

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 267
3366047

BETWEEN	WILLIAM DAVID MANNING Applicant
AND	MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT First Respondent
AND	KARIN SCHOFIELD Second Respondent

Member of Authority:	Geoff O’Sullivan
Representatives:	Phil Mitchell, counsel for the Applicant Peter Chemis, counsel for the Respondents
Investigation Meeting:	10 April 2025
Submissions Received:	10 April 2025 from the Applicant 10 April 2025 from the Respondents
Determination:	13 May 2025

DETERMINATION OF THE AUTHORITY

Introduction

[1] William David Manning commenced employment with the Ministry of Business, Innovation and Employment (MBIE) in June 2018 as a Senior Designer (IT).

[2] After an investigation process, MBIE wrote to Mr Manning on 14 March 2025 advising him that following allegations it had set out in an earlier letter dated 10 September 2024, Mr Manning’s employment was to end that day, with a payment being made in lieu of his notice period. Although the 14 March letter appears to canvass other issues, it contains the statement as follows:

For avoidance of doubt, and as confirmed in my preliminary letter, I have only taken into consideration the allegation of “Destroying MBIE official records”.

[3] The 14 March 2025 letter accordingly states that the serious misconduct relied on by MBIE to terminate Mr Manning’s employment was that he destroyed MBIE official records. The letter also makes it clear that this information was destroyed through Mr Manning restoring his laptop’s factory settings.

[4] Although the reason for dismissal is made clear through the 14 March 2025 letter, there is a background leading up to the dismissal which forms an important part of the factual matrix. In the period prior to his dismissal, Mr Manning had been on a lengthy period of suspension. On 26 February 2024, MBIE had commenced a formal process in relation to concerns it had that Mr Manning had been:

- Selling or promoting his company’s products to MBIE employees using MBIE resources during work hours;
- Using his company login to access MBIE’s Teams system;
- Using MBIE images as part of his personal design portfolio page on the internet;
- Using MBIE employee names on his personal design portfolio page on the internet; and
- Providing inaccurate or incomplete information in relation to his declared involvement in his company, Ameribuild.

[5] A meeting to discuss the matters was scheduled for 6 March 2024, however, on 5 March 2024, Mr Manning went on sick leave.

[6] Unbeknownst to MBIE at the time, Mr Manning reset his MBIE laptop to factory settings which, in effect, wiped any information retained on the laptop. He then went on planned annual leave.

[7] On 11 March 2024, Mr Manning was arrested by New Zealand Police and charged with obtaining by deception. Mr Manning has pleaded not guilty, however, a trial is yet to be held.

[8] Should Mr Manning be reinstated either on an interim or permanent basis, MBIE advised it would have to continue on with its investigation regarding other

matters other than the one point relied on for the dismissal. In August 2024, New Zealand Police returned Mr Manning's laptop to MBIE. They had seized this at the time of the arrest. It was only at this point that MBIE discovered that the laptop had been, in effect, wiped and nothing could be recovered from it.

[9] On 25 March 2025, New Zealand Police emailed MBIE advising they found evidence that prior to June 2023 Mr Manning appeared to have taken a computer dock belonging to MBIE. The Police advised that there was evidence that he may have taken more computer docks, possibly later in June or July 2023. The Police email concluded by saying "We are advising you of this so that you can conduct an internal investigation and avoid such conduct reoccurring".

[10] No detail was provided and why the email was sent remains unknown. In any event, it is an allegation only, but an allegation, should Mr Manning return to his employment, that would need to be investigated.

[11] In the statement of problem filed by Mr Manning, he has named Karen Schofield, a General Manager at MBIE, as a second respondent alleging that she has actively breached the terms of Mr Manning's employment agreement. He seeks penalties to be imposed for what is termed her egregious conduct.

[12] In his statement of problem, Mr Manning seeks reinstatement to his position, lost wages, compensation and penalties. However, it is his application for interim reinstatement that this determination deals with. The Authority is asked to decide whether or not Mr Manning should be reinstated to his position with MBIE pending a hearing and determination of his substantive claims. Mr Manning applied for and was granted urgency by the Authority and an investigation meeting for his employment relationship problem is set down for 28 May 2025.

