

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TAMAKI MAKAUROHE**

[2025] NZERA 247
3364963

BETWEEN	SAEED SOLTANMORADI Applicant
AND	SOUTHERN CROSS HEALTHCARE LIMITED Respondent

Member of Authority:	Robin Arthur
Representatives:	Applicant in person Paul White, counsel for the Respondent
Investigation Meeting:	1 May 2025 by audio-visual link
Determination:	5 May 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This determination resolves a request for interim reinstatement pending the Authority investigating and determining a personal grievance application.

[2] Saeed Soltanmoradi started his employment as Anaesthetic Team Lead at the Hamilton hospital operated by Southern Cross Healthcare Limited (SCHL) on 10 February 2024. He resigned on 10 March 2024 because he considered his managers had not taken adequate steps to address concerns he raised about the behaviour of technicians in his team.

[3] At his request Mr Soltanmoradi's resignation was of immediate effect, without serving a notice period. This occurred the day before a planned "group mediation", involving Mr Soltanmoradi and his team, which the hospital's general manager, Mark Watson, had arranged to discuss problems identified in working relationships.

[4] By email on 13 March Mr Soltanmoradi raised a personal grievance against his employer, Southern Cross Healthcare Limited and the next day lodged an application to the Authority seeking an investigation of his grievance.

[5] The remedies Mr Soltanmoradi sought for his grievance included reinstatement to his position. He also asked the Authority to exercise its discretion to reinstate him on an interim basis from now until his grievance application is determined.¹ He asked for an order restoring him to the SCHL payroll only, not to working at the hospital. His application included the required undertaking as to damages.²

[6] SCHL, in reply, said it had acted as a fair and reasonable employer could have done in addressing the concerns Mr Soltanmoradi had raised so that the end of his employment was the result of choices he made, not any unjustified action of the company. It said reinstating him to the role would not be reasonable or practicable and, in the interim period, he should not be reinstated to the payroll until his grievance was investigated and determined by the Authority.

Authority's investigation of interim reinstatement application

[7] Mr Soltanmoradi's and SCHL's counsel, Mr White, attended an investigation meeting held by audio-visual link to give oral submissions about the interim reinstatement application. SCHL also provided written submissions and Mr Soltanmoradi provided some additional information and explanation in answering questions about his oral submissions.

[8] Their submissions addressed the legal principles concerning interim reinstatement and the information presently available to the Authority about what had happened. This information came from Mr Soltanmoradi's statement of problem, SCHL's statement in reply and affidavits lodged by Mr Soltanmoradi and Mr Watson as well as background documents the parties had lodged with those statements and affidavits.

[9] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination states findings, expresses conclusions and specifies orders made. It does not record all evidence and submissions received.

¹ Section 127.

² Employment Relations Act 2000, s 127.

Principles regarding interim reinstatement

[10] In determining whether to order interim reinstatement the Authority must apply the law relating to interim injunctions and have regard to the object of the Act.³ The object is to build productive employment relationships through promoting good faith in all aspects of employment relationships.⁴

[11] The relevant principles are applied in a three-step process: evaluating whether Mr Soltanmoradi had “an arguable case”; assessing where the balance of convenience lay between now and when his substantive grievance claim will be determined; and assessing the overall justice of the matter.⁵

[12] At the initial step Mr Soltanmoradi must show his application has raised what can be called either a “serious question” or an “arguable case”. On either description this must be a case that appears to have a possible (but not necessarily certain) prospect of success and which is more than merely frivolous or vexatious.

[13] The arguable case must be sufficient to affirmatively answer two questions.

[14] Firstly, was there a tenable argument that SCHL caused Mr Soltanmoradi’s resignation by failing to do what an employer, acting fairly and reasonably, could have done to address the workplace concerns he had raised? If so, it would then be arguable that his employment really ended by constructive dismissal, being actions or inactions of SCHL, rather than his own freely made choice.

[15] Secondly, if the Authority’s eventual determination did find SCHL acted unjustifiably, was there then a tenable argument that Mr Soltanmoradi had a realistic prospect of reinstatement to his employment, in the same position or another position no less advantageous?

[16] The next step looks at the balance of convenience during the interim period, that is from now until the Authority has determined the substantive claim. This concerns the relative impact on Mr Soltanmoradi and SCHL of granting or refusing to grant an interim reinstatement order. Factors to be weighed may include an assessment of the merits of the case and its likelihood of success (insofar as this can be discerned at an

³ Employment Relations Act 2000, s 127(4).

