

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 544  
3387765

	BETWEEN	TE RINA McCLUTCHIE Applicant
	AND	KIFFS AGVENTURES LIMITED First Respondent
	AND	ANTHONY KIFF Second Respondent
	AND	DANELLE KIFF Third Respondent
Member of Authority:		Jeremy Lynch
Representatives:		Gregory Bennett, advocate for the Applicant Christie McGregor, counsel for the Respondents
Investigation Meeting:		27 August 2025
Submissions and Other Material Received:		At the investigation meeting for the Applicant At the investigation meeting for the Respondents
Determination:		2 September 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Te Rina McClutchie seeks interim reinstatement to her previous employment, pending the Authority's substantive investigation and determination of her personal grievance claims.

[2] Ms McClutchie's interim reinstatement is strongly opposed by the respondents.

[3] This determination deals only with Ms McClutchie's application for interim reinstatement.

## **Background**

[4] Anthony and Danelle Kiff are the directors of Kiffs Agventures Limited (Agventures), which operates as a contract dairy farming business on farmland in Tokoroa, owed by the Tauhara Number 2 Trust (the Trust).

[5] Agventures is not a large employer. Mrs Kiff says that she and her husband live and work on the farm, and that Agventures (currently) employs two other staff to assist with dairy operations.

[6] Ms McClutchie was recruited by Agventures in March 2025. Her terms of employment are set out in a comprehensive Federated Farmers individual employment agreement, signed by Ms McClutchie and Agventures on 7 April 2025, and recording a start date of 16 April 2025.

[7] Ms McClutchie was employed in the position of assistant farm manager. As a term of her employment, she was provided with a service tenancy, being a self-contained freestanding house on the farm (the accommodation).

[8] During her employment, Ms McClutchie reported a number of problems with the accommodation. Most of the issues she reported were promptly addressed. On one such occasion, a builder attended the accommodation to repair a leak in the chimney.

[9] While onsite, the builder determined that the roofing tiles, although intact, contained asbestos. Mrs Kiff says that the builder advised that the roofing tiles were not a safety risk, but if they were to be replaced, the process would need to be done safely, given the asbestos risk.

[10] Mrs Kiff says that as the accommodation was owned by the Trust, permission was sought for Agventures to have the roof tiles replaced, and a quote was obtained for the work. Under the quote, the project is estimated to take a number of weeks to complete, during which the accommodation cannot be occupied.

[11] On 16 June 2025, Ms McClutchie raised a personal grievance with Agventures, largely in relation to issues with the accommodation (to which she now wishes to return).

*Ms McClutchie is given notice of her dismissal*

[12] The employment agreement contains a 90-day trial provision.

[13] On 19 June 2025, Agventures gave Ms McClutchie notice of her dismissal, in reliance on the 90-day trial provision. In accordance with the employment agreement, Ms McClutchie was given five days' notice of termination of her employment, and 14 days' notice of the requirement to vacate the accommodation.

[14] Ms McClutchie says that she commenced work prior to signing the employment agreement, meaning the trial period provision is invalid, and therefore her dismissal is unjustifiable.

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

[15] On 30 June 2025 Ms McClutchie lodged her statement of problem in the Authority<sup>1</sup>, seeking a variety of personal grievance remedies. Ms McClutchie also sought an interim injunction (inter alia) staying her dismissal and the requirement to vacate the accommodation. Ms McClutchie sought to remain in the accommodation on an interim basis, until the Authority could investigate and determine her substantive grievance.

[16] This application was originally made on a 'without notice' basis. The Authority declined to proceed without notice. Instead, a case management conference was held with the representatives on 2 July 2025, at which the matter was granted urgency. The parties were directed to attend mediation on an urgent basis, however that process failed to resolve matters.

[17] Timetable directions were made for the affidavits of Mr and Mrs Kiff to be lodged, together with a date for Ms McClutchie to lodge a reply affidavit, and for the representatives to lodge submissions.

[18] Issues with legibility required the affidavits of Mr and Mrs Kiff to be refiled in hard copy form. In turn, the prior work commitments of Ms McClutchie's advocate meant that the delay had him unable to prepare submissions as timetabled. The scheduled investigation meeting to hear the parties' submissions was vacated, and a new timetable put in place for the affidavit evidence and written submissions.

[19] Affidavits sworn on 24 July 2025 were lodged by Mr and Mrs Kiff.

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<sup>1</sup> Supported by an undertaking as to damages, and affidavit in support sworn on 25 June 2025, together with a memorandum, and an ex parte notice of interim injunction.

