

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2021] NZERA 473  
3149043

BETWEEN	GRANT DOUGLAS SAUNDERS Applicant
AND	ST ANDREWS OF HAMILTON GOLF CLUB Respondent

Member of Authority:	Marija Urlich
Representatives:	Hamish Burdon, advocate for the Applicant Mark Hammond, counsel for the Respondent
Investigation Meeting:	By zoom
Submissions received:	11 October 2021 from Applicant 11 October 2021 from the Respondent
Determination:	28 October 2021

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment relationship problem**

[1] Mr Saunders' employment with the St Andrews of Hamilton Golf Club (the Club) ended by way of dismissal on 5 August 2021 following a disciplinary process commenced by letter dated 9 June. Mr Saunders' was dismissed for serious misconduct based on findings that he had refused to obey a lawful and reasonable instruction, failed to conduct himself in the best interests of the Club and failed to work cooperatively with others causing a break down in trust and confidence. This appears to be the only disciplinary action the Club had taken against Mr Saunders since his employment commenced in April 2017 as the golf club course superintendent.

[2] On 23 August 2021 Mr Saunders lodged an application for personal grievances related to the disciplinary process and dismissal, seeking remedies including permanent reinstatement along with an application for interim reinstatement, a supporting affidavit and undertaking as to damages. The Club opposes the remedies sought including interim reinstatement.

[3] The parties have provided submissions on a recent judgment of the Employment Court in *Humphrey v Canterbury District Health Board, Te Poari Hauora o Waitaha*.<sup>1</sup> In that judgment the court noted parliament had expressly provided reinstatement is the primary remedy in circumstances where an employee has been unjustifiably dismissed.

[4] This determination deals only with Mr Saunders' application for interim reinstatement. The investigation of his substantive claim of unjustified dismissal has been scheduled for dates in February 2022.

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

[5] On 22 September 2021 the Authority held a case management conference with the parties' representatives to set a timetable for Mr Saunders' interim reinstatement application. The parties have complied with timetabling directions.

[6] In determining this matter affidavit evidence of Mr Saunders, Louise Saunders, Jean McDermid, Ben Slaven, Craig Young, Grant Perrin, Lynda Shergold, Douglas Saunders, Gregory Tims, Murray Gutrey and Allan Smith has been considered as have the parties' statements of problem and reply, the documents attached thereto and the parties' submissions. Evidential matters in dispute between the parties will not be resolved by this determination because the evidence is untested and in applying the relevant tests the Authority is not required to resolve any disputes.

### **The Law**

[7] As the court observed in *Humphrey*, in determining whether or not to order interim reinstatement, regard must be had to the object of the Employment Relations Act 2000 (the Act) which is to build productive employment relationships through the promotion of good faith:

---

<sup>1</sup> *Humphrey v Canterbury District Health Board, Te Poari Hauora o Waitaha* [2021] NZEmpC 59.

One of the central features for the Act is its recognition of the importance of the employment relationship, the obligations both parties have to be responsive and communicative, and that issues ought to be dealt with promptly and between the parties if possible – in other words, supporting constructive employment relationships and repairing them where feasible.<sup>2</sup>

[8] It is with this in mind that applications for reinstatement are to be dealt.

[9] Section 127 of the Employment Relations Act 2000 (the Act) confers jurisdiction on the Authority to grant interim reinstatement. In considering Mr Saunders' application for interim reinstatement the Authority is required to consider the following:<sup>3</sup>

- (i) Does Mr Saunders have an arguable case for unjustified dismissal and an arguable case for permanent reinstatement?
- (ii) Where does the balance of convenience lie? This requires looking at the relevant detriment or injury that Mr Saunders and the Club will incur as a result of the interim injunction being granted (or not granted)?
- (iii) The Authority is then required to stand back and ascertain where the overall justice of the case lies until the substantive matter can be determined.

