

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 147
3429464

BETWEEN CLIVE BRYHAM
Applicant

AND ELECTRIX LIMITED (trading
as) OMEXOM
NEW ZEALAND
Respondent

Member of Authority: Peter Fuiava

Representatives: Michael O'Brien and Joseph Plunket, counsel for the
Applicant
Rob McStay and Oliver Boyce, counsel for the
Respondent

Investigation Meeting: 27 January 2026

Submissions and other information received: Up to, and including, 2 February 2026 from the
Applicant
Up to, and including, 9 February 2026 from the
Respondent

Determination: 10 March 2026

DETERMINATION OF THE AUTHORITY

What is the employment relationship problem?

[1] Clive Bryham seeks interim reinstatement to his role of field operations manager pending the Authority's investigation and determination of his substantive claims of unjustified dismissal and unjustified disadvantage. The application is opposed by Mr Byham's former employer, Electrix Limited, which trades as Omexom New Zealand (Omexom or the company).

How has the Authority investigated?

[2] Mr Byham's statement of problem was lodged with the Authority on 8 December 2025 and among the remedies he seeks are interim and permanent

reinstatement. In support of his application for interim reinstatement, Mr Bryham lodged with the Authority, a signed undertaking as to damages and affidavits in support. Electrix has filed a notice of opposition to interim reinstatement, a statement in reply and affidavits opposing interim reinstatement from its business unit general manager, Bradley Pirie, to whom Mr Bryham reported, and trade coach/fault man, Mohammed Hussein, a direct report to Mr Bryham.

[3] A case management conference was convened on 11 December 2025 and the parties were subsequently directed to attend mediation but matters did not resolve there. Following a submissions hearing on 27 January 2026 in which I heard legal submissions from Mr Bryham's counsel, Mr O'Brien, and Omexom's counsel, Mr McStay, I invited further affidavit evidence from Mr Hussein to clarify an email mentioned in his first affidavit to the Authority. In reply to that evidence, I have received further affidavit evidence and legal submissions from the parties which have been considered.

What is the relevant law?

[4] The principles of interim reinstatement are well understood which require me to first consider whether there is a serious question to be tried, or put another way, that the claim is not vexatious or frivolous.¹ This first question raises two sub-issues:²

- (i) whether there is a serious question to be tried in relation to the claim of unjustified dismissal; and if so,
- (ii) whether there is a serious question to be tried in relation to the claim of permanent reinstatement?

[5] If after an evaluative assessment, I find that there is a serious question to be tried, I must then determine where the balance of convenience between the parties lies and this involves consideration of the impact on the parties of the granting of and the refusal to grant the order.

[6] The final question to consider is, standing back and looking at the matter objectively, where the overall justice sits.³

¹ *NZ Tax Refunds Ltd v Brooks Homes Ltd* [2013] NZCA 90 at [12].

² *Western Bay of Plenty District Council v McInnes* [2013] NZEmpC 36 at [8].

³ *NZ Tax Refunds*, above n 1, at [12] – [13].

What happened?

[7] Mr Bryham's employment with Omexom commenced on 17 September 2009. By the time of his dismissal for serious misconduct on 18 November 2025, he had worked for the company for over 16 years.

[8] Omexom is an international engineering and services company that designs, builds, operates and maintains electrical infrastructure that makes energy transition. One of the company's key clients is Vector Limited (Vector) which owns and operates the electricity distribution network across the Auckland region.

[9] On 8 October 2025, a representative of Vector (who need not be named at this interim stage) emailed Mr Pirie about an illegal cable connection at a West Auckland address which appeared to have been done by a now former Omexom employee (the illegal connection incident). It is understood the illegal connection incident occurred sometime in August 2025. As the former employee has not been given the opportunity to give their views about being named in this determination, I have referred to the employee as AVM in this decision.

[10] On 9 October 2025, Mr Pirie began an investigation into AVM's conduct which included speaking to his line manager, Mr Bryham, who was at that time on annual leave. Upon his return from leave, Mr Pirie spoke to Mr Bryham on 20 October 2025 and discovered for the first time that Mr Bryham was aware of two earlier incidents involving AVM which he had failed to report to him as his manager.

[11] The first incident involving AVM which Mr Bryham had failed to report to Mr Pirie occurred approximately 18 months before the illegal connection incident in August 2025 and concerned an allegation that AVM had distributed his contractor card (the contractor card incident). However, Mr Bryham could not substantiate the allegation and issued AVM with a verbal warning only. As a result, no formal investigation into the matter took place and Mr Bryham did not inform Mr Pirie about the contractor card incident allegation until their conversation on 20 October 2025.