⁴ Employment Relations Act 2000, s 3.

⁵ *XYZ v ABC* [2017] NZEmpC 40 at [5] and [6].

interim stage), the impact on third parties and whether other remedies that might ultimately be ordered would likely be adequate.

[17] The third step stands back from the detail required by the earlier two steps and considers the overall interests of justice.

[18] If an order for interim reinstatement is made, it may be subject to any conditions the Authority thinks fit.⁶

How Mr Soltanmoradi came to resign

[19] Mr Soltanmoradi has worked for just under three years as an anaesthetic technician in New Zealand, initially in Wellington, then Tauranga and, most recently, in the short period of his employment at SCHL's Hamilton Hospital. He is originally from Iran where he had trained and worked in his specific health profession.

[20] His employment agreement, signed in December 2024, provided full-time permanent employment as Anaesthetic Team Lead, reporting to the Theatre Service Manager and with a start date of 10 February 2025. The position description said he was responsible for overseeing and coordinating Anaesthetic Services to ensure they are efficient and effective, supporting and educating the Anaesthetic Team and working closely with the Theatre Service Manager to achieve the hospital's goals.

[21] The hospital's Theatre Service Manager Juliette Cuttriss interviewed Mr Soltanmoradi for the role. Mr Soltanmoradi said that in the interview, and a further meeting held shortly before he started work, Ms Cuttriss had talked with him about "possible challenges in the team" and promised to support him in addressing those issues.

[22] He said two team members ignored him after he was introduced to them on his first day at work. He reported that event in the hospital's internal health and safety register as an instance of bullying behaviour.

[23] Ms Cuttriss invited team members to an introductory meeting with Mr Soltanmoradi three days later. Five of the eight team members attended. During this meeting Mr Soltanmoradi gave a speech in which he said he would "not tolerate poor performance". He said he and Ms Cuttriss had discussed his speech before the meeting

⁶ Employment Relations Act 2000, s 127(5).

and agreed he would use this phrase rather than his initial suggestion of saying he would “not tolerate bullying”.

[24] Mr Soltanmoradi described three events in subsequent days involving the team member he said had ignored him on his first day. She is referred to here as Ms Z.

[25] The first event occurred when he approached Ms Z while she was checking some equipment. He said he was surprised to find she was wearing headphones and, after removing one earphone, Ms Z said she did not have time to talk to him. Mr Soltanmoradi then logged a further safety report about what he described as “hostile, rude behaviour”.

[26] The second event occurred when Mr Soltanmoradi asked Ms Z to add him to a social media chat group of team members for which Ms Z was the administrator. He said Ms Z told him he could create his own group. He asked another team member, who had previously been the acting team lead, to set up a WhatsApp group for the team including him but other team members did not join it or left soon after they were added.

[27] The third event concerned an email Mr Soltanmoradi sent Ms Z at the beginning of his second week of work. Mr Soltanmoradi listed five days on which Ms Z had not clocked in at the time set in the roster for the start of her shift. He sent the email after what he considered was an unsatisfactory response from her when he was asked to talk to her about the issue. His email told Ms Z that failing to start on time was a breach of the company’s disciplinary policy.

[28] This set off a chain of events in which Ms Z spoke to Ms Cuttriss and Mr Watson about Mr Soltanmoradi’s message and Mr Soltanmoradi sent Ms Z a further email saying he would set up a formal meeting with her. Ms Cuttriss then asked Mr Soltanmoradi to talk with her before sending any meeting invitation to Ms Z. Mr Soltanmoradi also consulted an SCHL human resources manager about his messages to Ms Z. The manager told him that he should have found out more about the reasons for Ms Z not starting at times set in the roster rather than sending her an email saying she was in breach of the company’s disciplinary policy. The manager also suggested Mr Soltanmoradi work with Ms Cuttriss on a strategy for better communication with his team.

[29] As emerged from later information, Ms Z later starts on some days were part of a work practice whereby some technicians started worked later if they were working in afternoon theatre sessions that might run into the evening. This was done in order to minimise overtime hours. The written roster did not reflect that arrangement.