### **Arguable case of unjustified dismissal**

[10] The first question for consideration is whether there is an arguable case Mr Saunders was dismissed unjustifiably and that he will be permanently reinstated. An arguable case means a case with some serious or arguable, but not necessarily certain prospects of success.<sup>4</sup>

[11] Section 103A of the Act sets out the test for assessing whether a dismissal was justifiable. It requires an objective assessment of whether the Club's actions and how it acted were what a fair and reasonable employer could do in all the circumstances at the time the dismissal occurred. The Authority may take into account other factors it thinks appropriate and must not determine an action to be unjustified solely because of defects

---

<sup>2</sup> *Humphrey*, above n 1, at [5].

<sup>3</sup> *Western Bay of Plenty District Council v McInness* [2016] NZEmpC 36 at [7].

<sup>4</sup> *X v Y Ltd v New Zealand Stock Exchange* [1992] 1 ERNZ 863.

in the process if they were minor and did not result in Mr Saunders being treated unfairly.<sup>5</sup> The Authority's task is to examine objectively the Club's decision-making process and determine whether what the Club did and how it was done were steps open to a fair and reasonable employer.

[12] The context of Mr Saunders dismissal starts with the Club's course redevelopment project (the redevelopment project) which was launched in 2019. This was an important strategic project for the Club which required considerable funds and ongoing Board oversight with concomitant Board accountability for delivery of the project to members. Mr Saunders involvement in the early stages of the redevelopment project was acknowledged in a letter dated 5 February 2021 confirming his salary review:

Dear Grant

**Salary review**

On behalf of the Board, I am delighted to confirm your salary increase from \$75,000 to \$78,000 per annum effective 5<sup>th</sup> October 2020.

An adjustment to include the rate difference since October 5<sup>th</sup> will be included in the next payroll cycle to Sunday 7<sup>th</sup> February, 2021.

Thanks once again for your professional performance in the managing (sic) the course department, and additionally for successfully bringing the Course redevelopment Project through stages 1 and 2.

Yours sincerely

Hamilton Golf Club

...

[13] Notwithstanding what appears to have been the fulsome support of the Board for his performance and specifically with regard to his involvement in the delivery of stages 1 and 2 of the redevelopment project the Board says there were concerns about the redevelopment project which Mr Saunders was aware of and which were of such significance that it had to make a decision whether to go down a performance management route with Mr Saunders to have the concerns addressed or try a collaborative route and choose the later in the hope "the right solutions" would be found.<sup>6</sup>

---

<sup>5</sup> Section 103A Employment Relations Act 2000.

<sup>6</sup> Refer dismissal letter 4 August 2021 at [5].

[14] As part of the redevelopment project an independent course review was commissioned and was presented to the Club's Board in March 2021. This review was prompted, at least in part, by questions over how stage 1 and 2 of the redevelopment project had been implemented to date. The review raised concerns about the condition of the course and prompted the Board to seek an additional independent review of the concerns raised (the second review). The reviewer to undertake the second review was appointed in April with his final report being accepted by the Board on 3 May 2021 (the second reviewer). The Board then decided that the second reviewer and Mr Saunders should work collaboratively. To this end they met in early May to discuss how the collaborative approach would work, discussed the findings of the reviews and steps that could be taken to remediate stages 1 and 2. The second reviewer provided a further report which replaced the first taking into account Mr Saunders' views. How involved Mr Saunders was in the previous iterations of the review process and how any such involvement or lack thereof may have contributed to the employment relationship problem subsequently faced by the parties appears to be a relevant issue. A further relevant issue arising from this is what terms of Mr Saunders employment agreement were engaged by the collaborative approach given the redevelopment project was not part of Mr Saunders job description.<sup>7</sup>

[15] The Board became dissatisfied with Mr Saunders engagement with the second reviewer in particular his drafting of separate reports which had not been asked for and further dissatisfied with Mr Saunders apparent failure to commit to a process for a single report to be produced. A meeting was convened on 26 May with Board members, Mr Saunders and Ms McDermid as his support person to attempt to iron out concerns about the process and move forward. Mr Saunders was asked to reflect on "being a collaborative and supportive team player, being a better and more responsive communicator and being more open to new ideas and changing his views" and meet again with the Board members on 31 May.<sup>8</sup> At the 31 May meeting Mr Saunders advised he agreed with the process but fundamentally disagreed with a third party reviewer being brought in.