[12] The second incident arose in May 2025 which involved Mr Bryham receiving an allegation outside of work that AVM was potentially performing a cash job during company hours and using company resources (the cash-in-hand incident). Mr Bryham

would later explain to Mr Pirie at his own disciplinary meeting on 25 October 2025 that he had confronted AVM about the allegation but he denied it. Mr Bryham then followed up with another staff member for further information but that staff member advised Mr Bryham that he simply wanted him to raise the matter with AVM and did not wish it to be escalated any further.

[13] Although Mr Bryham issued AVM with a verbal warning for the alleged cash-in-hand incident, he did not convene a formal investigation meeting or document the allegation and his response to it. Neither had he reported the matter to his line manager Mr Pirie who learnt about the cash-in-hand incident for the first time during his conversation with Mr Bryham on 20 October 2025.

Mr Bryham is suspended

[14] On 20 October 2025, Mr Pirie met with Mr Bryham and proposed suspending him on full pay while he was investigated for allegedly failing in his duties as AVM's manager. Mr Bryham appears to have agreed to the suspension but has since claimed that the suspension was unjustified and disadvantaged him with respect to his employment.

[15] By letter dated 21 October 2025, Mr Pirie wrote to Mr Bryham alleging that he was aware of a possible conflict of interest concerning AVM which included claims that he may have performed cash-in-hand work during company hours and utilised company resources in the process. Mr Pirie's letter further stated:

If this serious concern is substantiated, we consider that this behaviour would fall below what is expected of an employee at Omexom. Further we consider such conduct would be in breach of our workplace policies including the Employee Handbook and Disciplinary Policy and Procedures (HR34).

Mr Pirie's investigation and commencement of disciplinary process

[16] On 23 October 2025, an investigation meeting took place involving Mr Pirie, an HR advisor, Mr Bryham, and his then employment advocate. At the meeting, which was recorded and later transcribed, Mr Bryham admitted that he had "made a great mistake" in the way that he had handled AVM with respect to both the contractor card incident and the cash-in-hand incident. He further stated that if he could go back and do it again, he would have told Mr Pirie and that he could see where he had gone wrong

and the next time something this serious came to light, he would do things by the employee handbook.

[17] On 30 October 2025, Mr Pirie advised Mr Bryham in writing of the outcome of Omexom's investigation which was that its concerns about his conduct as a senior employee in the role of field operations manager were substantiated. He was subsequently invited to a disciplinary meeting on 3 November 2025. Mr Pirie's letter noted that, on two separate occasions, Mr Bryham was aware of allegations involving AVM but had failed to escalate matters or follow the company's disciplinary policy and procedures known by shorthand as HR34.

[18] The letter expressed the preliminary view that Mr Bryham's failures to follow the process, which included informing Mr Pirie as his business unit manager, constituted serious misconduct. The letter further noted that Mr Bryham's actions placed Omexom at risk of reputational harm with Vector as a proper investigation and management of employee conduct was critical in maintaining client confidence and with Omexom meeting its contractual obligations with a key customer.

[19] In a written reply dated 4 November 2025, Mr Bryham's employment advocate stated that there were reasonable alternatives which the company had not considered and noted that Mr Bryham had openly acknowledged that he could have approached the situation differently; that Omexom had operated in a very contrasting organisational context five months prior; the circumstances were consistent with Category 5 of the company's 'Just Culture Matrix' which asks: "Is it normal practice to not follow the procedure onsite?"; and in line with the Just Culture Matrix, the appropriate response was coaching and not disciplinary action.

[20] Following a further meeting between the parties on 6 November 2025, Mr Pirie wrote to Mr Bryham on 10 November 2025 stating that Omexom viewed his actions as serious misconduct and that the proposed outcome was summary dismissal without notice. However, before any final decision was made, Mr Pirie wished to meet with Mr Bryham to hear his feedback regarding the proposal.

[21] On 13 November 2025, Mr Bryham and his employment advocate attended one final meeting with Mr Pirie and the HR representative. That same day, Mr Bryham

raised a complaint of disparate treatment against Mr Pirie who had taken a similar approach to his when dealing with another employee who had allegedly undertaken cash-in-hand work. It was understood that Mr Pirie had spoken to the employee privately in his office and like Mr Bryham did not initiate a formal investigation or stand the employee down or take any other procedural steps other than to have an informal conversation. It seemed to Mr Bryham that Mr Pirie's approach with the employee mirrored his own actions with AVM. Because of the conflict of interest, Mr Bryham requested that his case be independently reviewed by the perimeter director.

[22] By letter dated 18 November 2025, Omexom terminated Mr Bryham's employment because it determined that his conduct sat within Category 8 of the 'Just Culture Matrix' which asks: "Was the person trying to benefit themselves by not following the procedure?". The termination letter recorded that, by not following formal disciplinary procedures, Mr Bryham had avoided the time and effort required to properly investigate the allegations, document the process, and escalate the matter to Mr Pirie as his manager.