[20] Despite timetable provision being made for Ms McClutchie to lodge a reply affidavit, she elected not to do so.

#### *Interim reinstatement*

[21] Although she sought an order for the continued occupation of the accommodation, there is no dispute that Ms McClutchie vacated the farm in accordance with the notice provisions of the employment agreement. Ms McClutchie moved out of the accommodation on 4 July 2025, but did not lodge an amended application, altering the orders she originally sought.

[22] An investigation meeting to hear submissions was held on 27 August 2025. The parties' representatives filed written submissions prior to the meeting, and provided oral submissions at the meeting.

[23] At the start of the meeting, Ms McClutchie's representative advised that given his client had vacated the accommodation, the orders she originally sought were no longer being pursued. Instead, Ms McClutchie sought to be reinstated to her previous position (and to the accommodation), on an interim basis. She did not seek to be reinstated only to the payroll, but to the her previous role.

[24] Counsel for the respondents agreed that the focus of the investigation meeting should be as to the issue of interim reinstatement, and advised that the respondents' written submissions had been prepared on that basis.

[25] As permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination has not recorded everything received from the parties, but has stated findings of fact and law, expressed conclusions and specified orders made as a result.

[26] The Authority has carefully considered all the material provided.

[27] 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 such disputes.

#### *Tenancy Tribunal proceeding*

[28] Since commencing her proceeding in the Authority, Ms McClutchie has filed a claim before the Tenancy Tribunal. Claims in Ms McClutchie's statement of problem in relation to breaches of Healthy Homes standards and the like are a matter for the

Tenancy Tribunal. The Authority has no jurisdiction to make findings or orders in relation to Healthy Homes standards, or under the Residential Tenancies Act 1986.

### **The issues**

[29] Section 127 of the Act confers jurisdiction on the Authority to grant interim reinstatement. For the Authority to grant interim reinstatement, an applicant must establish that there is a serious question to be tried. Consideration must be given to the balance of convenience, the impact on the parties of the granting of, and the refusal to grant, an order. The impact on third parties will also be relevant to the weighting exercise. Finally, the overall interests of justice are considered, standing back from the details required by the earlier steps.<sup>2</sup>

[30] The issues for determination in this interim reinstatement application are:

- (a) whether there is a serious question to be tried. That is, does Ms McClutchie have an arguable case for unjustified dismissal?
- (b) If so, does Ms McClutchie have an arguable case for permanent reinstatement?
- (c) Where does the balance of convenience lie?
- (d) 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.

[31] In determining whether to order interim reinstatement, regard must be had to the object of the Act, which is to build productive employment relationships through the promotion of good faith:<sup>3</sup>

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.

[32] It is in light of these factors that applications for interim reinstatement are considered.

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<sup>2</sup> *Western Bay of Plenty District Council v McInnes* [2016] NZEmpC 36 at [7].

<sup>3</sup> *Humphrey v Canterbury District Health Board, Te Poari Hauora O Waitaha* [2021] NZEmpC 59 at [5].

## Arguable case

*Is there an arguable case for unjustified dismissal?*

[33] The first question the Authority must consider, is whether there is an arguable case that Ms McClutchie was unjustifiably dismissed. An arguable case means a case with some serious or arguable (but not necessarily certain) prospect of success.<sup>4</sup> The threshold for a serious question or arguable case as stated in *McInnes*, is that the claim is not frivolous or vexatious:<sup>5</sup>

... an applicant must establish that there is a serious question to be tried, in that the claim is not vexatious or frivolous. The merits of the case (insofar as they can be ascertained at an interim stage) may be relevant in assessing the balance of convenience and overall interests of justice...

[34] Ms McClutchie submits that text messages exchanged by the parties is evidence that she had been offered and had accepted employment prior to her signing the employment agreement. She submits that:

As an employee intending to work, the law defines “a person intending to work” as being one “who has been offered, and accepted, work as an employee”.

[35] Ms McClutchie submits that a text message she received from Mrs Kiff on 25 March 2025 saying “start tomorrow haha can’t wait to have ya join us!...” implies that:

[Ms McClutchie] already had been offered the job, secondly, [she] could elect a start date, and [Mrs Kiff] acknowledged [Ms McClutchie] had given her notice in and was starting with them. At this time [Ms McClutchie] had not been provided with the IEA but was clearly an employee intending to work.

[36] Agventures submits the comment of Mrs Kiff was nothing more than a joke, and in context, cannot be taken as a serious agreement as to Ms McClutchie’s moving in date.