[16] The Club was alarmed by this response and a disciplinary process into allegations of serious misconduct was commenced by letter dated 9 June. A meeting was held on 23 June for Mr Saunders to provide a response. The Club then wrote to

---

<sup>7</sup> Refer dismissal letter 4 August 2021 at [3].

<sup>8</sup> Statement of reply 8 September 2021 clause (2)(o).

him on 30 June with a preliminary view the allegations were upheld and dismissal was a possible disciplinary outcome if the allegations were ultimately upheld.

[17] On 23 July the parties attended mediation, the first of four mediations the Authority understands the parties have attended to date.

[18] On 4 August the Club wrote to Mr Saunders advising the allegations were downgraded from serious misconduct to misconduct with a disciplinary outcome of dismissal.

[19] The Club wrote a further letter to Mr Saunders on 4 August advising the allegations were upheld with a disciplinary sanction of dismissal and that 5 August would be his final day. As in *Humphrey* the dismissal focussed on a finding the employment relationship was untenable and the situation irretrievable:

13. We find ourselves in a very disappointing position. Despite our significant efforts to work collaboratively with you and to facilitate you working in the same way with others, from our perspective, this has not happened. A performance management approach was not supported by the Board as being the way to address the developing problems. The General Manager sent the Board an email on 21 July 2021, the day after your letter of response was received, stating that you had learned some valuable lessons from this process. Of note is that you have never conveyed this learning to the Board at any time, behaviourally or in writing, instead you have made a number of personally critical comments about the Board Chairman, and criticised aspects of the process in your letter of response. If you had genuinely learned something from this process, then the way in which you have communicated to us in your letters of 30 June and 20 July 2021 should have conveyed that. Your responses have been to the contrary, negative and unhelpful.

14. We have finally lost all trust and confidence in you, and your behaviour over the period that we have been trying to work with you to find a solution to the problem of your lack of collaboration. Your consistent behaviour has confirmed to us that you are either unable and/or unwilling to genuinely work collaboratively, or even on finding a solution to restore our employment relationship. Your consistent view has been that you are unaware of any problems, which is in direct contrast to what the General Manager has conveyed in writing to the Board about what you have said to him. You appear to say things to one person, and then say something different to someone else. This apparent disingenuousness appears to apply to a number of people that you have interacted with during this process, including the General Manager, individual Board members and club members.

15. After careful consideration on what is best for the Club and its members, and for the reasons outlined above and in our letters of 9 and 30 June 2021, we have decided to implement Clause 22.1 (b) of your IEA, and uphold the finding of misconduct with dismissal on notice. Not only have you consistently failed

to work cooperatively with others, including the Board, we also find that your conduct has not been in the best interests of the HGC.<sup>9</sup>

[20] Mr Saunders says his dismissal was unjustified because:

- (i) the outcome of the disciplinary investigation was predetermined;
- (ii) the disciplinary process followed by the Club was flawed – meetings were unfairly constituted, documents which the Club appeared to rely on were not provided to Mr Saunders, the basis of the disciplinary allegations were unclear;
- (iv) the decision to dismiss was made in the face of a personal grievance related to the unfair disciplinary process dated 30 June 2021; and
- (v) the decision to dismiss was unreasonable and unfair in all the circumstances.

[21] It is seriously arguable whether the disciplinary process undertaken by the Club and the conclusions reached justifying dismissal were the actions a fair and reasonable employer could have taken in all the circumstances. The Club properly concedes Mr Saunders has an arguable case his dismissal was unjustified.

[22] The Authority is satisfied there is a seriously arguable case Mr Saunders was unjustifiably dismissed.