[30] Ms Cuttriss convened a meeting on 20 February with Mr Soltanmoradi, Ms Z and Ms Z's support person (another technician) to discuss the shift times issue and ongoing communication expectations. Her file note of the meeting recorded Ms Z had placed a written response about her alleged lateness on the table and pushed it toward Mr Soltanmoradi who had pushed the paper back and said he did not want to read it. It was the start of what Ms Cuttriss' note said became a "somewhat heated and not productive" discussion with Mr Soltanmoradi "pointing and raising his voice" and Ms Z and her support person appearing "visibly uncomfortable".

[31] During the meeting Ms Cuttriss said she did not consider there was an issue of lateness with Ms Z but rather an issue with the roster system. After the meeting Ms Cuttriss also told Mr Soltanmoradi that he had not acted professionally and appeared to be "looking for confrontation".

[32] Early the following week Mr Soltanmoradi wrote to a national nursing advisor in SCHL's head office outlining his concerns about interactions with his team members and saying "right now, I'm thinking about just resigning since I don't see any chance for improvement".

[33] He also asked Mr Watson to meet with him. This led to the first of three meetings Mr Soltanmoradi had with Mr Watson between 26 February and 7 March to discuss his concerns.

[34] Mr Watson's note of their 26 February meeting recorded they had agreed a plan for Mr Watson to meet with the technicians to understand their perspectives and to then organise "a mediated group meeting" between Mr Soltanmoradi and the team. Mr Watson was to act as facilitator of the group meeting. They also agreed Mr Watson and Mr Soltanmoradi would meet again before that meeting to discuss feedback from Mr Watson's meeting with the team.

[35] In a meeting Mr Watson then held with the technicians on 4 March, some team members criticised Mr Soltanmoradi's interactions with them. They said Mr

Soltanmoradi had asked to talk to them at some times when “they were too busy to fully interact” and at other times communicated by email rather than face to face. One team member, who had met technicians from a previous workplace of Mr Soltanmoradi, told Mr Watson that Mr Soltanmoradi had a reputation of “not work[ing] well with females, due to cultural differences”.

[36] In his note of this meeting Mr Watson recorded telling the technicians there were “clear indicators that the team had started off on the wrong foot and needed a full reset”. He said they agreed to participate in the proposed mediated meeting.

[37] Mr Watson then met again with Mr Soltanmoradi on 6 March. He said Mr Soltanmoradi told him “no one was speaking to him, which left him feeling isolated” and “he had applied for another role and was awaiting a potential job offer”. He said Mr Soltanmoradi attributed his difficulties to two specific team members and said Ms Cuttriss was not supporting him. Mr Watson, according to his note, asked Mr Soltanmoradi to focus on “wiping the slate clean” and “starting anew”, including through the planned group meeting.

[38] Mr Watson met again with Mr Soltanmoradi, along with Ms Cuttriss, on 7 March. His meeting note recorded Mr Watson said there were “clearly two sides to the issues affecting team dynamics” but “emphasised our commitment to setting [Mr Soltanmoradi] up for success in his role as AT Lead”. His notes included a summary of a plan for “relationship building”, over a period of up to 60 days, and a facilitated meeting to reset those relationships. He recorded their discussion included some coaching of Mr Soltanmoradi about the importance of body language, tone and careful choice of words and Mr Watson’s impression that, by the end of their conversation, Mr Soltanmoradi seemed encouraged.

[39] However, according to Mr Soltanmoradi, another conversation also occurred that day with Ms Cuttriss. He said he had “a casual meeting” with her because he “wanted to express that I was unhappy with her approach”. He said Ms Cuttriss referred, during that discussion, to his role as team leader being 0.2 of a full time equivalent (FTE) position, with the remaining 0.8 being clinical work as an anaesthetic technician.

[40] By email on 10 March Mr Soltanmoradi questioned Ms Cuttriss further about that description of his team lead position. He said his employment agreement referred

to the position as a permanent full time AT leader and did not mention also being a technician for any part of the FTE.

[41] Ms Cuttriss responded that his position description referred to active participation in clinical care in the theatre roster, which was “a standard expectation for leadership positions of this nature”.

[42] Mr Soltanmoradi described her response as “the final trigger for my resignation”. He said he had expected to work in the theatre, and had done so, but from earlier conversations with Ms Cuttriss understood this would be for one shift a week, an arrangement he consider was changed significantly by her latest message.