[37] Ms McClutchie referred the Authority to *Blackmore v Honick Properties Limited*,<sup>6</sup> in which the Employment Court held that trial periods must be mutually agreed in writing before a prospective employee becomes an employee, in order for there to be a valid trial period.

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

<sup>5</sup> Above n 2, at [9].

<sup>6</sup> *Blackmore v Honick Properties Limited* [2011] NZEmpC 152 at [70].

[38] Agventures submits that there was no offer of employment capable of acceptance prior to 26 March 2025 when Ms McClutchie was shown the farm accommodation and provided a copy of the employment agreement.

[39] Agventures further submits that there is no evidence that Ms McClutchie carried out any work prior to her start date, and relies on call logs from Mr and Mrs Kiffs to confirm that there was no communication with Ms McClutchie, and no instruction to carry out any work prior to the start date in her employment agreement.

[40] In addition, Agventures submits there is no serious question to be tried. Agventures submits that Ms McClutchie was dismissed under a valid trial period provision, and therefore she has no arguable case for unjustified dismissal.

[41] In an interim application, reliance is placed on untested affidavit evidence. As noted above, Ms McClutchie chose not to lodge an affidavit in reply to the evidence of Mr and Mrs Kiff. The effect of Ms McClutchie's decision not to lodge reply evidence, is that the evidence of Mr and Mrs Kiff is unchallenged.

[42] As part of the Authority's substantive investigation, Ms McClutchie's text message exchanges with Mr and Mrs Kiff will need to be considered, as will any response Ms McClutchie might wish to make to Agventures' strongly held view that no work was performed by Ms McClutchie prior to the signing of her employment agreement.

[43] In determining an interim application, the Authority cannot resolve disputed matters on the basis of untested affidavit evidence. Ms McClutchie's claim meets the low threshold of an arguable case for her personal grievance for unjustified dismissal. At the very least there is a dispute between the parties as to the validity of the trial period provision.

[44] The Authority is satisfied that there is an arguable case that Ms McClutchie was unjustifiably dismissed.

*Is there an arguable case for permanent reinstatement?*

[45] Again, this is a low threshold.

[46] Where it is practicable and reasonable to do so, the Authority must provide for reinstatement (when sought) as the primary remedy.<sup>7</sup>

[47] Agventures submits that Ms McClutchie has no arguable case for permanent reinstatement because:

- (a) It has grave and serious concerns about Ms McClutchie (and concerns as to safety of the other employees).
- (b) There are serious trust and confidence issues arising from Ms McClutchie's conduct, including her breaches of specific provisions of the employment agreement in respect of the accommodation.
- (c) Agventures needs to recruit a new assistant manager, who will be offered the accommodation as part of his/her employment. Agventures is unable to provide accommodation on the farm for the new assistant manager, as well as Ms McClutchie. There is only one house available.
- (d) During the recruitment process, Ms McClutchie misrepresented when she had completed her farming training.
- (e) Ms McClutchie was unable to perform her role properly, and Mr Kiff's evidence is that Ms McClutchie "accepted she was finding the farm work challenging and beyond her capabilities".
- (f) Mr and Mrs Kiff are required to travel for work and are fearful of having Ms McClutchie back on the farm property, unsupervised and exposed to the other staff.
- (g) Ms McClutchie had volunteered information in relation to previous conduct, about which Agventures holds serious concerns.

[48] It is not sufficient for an employer to show resistance and strained circumstances in order to avoid an order for reinstatement.<sup>8</sup>

[49] If Ms McClutchie is able to establish her personal grievance, it cannot be said that reinstatement is impossible, particularly given that the Authority may order reinstatement subject to any conditions it thinks fit.<sup>9</sup>

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<sup>7</sup> Employment Relations Act 2000 s 125(2).

<sup>8</sup> *Angus v Ports of Auckland* [2011] NZEmpC 122 at [63].

<sup>9</sup> Section 127(5).

[50] The arguable case threshold for permanent reinstatement is established.

### **The balance of convenience**

[51] The Authority now turns to weigh the interests of Ms McClutchie, against those of Agventures. The Authority considers the potential effect on Ms McClutchie if she were declined interim reinstatement, against the potential effect on Agventures if interim reinstatement was granted.

[52] The memorandum lodged by her representative in support of her application for an interim injunction sets out that irreparable harm will be caused to Ms McClutchie if an interim order is not granted, and compensation by way of an award of damages would be an inadequate remedy. However, no reasoning or support is provided for this position, and this is not addressed by Ms McClutchie in her evidence.

