could be done in the loading and unloading of planes on the Ramp in February 2024 indicates a detailed commitment and enthusiasm for the work in this workplace inconsistent with him wanting to leave and move elsewhere. It is supportive of him performing a role which as submitted for him, is like his 'trade.'

[61] The applicant and his partner of ten years' in their affidavits indicate they have a baby due. To have a shift from the region to obtain employment would seem a significant detriment. While I note the respondent's submission that the applicant has not provided much detail about why he thinks he would not get a similar role with the single other employer at the airport again, I still weigh here in the applicant's favour based on the above.

[62] It would be some detriment to the respondent if the applicant is returned to a no less advantageous role by him performing a lower level role on the pay he left on, but this is less of a detriment than returning him to the payroll only. The detriment to the respondent can be tempered by having the return of an experienced and skilled employee back on the Ramp.

[63] Accordingly, I find while the four 'new roles' are currently filled and take note that the applicant did not have an interest in training roles, and that his feedback indicated he had no comment about the duty manager role, I find no impediment to reinstatement on no less advantageous conditions of pay as and when a role becomes available as my orders reflect below. This can include reinstatement to payroll and then to whichever of a 'Ramp Team Leader' 'Ramp Lead' or 'Ramp Agent' role that becomes vacant first.

[64] Overall, the balance of convenience favours the applicant.

**Where does the overall justice of this matter lie until the substantive problem can be resolved?**

[65] I find that based on the untested evidence before me there is a strongly arguable case for unjustified dismissal, permanent and interim reinstatement. I find an arguable case linking the applicant's claim that he was provided insufficient information about

the 'new roles' and this arguably disadvantaged him in the restructure process. I find this matter also stands out as a restructuring that was not for the purpose of reducing the number of employed positions on the basis they are surplus to reasonable business requirements. The parties agree that the applicant was one of those who provided feedback about improvements to the way the Ramp structure was working as per roles which led to the proposed changes to address how the roles actually operated. This in turn, even at this interim stage, can be said to have quickly resulted in the applicant finding himself unemployed despite alerting the employer to him not considering he had the 'options' put to him. This in turn was at a stage when a 'new role' similar to the one he had been disestablished from still remained vacant. While that situation and the applicant's part in it is yet to be fully tested, I find that based on my conclusions above, and then standing back from it, the overall justice falls in favour of the applicant to be reinstated on an interim basis pending the outcome of the substantive matters.

## **Orders**

[66] The applicant has, under s 127(2) of the Act, signed an undertaking as to damages pending the outcome of the substantive matters.

[67] Accordingly, I order interim reinstatement on the following conditions under s 125(1) and (5) of the Act until the substantive matters are determined:

- a. The respondent is to take immediate steps to reinstate the applicant to the payroll at a rate provided to him by his four week notice period at the end of his employment but then backdated from the date 10 weeks after the 30 June 2025 being the end of his four weeks' paid notice and six weeks' redundancy pay.
- b. The applicant is to remain on the payroll as set out above at a. and as soon as a position becomes vacant the respondent must reinstate him to an employed role with any further payment of any applicable allowances applying to the working terms and conditions of employment for that ongoing performance of the role being either a 'Ramp Team Leader' role, a 'Ramp Lead' role or a 'Ramp Agent' role whichever becomes vacant first in time.

### **Further steps**

[68] An Authority Officer will contact the parties about a substantive hearing date and timetable for evidence. The dates currently being held according to availability are in May 2026.

### **Costs**

[69] I reserve the issue of costs, and these will be dealt with after the substantive investigation.

Antoinette Baker  
Member of the Employment Relations Authority