[43] Half an hour after getting Ms Cuttriss’ email on 10 March Mr Soltanmoradi sent her a message saying he would like to resign from his position that day if an immediate resignation could be agreed. When Ms Cuttriss agreed to waive a one week notice period in his employment agreement Mr Soltanmoradi sent her a further message about the reason for his resignation which included the following:

As you know from the day one I faced with extreme hostility, rudeness, disrespectful behaviour and bullying specially in the form of ignorance, excluding and isolation. Although I appreciate you and the GM acknowledgement about this ongoing matter, your policy of not willing to hold these unlawful and immoral and inhuman actions accountable, left me no choice but to resign even though as I advised you I am not employed or have an offer of employment from anywhere now, so this will put me and my family in great risks specially as I am the only provider of my household.

[44] At the time of his resignation Mr Soltanmoradi was waiting for news about a position at another Hamilton hospital for which he had applied on 27 February, attended an interview on 4 March and had been asked on 5 March to provide references for checking. He was subsequently not offered the role. It was readvertised in early April.

An arguable case: an unjustified dismissal?

[45] Against that background, the first question in considering the interim reinstatement application was whether those events showed Mr Soltanmoradi had an arguable case that SCHL had acted unjustifiably and his decision to resign amounted to a constructive dismissal.

[46] Establishing an arguable case of unjustified dismissal or disadvantage has a low threshold. It is usually crossed simply by the affected worker disputing the justification

of the employer's actions that are said to give grounds for a grievance. This is because, once such a claim is made, the statutory onus falls on the employer to justify what it did and how it did it.⁷

Constructive dismissal requires dismissive or repudiatory conduct by the employer

[47] Constructive dismissal concerns circumstances where the behaviour or other actions of the employer is said to have compelled the employee to leave their job. Such conduct, resulting in a resignation, is held to be as much a dismissal as where an employer has actually dismissed the employee. In each case the actual facts need to be examined to answer this question: could the employer's conduct fairly be described as crossing the line from being inconsiderate conduct, causing some unhappiness or resentment to the employee, to being dismissive or repudiatory conduct sufficient to justify ending the employment relationship? If the employer really caused the employee to take the step of terminating the relationship by resigning, then the case is one of constructive dismissal.⁸

[48] If a breach of duty by the employer is said to have caused the resignation, all the circumstances of that occurrence have to be examined, not only the terms of notice given or whatever else the employee communicated in tendering her or his resignation. If the answer to the causation question is yes, the next question is whether the employer's breach of duty was sufficiently serious to make a substantial risk of resignation reasonably foreseeable. This considers whether an employee would reasonably be prepared to keep working under such conditions.⁹

[49] The evaluation of the breach, and its seriousness, is an assessment of fact and degree.¹⁰

An arguable case of unjustifiable action is accepted

[50] Mr Soltanmoradi's criticisms of his interactions with Ms Cuttriss were, alone, sufficient to meet the low threshold of an arguable case that his concerns had not been properly addressed. Those criticisms concerned whether she provided him with adequate support in dealing with known problems in the team.

⁷ Employment Relations Act 2000, s 103A.

⁸ *Wellington Clerical IUOW v Greenwich* (1983) ERNZ Sel Cases 95 at 104.

⁹ *Auckland Electric Power Board v Auckland Provincial District Local Authorities Officers IUOW (Inc)* [1994] 2 NZLR 415 (CA) at 419.

¹⁰ *Spotless Facility Services NZ Limited v Mackay* [2016] NZEmpC 153 at [71].

[51] SCHL's submissions also, appropriately, conceded Mr Soltanmoradi's claim met the relatively low threshold at this stage. It did so without conceding some essential facts were as he described them but submitted his case was nevertheless weak. Its submission on the merits of his case, that is its relative strengths and weaknesses, is considered later in this determination as part of the balance of convenience.

An arguable case: permanent reinstatement reasonable and practicable?

[52] There is a less straight forward answer to the next question, of whether there was an arguable case about the prospects of permanent reinstatement, if how Mr Soltanmoradi's employment came to end was found to be unjustified.