### **Arguable case for permanent reinstatement**

[23] Where it is practical and reasonable to do so and sought, the Authority must provide for reinstatement as a primary remedy<sup>10</sup>. The question is whether it is feasible or practical to re-impose the employment relationship. It is not sufficient to show resistance and strained circumstances to avoid reinstatement.<sup>11</sup>

[24] The Club submits permanent reinstatement is not practicable or reasonable because there is a deep and irreconcilable breakdown in the relationship between Mr Saunders and the Board, to whom he is ultimately responsible for the discharge of his

---

<sup>9</sup> Dismissal letter 4 August 2021 [13] – [15].

<sup>10</sup> Section 125(2) of the Employment Relations Act 2000.

<sup>11</sup> *Angus v Ports of Auckland* [2011] NZEmpC 122 at [63] and *Air New Zealand Limited v Hudson* (unrep) Employment Court, Auckland, AC 46/05, 17 August 2005, Judge Colgan at p 8.

duties and if Mr Saunders is reinstated third parties will be affected namely, members and sponsors of the Club.

### *Practicability*

[25] Can the employment relationship be successfully re-imposed?<sup>12</sup> There is untested evidence Mr Saunders relationship with the Board is strained and that long standing members of the Club hold concerns about his reinstatement and the impact that might have on membership levels and sponsorship. It is evident that the parties have made sincere efforts to negotiate a resolution of this employment relationship problem without success including attending mediation four times.

[26] There is also evidence before the Authority, albeit untested, that until relatively recently the employment relationship was good and that the Board held a positive view of Mr Saunders and in particular his work with the redevelopment project. There is also evidence that he is highly regarded by his team and a number of Club members support his reinstatement. His direct reports Ben Slaven and Craig Young, are unequivocal in their support of his technical and leadership skills. The affidavit of Jean McDermid affixes the names of 50 current Club members who, Ms McDermid avers, support Mr Saunders reinstatement. A number of third party emails included in the evidence congratulate the Club on the good condition of the course.

[27] On the untested evidence before the Authority the breakdown of the parties' relationship appears to have arisen from the involvement of the Board in the redevelopment project and Mr Saunders' role within that project in the period March – June 2021. The project is at a more advanced stage now and a new structure is in place to manage the project.<sup>13</sup> It is unclear on the evidence how Mr Saunders role might work differently with that new structure in respect of the project. With respect to Mr Saunders day to day duties there is little suggestion in the evidence that he could not complete the practical component of the role of course superintendent and significantly, in my view, no evidence that the general manager, to whom Mr Saunders' reports, could not continue to provide that supervision.<sup>14</sup>

---

<sup>12</sup> *Smith v Fletcher Concrete & Infrastructure Ltd* [2020] NZEmpC 125 at [20].

<sup>13</sup> Board Course Update Board Newsletter 20 August 2021.

<sup>14</sup> 23 November employment agreement update.

### *Reasonableness*

[28] Is it reasonable to require Mr Saunders to return?

[29] There is a risk of detrimental effect to third parties' namely members and sponsors. The detail of this risk is somewhat unspecified which is understandable given it is a possible future event. However, the risk as understood by the Club may reasonably be neutralised to a degree by the evidence of the support of members and staff members to Mr Saunders reinstatement. There is little evidence of steps the Club has taken or could take to mitigate the perceived risk to membership and sponsorship and little evidence of steps the Club has taken to understand the causal link between the risk and Mr Saunders actions or inactions.

[30] Mr Saunders has worked for the Club for five years and has 26 years' experience working in the golf industry starting as a 17 year old part-timer. It is the only field he has ever worked in or gained qualifications. He is passionate about golf. It is an integral part of his identity. He says green keeping is the most formative experience and of the greatest impact on his life. He says the industry is tight-knit and his reputation and standing is of high regard and one he values. It is difficult not to conclude reinstatement will go some way to addressing the reputational damage and emotional toll his dismissal and the rumours he has heard about his dismissal has taken.