[53] Ms McClutchie's affidavit evidence is lacking in any detail as to balance of convenience. She does not provide any information at all about her financial circumstances, or efforts to secure new employment (or new accommodation). The only evidence she gives as to the effects of her dismissal is that she was "extremely distressed to see the letter of termination..." which has put her to "enormous and unnecessary stress...".

[54] There is no information about Ms McClutchie's ability to meet any award of damages.

[55] The focus of Ms McClutchie's statement of problem is about securing an order allowing her to remain in the accommodation. However, the accommodation is a term of her employment. The employment relationship must be re-established in order for Ms McClutchie to have access to the accommodation.

[56] Given this, it is unusual that her affidavit is silent as to her reasons for seeking interim reinstatement. She has provided no evidence in support of the order she seeks, and there is no information before the Authority as to what detriment Ms McClutchie might face should she be declined interim reinstatement.

[57] Agventures submits that there are no factors which point to the balance of convenience weighing in favour of Ms McClutchie because:

- (a) as a team normally comprising only five (including Mr and Mrs Kiff) Agventures cannot easily accommodate Ms McClutchie, should she be reinstated.
- (b) The position of assistant farm manager is a senior and autonomous role. Ms McClutchie's reinstatement would cause considerable disruption, inconvenience, and potential harm for the business.
- (c) There has been a breakdown in the workplace relationship such that Ms McClutchie cannot reasonably be accommodated back into the business.
- (d) Agventures does not possess the resources to handle the pressure and uncertainty (and potential safety risk) of Ms McClutchie returning to the farm.
- (e) Agventures no longer trusts Ms McClutchie to be able to work alone. If Ms McClutchie was reinstated, an additional assistant farm manager would need to be employed, to supervise her. As a result, Agventures would be required to pay two people to perform the same role, which is a significant cost for a small business.
- (f) Ms McClutchie has now moved out. Agventures requires the accommodation to remain vacant for at least a period to allow for the building remediation project, during which the accommodation cannot be occupied.
- (g) If Ms McClutchie was reinstated to her former position on an interim basis, Agventures would face great hardship, cost, safety concerns and inconvenience. It would prevent Mr and Mrs Kiff's ability to travel, and given they also live on the property, would be the cause of on-site safety concerns.

*Evaluating the strengths and weaknesses of Ms McClutchie's case*

[58] Evaluating the relative strengths or weaknesses of aspects of Ms McClutchie's case is helpful in assessing the balance of convenience. As noted above, this evaluation is reached from considering untested affidavit evidence. Conclusions reached at this stage of the proceeding are provisional and subject to change when evidence is fully tested through questioning at the substantive investigation meeting.

[59] Although Ms McClutchie has an arguable case that her employment ended unjustifiably, this argument does not appear strong.

[60] The evidence before the Authority that Ms McClutchie was a person intending to work is not unequivocal. Despite submissions made for Ms McClutchie that the 'offer and acceptance' of her employment were concluded at some point in March 2025 (prior to the date of the parties' written agreement), the evidence does not appear to support this. At the very least, on the information before the Authority at this interim stage, it cannot be said that the parties were *ad idem*, or that there was certainty on all the terms and conditions of Ms McClutchie's employment.

[61] As noted above, Ms McClutchie did not lodge a reply affidavit. The evidence of Mr and Mrs Kiff as to the formation of the employment relationship and the employment agreement, is therefore unchallenged at this interim stage.

[62] Agventures' evidence is that Ms McClutchie misrepresented key matters during the recruitment process. If Agventures can establish certain behaviours alleged against Ms McClutchie, this could pose a potential barrier to permanent reinstatement. However, the Authority notes that there is no evidence that any issues relating to misrepresentation were raised with Ms McClutchie during her employment. Issues to do with misrepresentation, including as to Ms McClutchie's pre-employment background (to the extent they are relevant), will need to be considered by the Authority as part of its substantive investigation.

[63] In the circumstances, Agventures appears to have the stronger case that Ms McClutchie was dismissed under a valid 90-day trial period provision, the effect of which is that her dismissal is not amenable to challenge.

[64] An assessment of the relative merits of the parties' cases, although not clear-cut, favours Agventures.

#### *Relevant post dismissal events*

[65] There are obvious practical difficulties in returning Ms McClutchie to the accommodation. It is currently undergoing significant remediation, during which it cannot be occupied. The project is likely to take some weeks.