[53] SCHL submitted the threshold was not crossed because Mr Soltanmoradi's trenchant criticisms of some of the technicians, and particularly his comments about not trusting Ms Cuttriss, would likely make the prospect of successful reinstatement to his former role both impractical and unreasonable.¹¹ It said Ms Cuttriss would continue to be his manager if Mr Soltanmoradi were reinstated and his view of her would make restoring a productive working relationship so difficult that it was impractical. Mr Watson was also shortly due to leave his role at SCHL's Hamilton Hospital and move to a new role at Grace Hospital in Tauranga. SCHL submitted this would make a restorative process less likely to be successful because a long serving manager, who had the trust of staff, would no longer be available to facilitate such a process.

[54] At this stage of the analysis it was, however, at least arguable SCHL, as a large and sophisticated organisation, would have the capacity to address and resolve the difficulties in workplace relationships that would need to be overcome for a successful reinstatement. It has national advisors on human resources and clinical practice and operational managers experienced in developing productive teams from the diverse range of highly qualified health sector professionals working in its hospitals. Together, they likely also have experience in resolving problems that can arise from time to time in the workplace dynamics of those teams.

¹¹ Employment Relations Act 2000, s 125.

The balance of convenience

[55] The balance of convenience weighs the potential effect on Mr Soltanmoradi if he were declined interim reinstatement against the potential effect on SCHL if interim reinstatement were granted. This comparison is sometimes referred to as considering the relative hardships to the parties and any relevant third parties.¹²

[56] The period under assessment is from the date of this determination on the interim issue until the date of issue of the Authority's substantive determination on Mr Soltanmoradi's personal grievance claims. An investigation meeting has been scheduled for late September. A determination would follow within the following three months. On that basis, interim reinstatement now, if ordered, could be for a period of around seven months.

Evaluating strengths and weaknesses of merits of the case

[57] Evaluating the relative strength or weakness of aspects of Mr Soltanmoradi's case is helpful in assessing the balance of convenience in this case. As noted earlier, this evaluation is reached from reading untested affidavit evidence and background documents and by considering the parties' submissions. Conclusions reached at this stage of the proceedings are provisional and subject to change when the evidence is fully tested through questioning at the eventual substantive meeting.

[58] Although Mr Soltanmoradi has an arguable case that his employment ended by unjustified actions of SCHL managers, it is only a weak case. This is for the following reasons.

[59] Firstly, the Authority's investigation is not into why there were difficulties in the Anaesthetic Technicians team. The inquiry concerns whether the actions of the relevant SCHL managers in their dealings with Mr Soltanmoradi, over addressing those difficulties, met the standard of the test of justification set by s 103A of the Act. It is not a standard of perfection or measured solely by Mr Soltanmoradi's view of what would have been satisfactory. Rather, the actions of Ms Cuttriss, Mr Watson and others in positions of responsibility within SCHL are assessed on the objective standard of what a fair and reasonable employer could have done in all the circumstances at the time of the relevant events.

¹² *Angus v Ports of Auckland Limited* [2011] NZEmpC 125 at [56].

[60] Secondly, the evidence presently available suggests SCHL had responded to the concerns reported by Mr Soltanmoradi in a way that was fair and reasonable, when viewed in the full context.

[61] Those responses had to calibrate with SCHL's obligations to other employees. For instance, when Mr Soltanmoradi wrote to Ms Z raising her starting times as a breach of disciplinary policy, Ms Cuttriss and Mr Watson had to act fairly in addressing the concerns Ms Z then raised with them about that correspondence. This included meeting with her and, although Mr Soltanmoradi felt undermined by how Ms Cuttriss conceded the point, later accepting Ms Z's explanation relating to a common practice for technicians working on afternoon theatre sessions.

[62] Mr Watson's prompt responses, as the hospital's general manager, to Mr Soltanmoradi's requests to meet indicated he was carrying out SCHL's good faith obligation to be responsive and communicative in seeking to maintain a productive employment relationship with Mr Soltanmoradi.¹³

[63] Those meetings resulted in a stepped plan to address the concerns Mr Soltanmoradi had raised. In his oral submissions on this application Mr Soltanmoradi said he, rather than Mr Watson, had proposed the plan for Mr Watson to meet with the technicians and then facilitate a group meeting. Before Mr Soltanmoradi resigned a fortnight later, Mr Watson had already carried out two of the agreed steps and the third step was scheduled to be held the very next day.