[13] It is important to note at this stage that this determination will not decide whether or not Mr Manning was unjustifiably dismissed or whether, if a later determination finds he was unjustifiably dismissed, he would be reinstated on a permanent basis. In *Alistair Ross Gordon Humphrey v Canterbury District Health Board, Te Poari Hauora o Waitaha* the Employment Court noted that Parliament had expressed that reinstatement is the primary remedy in circumstances where an employee has been unjustifiably dismissed.¹ MBIE disputes Mr Manning's claim and

¹ [2021] NZEmpC 59.

strongly opposes the application for interim reinstatement. They point out that Mr Manning has been on extended period of suspension and is currently facing criminal charges. If he was reinstated, he would remain on suspension and MBIE would need to continue its investigation into his conduct, whilst all the time the criminal charges Mr Manning faces would be unlikely to have been dealt with, with there being a suggestion his case will not be heard until 2026. MBIE says that other team members face significant workload pressures and should Mr Manning be reinstated on an interim basis, because he was on suspension, that workload pressure would continue unfairly.

[14] MBIE also says even if Mr Manning were reinstated to the payroll they would have to employ a replacement and pay two salaries, perhaps for two years, until the criminal case is finally heard. MBIE states it finds Mr Manning's actions concerning to the extent trust and confidence has been severely damaged. Whilst MBIE accepts it does not know whether Mr Manning or his company has acted criminally or defrauded anyone, that at a time when Police had an interest in him, and MBIE also was interested in what was on his laptop, he reset his laptop, wiping off any information it may have contained. They say they are suspicious of his motives and accordingly do not consider it reasonable to reinstate him to the workplace or to the payroll. For his part, Mr Manning says he faces significant costs in defending himself against the criminal charges and that he is the sole income earner in his household. He says he wiped his computer for security purposes and to protect himself from harm.

Legal framework, interim orders

[15] As the Court observed in *Humphrey*, in determining whether or not to order interim reinstatement, regard must be had to the objects of the Employment Relations Act 2000 (the Act) which is to build productive employment relationships through the promotion of good faith. In *Humphrey*, the Court noted at [5]:

One of the central features of 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.

[16] It is with this in mind that Mr Manning's application for reinstatement is to be dealt with.

[17] The legal framework I must follow in respect of his application for interim orders can be summarised as follows:

- (a) The applicant must establish that there is a serious question to be tried in relation to the claim of unjustified dismissal and if so, he must also establish that there is a serious question to be tried in relation to the claim of permanent reinstatement; and
- (b) Consideration must then be given to the balance of convenience and the impact on the parties of granting or refusing to grant, the interim orders sought. The impact on any third parties would also be relevant to the weighting exercise; and
- (c) The overall interests of justice are to be considered standing back from the detail required by the above steps.

[18] Both parties have provided evidence by way of affidavit and both parties have spoken to written submissions presented at the investigation meeting. This means, at this interim stage, the Authority has proceeded on the basis of untested evidence, which will not be tested until the substantive hearing.

Serious question to be tried in relation to the claim of unjustified dismissal

[19] The threshold for a serious question is that the claim is not frivolous. Analysing this is not an exercise of a discretion, rather, it must be based on a judicial assessment of the evidence, albeit untested, and the submissions advanced.² In this case, the serious question to be tried is whether or not termination of Mr Manning's employment for destroying MBIE official records was something a fair and reasonable employer could do under all the circumstances.

Arguable case

[20] Although as mentioned above the Authority has had only untested evidence before it, it is certainly arguable that Mr Manning's claim he did not destroy MBIE official records at all when resetting his computer. He says the information remains elsewhere.

[21] MBIE agree that on this basis Mr Manning has an arguable case. Indeed, it was clear during the investigation meeting that MBIE had a significant number of

² *Western Bay of Plenty District Council & NZ Tax Refunds v Brooks Homes Limited* [2013] NZCA 90.

unresolved concerns in respect of Mr Manning's conduct which have yet to be properly investigated. It is certainly arguable that MBIE may not have acted as a fair and reasonable employer under the circumstances when it dismissed Mr Manning for "destroying MBIE official records".

Serious question to be tried in relation to the claim of permanent reinstatement

[22] MBIE argues that at best, there is only a weakly arguable case for permanent reinstatement. It reiterates its concerns regarding Mr Manning's lack of openness and the criminal charges he faces. MBIE has also raised other concerns referred to in paragraph 4 which, for reasons that are somewhat unclear, have still not been investigated and findings made. MBIE also says that in seeking penalties against Ms Schofield personally, means that reinstatement would not be practicable or reasonable bearing in mind her position with MBIE. In effect, MBIE says Mr Manning is accusing Ms Schofield of having some form of vested interest in the dismissal.