[66] In addition, in March 2025, Mr and Mrs Kiff were awarded the Share Farmers of the Year award at the Central Plateau Dairy Industry Awards. This was reported in

local media. The unchallenged evidence of Agventures is that after Ms McClutchie's dismissal, her representative (presumably acting on instruction), contacted the organiser of the awards and informed the organiser of Ms McClutchie's employment dispute.

[67] Mr Kiff's evidence is that Ms McClutchie's advocate contacted the industry body, and questioned if the award was appropriate given Agventures was a poor employer. Mrs Kiff said that Ms McClutchie's advocate questioned the industry body as to how she and her husband could represent the dairy industry, given they were poor employers. Mr and Mrs Kiff say they were "stressed" and "shocked" by this.

[68] Furthermore, Mr Kiff says that following her dismissal, Ms McClutchie's representative also contacted the Trust (which owns the farm and buildings, but is not a party to the employment relationship) to advise it of the current employment dispute.

[69] Ms McClutchie does not dispute that these events occurred. These actions have clearly been the cause of significant ill will. Such conduct is an impediment to the successful re-imposition of the employment relationship. As a result of these actions, it is difficult to envisage the parties working co-operatively again.

[70] In addition, Mr Kiff's evidence is after she had been given notice of her dismissal, a package dropped off for Ms McClutchie by the local delivery driver was torn open by the Kiff's dog. Upon discovering the torn package, Ms McClutchie followed the delivery driver for a distance of some kilometres, and confronted her on the side of the road.

[71] The inference Agventures appears to have taken, is that this was deliberate conduct on the part of Ms McClutchie to intimidate the delivery driver, who Ms McClutchie appeared to blame for the damage caused by the dog.

[72] Furthermore, Mr Kiff's evidence was that when Ms McClutchie moved out of the accommodation, without authorisation she removed wet weather gear valued at over \$1000.00, belonging to Agventures.

[73] This evidence was not challenged by Ms McClutchie, and provides a basis for Agventures' submission that in the circumstances of this matter, there is no ability to "put the relationship back again", in light of its serious concerns, and Ms McClutchie's post dismissal conduct.

[74] There is no immediate effect on third parties that weighs strongly for or against the order sought.

*Conclusion as to balance of convenience*

[75] Should Ms McClutchie be reinstated on an interim basis, this would be disruptive for Agventures' business. Agventures' unchallenged evidence is that it would be required to recruit a second assistant manager to work with (and effectively supervise) Ms McClutchie, should she be reinstated. The additional burden this would impose on a small employer, is obvious.

[76] Any detriment to Ms McClutchie in not being reinstated on an interim basis, can be remedied through an award of damages if her claim is successful at the substantive stage.

[77] Considering all relevant factors, the balance of convenience weighs in favour of Agventures.

*Overall justice*

[78] Standing back from the detail of the claim, the Authority must then consider where the overall justice lies. This has been described by the Court of Appeal as:<sup>10</sup>

the overall justice assessment is essentially a check on the position that has been reached following the analysis of the earlier issues of serious question to be tried and balance of convenience.

[79] Ms McClutchie's claim turns on whether Agventures was justified in terminating her employment in reliance on a trial period provision. On the information presently available to the Authority, it appears that Ms McClutchie faces a considerable hurdle in establishing that her dismissal was pursuant to anything other than a valid trial period.

[80] The Authority is required to make an assessment of the evidence, and determine this interim matter on the basis of the material before it. There is no evidence before the Authority as to Ms McClutchie's personal (including her financial) circumstances, which provides any basis for the order she seeks.

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<sup>10</sup> *NZ Tax Refunds Limited v Brooks Homes Limited* [2013] NZCA 90 at [47].

[81] In addition, Ms McClutchie's post dismissal conduct has created a serious impediment to the re-establishment of a productive employment relationship. Her actions are inconsistent with the requirements of 'supporting constructive employment relationships and repairing them where feasible' as set out in *Humphrey*.<sup>11</sup>

[82] In the circumstances of this matter, an order for Ms McClutchie's reinstatement is not in the overall interest of justice at this interim stage of the case.

### **Outcome**

[83] Ms McClutchie's application for interim reinstatement is declined.

### **Mediation**

[84] The parties may wish to attend further mediation prior to the Authority's substantive investigation of Ms McClutchie's grievance. The parties have 14 days from the date of this determination within which to inform the Authority of their views regarding further mediation.

### **Costs**

[85] Costs are reserved, pending the outcome of the substantive investigation of Ms McClutchie's grievance application.

Jeremy Lynch  
Member of the Employment Relations Authority

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<sup>11</sup> Above n 3.