[64] Other instances of the responsiveness to concerns raised by Mr Soltanmoradi included advice from a human resources manager when Mr Soltanmoradi asked about the letter he had written to Ms Z, information from a national clinical advisor when asked about workplace policies, and several detailed discussions with Ms Cuttriss about how to deal with interactions with team members.

[65] Mr Soltanmoradi did not always welcome the specific advice he was given but coaching from Ms Cuttriss and Mr Watson about how he could better communicate with team members was within the scope of what an employer, acting fairly and reasonably, could have done in responding to his concerns. It was advice they could

¹³ Employment Relations Act 2000, s 4(1A)(b).

reasonably give to someone who was dealing on SCHL's behalf, as a team leader, with other employees.

[66] Thirdly, in an email to Ms Cuttriss about his resignation on 10 March, Mr Soltanmoradi incorrectly described himself as having "tried every possible avenue to make things right".

[67] Mr Soltanmoradi did not try the avenue which Mr Watson had put in place for 11 March, the facilitated group meeting with the team. Holding the meeting was a key step in the plan that Mr Soltanmoradi had agreed with Mr Watson in their meeting on 26 February. He opted to resign rather than attend the meeting scheduled for the next day.

[68] Fourthly, the further plans for a "reset" which Mr Watson and Ms Cuttriss discussed with Mr Soltanmoradi in their meeting on 7 March indicated SCHL intended providing ongoing support to him as the team lead.

[69] In that light, SCHL appears to have the stronger case that it had met the standard of acting fairly and reasonably in seeking to address the concerns Mr Soltanmoradi raised during the 28 days from the start of his employment until he resigned. While he found the situation difficult, developing better team dynamics would likely take time. It was not unreasonable for an employer, in those circumstances, to seek to set in place a collaborative rather than confrontational approach to resolving those problems on a long-term basis.

[70] The relative merits of the parties' cases regarding the prospect of successful reinstatement were not as clear cut. It is a matter that, of course, would need to be addressed only if Mr Soltanmoradi did eventually establish unjustified action by SCHL had caused his resignation. A factual analysis of the practicability and reasonableness of reinstatement would then be required.

[71] While SCHL said there was a risk some technicians would leave if an order was made for Mr Soltanmoradi's reinstatement, this is not a determinative factor. Some technicians could leave in any event for a range of factors such as career development, change of family circumstances and the competitive market for anaesthetic technicians. Experienced technicians are in short supply and they may be drawn away by attractive offers of employment elsewhere anyway.

[72] Mr Watson's availability as a trusted facilitator for a return to work would not be a decisive factor. SCHL may have other skilled managers and advisors who could adroitly navigate the restorative measures that would be necessary with Mr Soltanmoradi, some of the technicians and Ms Cuttriss. And Mr Watson's new role is at a hospital operated by a company in which SCHL is a shareholding partner, so there might also be some prospect arrangements could be made with that business for use of his skills as a facilitator, if his participation was vital to the prospects of successful reinstatement.

[73] The merits of this second aspect, concerning the prospects for successful reinstatement, were evenly balanced.

Effect on third parties

[74] There is no immediate effect on third parties in respect of this interim reinstatement application because Mr Soltanmoradi had asked for reinstatement to the payroll only, not to the workplace. The potential effect on co-workers if he was to be permanently reinstated is a factor for consideration in the substantive investigation of his grievance, if that remained a remedy he sought at that stage.

Relative hardships on the parties

[75] Mr Soltanmoradi's request for interim reinstatement to the payroll only is, as SCHL submitted, an unusual application. More typically, an order is sought for return to the workplace or some form of work, such as working from home or another location. In some cases, particular logistical or relationship difficulties may result in the order for interim reinstatement reserving a discretion to the employer to elect to restore the person to its payroll but not require the person to do any work. Exercising that discretion means the employer is incurring the cost of paying the employee but not getting the benefit of any work in return. It is then a choice the employer has made not to get the usual value of the wage-work bargain.

[76] Mr Soltanmoradi sought only what he described as "income continuity" while his grievance was heard in order to meet his living costs, which include rent for the flat in which he and his partner live, and to pay for a representative to assist with his case.

[77] There was no doubt SCHL could afford the payment, if ordered, so the relative burden of hardship plainly lay with Mr Soltanmoradi. There are, however, aspects of the information about his own efforts to secure alternative employment and income in the interim period which do not support the order he sought.