### *Conclusion*

[31] Given the conflicting affidavit evidence, Mr Saunders apparent practical ability to perform the duties of the role, the progress of the project and the role of the general manager in his day to day supervision to say that it would not be practical or reasonable for Mr Saunders to be reinstated to the role. While it is accepted the parties have engaged in attempts to remedy the relationship without success it does not follow that such attempts are exhausted or not worth continuing. In a recent judgment the court commented:

While no-one is of the view that this would be easy, neither is it possible to say at this stage that it is not practicable or reasonable.<sup>15</sup>

[32] Mr Saunders has an arguable case for reinstatement.

---

<sup>15</sup> *Christieson v Fonterra Co-operative Group Limited* [2021] NZEmpC 142 at [42].

## **Balance of convenience**

[33] This ground for consideration involves the relevant detriment or injury the parties will incur if interim reinstatement is granted or not.

[34] The Authority understands the key motivator of Mr Saunders' claim for interim reinstatement is his desire to return to his position and to address the financial and emotional impact of his dismissal on himself and his family. Mr Saunders submits reinstatement is necessary to offset the emotional harm he has suffered consequent to the dismissal including the rumours. It is accepted on the untested evidence filed by Mr Saunders he has suffered specific harm (emotional, professional and financial) consequent to his dismissal and that reinstatement could address such harm.

[35] The Club says the balance of convenience favours it given Mr Saunders does not work in a dynamic area of practice with specialist skill and knowledge as was the case in *Humphreys* and also, unlike *Humphreys*, Mr Saunders is responsible for the relationship breakdown.

[36] It is not accepted Mr Saunders does not work in a dynamic area with specialist skill and knowledge. The evidence suggests the fine calibrations required to maintain and develop a golf course is intensely dynamic and requires specialised skill. Mr Saunders evidence is compelling as to his commitment to and identification with his role. It is also not accepted the evidence supports a view at this stage that Mr Saunders is wholly or indeed in large part responsible for the relationship breakdown. The Authority has found he has a strongly arguable case his dismissal was unjustified on both procedural and substantive grounds. That said the concern repeated in the Club's evidence of a deep sense of intransigence on Mr Saunders part is serious and a matter that would need to be addressed.

[37] The impact on third parties has been carefully considered. As stated above the specifics of the claimed impact is not clear nor the causal link back to Mr Saunders and steps taken by the Club to mitigate any such impact have not been outlined. It is accepted reinstatement would be difficult for the Board member decision makers but the buffer of the general manager and other Board committee structures is likely to go some way to ameliorating those concerns. While it is accepted the Club does not have

a human resource department it is not without resources and the institutional confidence to take on difficult and complex tasks.

[38] The balance of convenience favours Ms Saunders and supports an order for interim reinstatement.

### **Overall justice**

[39] Standing back from the detail of the claim where on balance does the overall justice lie? Mr Saunders has a seriously arguable case his dismissal was unjustified and that he would be permanently reinstated to his role if his substantive claim was successful. Though on the basis of untested evidence the balance of convenience favours Mr Saunders. Mr Saunders will suffer professionally, emotionally and financially if he is not reinstated. Given this it is unlikely damages will be an adequate remedy.

[40] The Club says membership and sponsorship of the Club will be jeopardised if Mr Saunders is reinstated, though the specific detail of the jeopardy or steps the Club has taken or could take to mitigate that jeopardy is not strong and is somewhat neutralised by the specific evidence of Ms McDermid and Mr Saunders co-workers.

[41] The overall justice of this matter favours interim reinstatement.

### **Outcome and orders**

[42] Mr Saunders' application for interim reinstatement is granted. Mr Saunders is to be reinstated to his former position with the Club within 14 days of this determination, pending further order of the Authority. He is to be reinstated to the payroll from the date of this determination. The parties are directed to attend urgent mediation within 10 working days so they can ensure there is a managed return to the workplace which recognises and deals with the interests of the parties including the interests of the members of the Board.

[43] If the parties cannot agree to the necessary arrangements and the timing of them, leave is reserved to apply to the Authority for urgent orders to be made.

## **Costs**

[44] Costs are reserved and will be dealt after determination of the substantive investigation.

Marija Urlich  
Member of the Employment Relations Authority