[23] MBIE also submits that even if Mr Manning were to be reinstated, he would be reinstated on suspension whilst MBIE undertakes a lengthy investigation into the various other concerns it had with Mr Manning, although it concedes it did not rely on these grounds for the dismissal. Although those grounds were not relied on, MBIE reiterates they have yet to be investigated. I attach little weight to this as the truth or otherwise of the allegations is yet to be determined.

[24] I accept that on the untested evidence, there is an indication of significant relationship issues, especially regarding trust and confidence. They may have a negative impact should Mr Manning be reinstated. However, at this stage of the proceedings, it cannot be said his claim of permanent reinstatement, should he succeed in a claim of unjustified dismissal, has no chance of success. I find there is an arguable case for permanent reinstatement should Mr Manning succeed with his claim of unjustified dismissal.

Balance of convenience

[25] Assessing the balance of convenience requires the comparative analysis of the impact on Mr Manning, MBIE and any third parties if the interim orders sought by Mr Manning are either granted or not. This involves a weighing exercise in exercising the Authority's discretion. I must assess what would happen if the interim position is reversed in the later substantive determination.

[26] For Mr Manning, this means assessing the consequences to him if he were not reinstated on an interim basis but then later deciding in favour of permanent reinstatement. For MBIE, this means assessing the consequences of requiring it to reinstate Mr Manning on a temporary basis, but then subsequently deciding against the remedy of reinstatement. In his untested evidence, Mr Manning accepts he took an MBIE-owned dock home, but says he returned it. He also accepts that he mentioned taking MBIE property as compensation, but says this simply represented his frustrations with MBIE's reaction to concerns he raised when his pay was withheld without his knowledge or consent. He says he expressed that frustration with his spouse and it was a private conversation arising simply through frustration.

[27] Mr Manning's prime concern is that should he not be interimsly reinstated he will be left without income.

[28] I have already set out MBIE's concerns in respect of what would happen should Mr Manning be reinstated on an interim basis. I do not see the grounds put forward as being particularly strong. Whilst obviously the relationship would remain fraught whilst MBIE carries out any further investigation into concerns it has with Mr Manning, the Courts have noted the benefits of a restorative approach to the breakdown of an employment relationship, bearing in mind the underlying objects of the Act and the fact that reinstatement is a primary remedy.

[29] I accept that, on the face of it, seeking a penalty personally against Ms Schofield would be damaging to any relationship. In saying that, I am not criticising Mr Manning's seeking of a penalty. It is his right and not unusual in cases involving an unjustified dismissal. It is perhaps less usual when a party is seeking interim reinstatement. It does give a limited insight, however, into the relationship between the parties.

[30] I am very mindful that Mr Manning has been granted urgency and the substantive matter will be heard on 28 May 2025. That is not very far away and counts against interim relief. It is a substantive determination which holds the key to Mr Manning's concerns. Accordingly, on the limited evidence before the Authority, the balance of convenience, mainly because of the close proximity of an investigation meeting into Mr Manning's substantive concerns, favours MBIE.

Overall interests of justice

[31] The overall interests of justice do not favour the granting of interim reinstatement in this case. MBIE asserts that there are significant difficulties with the parties' relationship and there remains, of course, the allegations of impropriety against Mr Manning, including the criminal proceedings. Whilst such issues are unlikely to affect permanent reinstatement being available as a remedy, should he succeed in his substantive claim, it is nonetheless a matter to be considered at this interim stage. MBIE has significant concerns with Mr Manning having access to its systems bearing in mind the reasons for his dismissal and the unresolved concerns which would need to be addressed should he return to the workplace. Again, I am mindful that Mr Manning sought and was granted urgency in respect of the substantive hearing and with the investigation meeting currently set to be heard on 28 May 2025, the Authority will have in front of it all relevant information and evidence. As at that date, all matters will be able to be canvassed. The overall interests of justice do not favour the granting of interim reinstatement at this point in time.

Conclusion

[32] The application for interim reinstatement is unsuccessful.

Costs

[33] Costs are reserved and will be dealt with after the substantive determination is issued.

Geoff O'Sullivan
Member of the Employment Relations Authority