[78] Mr Soltanmoradi provided evidence of seeking employment with three other employers in Hamilton who employ anaesthetic technicians. One was the employer he had approached in late February, and which then asked in early March about checking his references. He was not offered a job there and, despite inquiries, had not been able to find out why. Two other employers had not offered him interviews although he understood suitable positions as anaesthetic technicians were available and people with his level of skill and experience are in short supply.

[79] Mr Soltanmoradi believes this difficulty getting a position elsewhere in Hamilton, directly or indirectly, results from what happened during his brief employment with SCHL. Mr Watson, in his affidavit, said he had no knowledge of what had happened over Mr Soltanmoradi's approach to those other hospitals in Hamilton but offered one possible explanation. Mr Watson said the hospitals directly employed their technicians but the surgeons and anaesthetists operated independently across a number of hospitals. He suggested what happened with Mr Soltanmoradi leaving SCHL's Hamilton Hospital, after such a short period of employment, may have been a "topic of conversation" when those doctors were working at other hospitals and affected Mr Soltanmoradi's employment prospects elsewhere.

[80] However, Mr Soltanmoradi also had the prospect of work at the Grace Hospital in Tauranga, the workplace he had left in January 2025 to start work for SCHL in Hamilton in February.

[81] On 8 April Grace Hospital made Mr Soltanmoradi a formal written offer of three months' work on a fixed-term employment agreement. He turned the offer down. He said he was prepared to work on a casual basis or in a permanent role but it did not suit him to work full-time in Tauranga for that three-month fixed period.

[82] However copies of text messages exchanged in early April show Mr Soltanmoradi's former Team Lead at Grace Hospital had proposed offering him a fixed term contract till December, that is around eight months. Mr Soltanmoradi had responded to that suggestion with a message saying he thought he could "do at least 3-

4 months of full-time casual now”. The Team Lead responded with messages asking when Mr Soltanmoradi wanted to start and said he would arrange for an offer to be sent through to Mr Soltanmoradi to sign and accept.

[83] When Mr Soltanmoradi then received a written agreement providing a three-month fixed term, he rejected the offer saying he understood he would be offered either “a permanent full-time or casual position”.

[84] His explanation for rejecting the offered work, given during his oral submissions on the interim reinstatement application, was not convincing. He said taking the fixed term role would require relocating from Hamilton and he wanted a casual role as he could then choose to work just enough days to meet the accommodation and living costs for him and his partner in their flat in Hamilton. He said those costs were relatively low and he had intended staying with friends or renting cheap Airbnb accommodation if he travelled to Tauranga to work casual shifts.

[85] This did not explain why Mr Soltanmoradi did not accept an offer for full-time employment in Tauranga until December, using the same arrangements for accommodation and generating more income, or the fact that the messages exchanged with the Team Lead at Grace Hospital had referred to full-time not part-time work being available for him. While the alternative employment available in Tauranga included some inconvenience of travel and accommodation, Mr Soltanmoradi had not established a compelling reason for rejecting it and for, instead, SCHL paying his full salary for the interim period.

[86] In light of the conclusions reached regarding the relative merits of each party’s case and the relative hardships in the interim period, the balance of convenience favoured SCHL.

Overall justice: where does it lie meanwhile?

[87] This last step stands back from the details about the arguable case and the balance of convenience and considers the overall justice of the matter, from now until its eventual determination.

[88] On the information presently available to the Authority, Mr Soltanmoradi faces a considerable hurdle establishing how the actions of Mr Watson and Mr Cuttriss, in discussing and addressing his concerns, were dismissive or repudiatory conduct that

then made his decision to resign a constructive dismissal. Rather than ignoring the problems he had identified, a plan was in place to address them and to assist him in building the relationships needed to successfully carry out his role in the team.

[89] In those circumstances, an order for his interim reinstatement to SCHL's payroll until his grievance application has been investigated and determined was not in the overall interests of justice, at this stage of this case. Accordingly, Mr Soltanmoradi's application for interim reinstatement is declined.

[90] Timetable directions are already in place for the parties to lodge witness statements and documents for the Authority investigation of Mr Soltanmoradi's personal grievance.

Costs

[91] Costs are reserved, pending the outcome of the substantive investigation of Mr Soltanmoradi's grievance application.

Robin Arthur
Member of the Employment Relations Authority