[23] The letter also addressed the issue of disparate treatment raised by Mr Bryham stating that the circumstances involving Mr Pirie were materially different and did not constitute disparate treatment. The letter concluded that Omexom no longer had the necessary trust and confidence in Mr Bryham to perform his role as field operations manager and that he was summarily dismissed without notice, effective immediately.

Is there a serious question to be tried that Mr Bryham was unjustifiably dismissed?

[24] Omexom submits that there is no serious question to be tried in respect of unjustified dismissal because Mr Bryham's actions amounted to serious misconduct and that the company was substantively justified to dismiss him which was a decision that Omexom made following a fair and reasonable process.

[25] In assessing whether there is a serious question to be tried of unjustified dismissal, the threshold is low. The claim must simply be more than frivolous or vexatious. The decision to dismiss Mr Bryham was made in large part because of the seriousness in which Omexom viewed his conduct and the potential harm that this could have caused to the company's relationship with Vector, a key client.

[26] I was provided with a copy of an email dated 8 October 2025 from Vector's representative who emailed Mr Pirie on 8 October 2025 (see above at [9]) requesting that he look into the illegal connection incident by AVM. However, the email does not expressly state that harm was caused to Vector or had impacted its business relationship with Omexom. The email was a simple request by the Vector representative for Mr Pirie to have a look into what involvement Omexom had with that particular job.

[27] However, in opposing Mr Bryham's application for interim reinstatement, there has been a paucity of evidence from Vector of it having suffered actual harm or loss as a result of the illegal connection incident for which AVM is solely at fault and not Mr Bryham. This matters because clause 22 of Omexom's Employee Handbook provides a list of examples that are causes for instant dismissal which includes: "Personal conduct, within or outside working hours, which harms the company's trust and confidence in the employee or the company's reputation with its clients or the public."

[28] The operative word in the above passage is "harm" which suggests actual harm rather than potential harm.

[29] The transcript of the parties first meeting on 23 October 2025 records Mr Pirie saying to Mr Bryham that "this is very high level with the client"⁴ and while that may be so, there is no affidavit evidence from Vector to support the impact (if any) of Mr Bryham's actions on the business relationship between Omexom and Vector. On its face, there is a disconnect between Omexom's termination letter which refers to "potential harm" and cl 22 of the employee handbook which refers to "harm".

[30] In the absence of evidence of actual harm to the business relationship between Vector and Omexom, it would seem that Mr Bryham has a reasonably arguable case that his dismissal was not substantively justified because it did not comply with Omexom's employee handbook.

[31] Additionally, there is the matter of disparity in treatment in the way in which Mr Pirie informally investigated another employee. At this early stage, I am not able to resolve if this was materially different or substantially the same with how Mr Bryham

⁴ Transcript, 23 October 2025, pg 3, half-way down.

approached matters with AVM. At the very least, there is a serious question to be tried here.

[32] Finally, there is an arguable case regarding whether or not there is evidence to support Omexom's ultimate finding that, by not following the formal disciplinary procedures, Mr Bryham had saved himself the time and effort to properly investigate AVM, document the process, and to escalate the matter to Mr Pirie as his manager.

[33] Having regard to the transcripts provided to the Authority, there does seem to be a basis to have a closer examination as to whether this adverse inference is one that was reasonably available for Mr Pirie to adopt noting Mr Bryham's comments at the 23 October 2025 meeting that he was not hiding anything and was not trying to deceive anybody, "I just thought I was doing the right thing..."⁵

[34] For the reasons given above, I am satisfied that there is a reasonably arguable case of unjustified dismissal. It is noted that Mr Bryham has claimed that he was unjustifiably disadvantaged in his employment by Mr Pirie's decision to suspend him on 20 October 2025. However, Mr Bryham was suspended on full pay and given the nature of the concerns that Mr Pirie had and acknowledging that as field operations manager Mr Bryham was a senior Omexom employee, suspension was an orthodox approach for Omexom to take. I do not consider Mr Bryham's unjustified disadvantage claim to be particularly strong.

Does Mr Bryham have a serious question to be tried for permanent reinstatement?

[35] Under s 125(2) of the Act, the Authority must provide for reinstatement wherever practicable. Omexom's position is that reinstatement would neither be practicable nor reasonable and submits that reinstatement is not practical because it would require Omexom to put Mr Bryham back into a senior, autonomous, and client-facing role when it can no longer trust him to perform that role. It was further submitted that there is no practical way for the company to add layers of coaching and oversight to ensure his compliance and discipline while in the role.

⁵ Transcript of 23 October 2025 meeting, pg 6.

[36] However, apart from one unrelated disciplinary matter in 2016, Mr Bryham's record as an Omexom employee of 16 years shows that he is a proven performer during which he was promoted from contract manager to field operations manager.

[37] Mr Bryham was dismissed because he had on two previous occasions involving AVM, not followed the proper process in investigating those matters, documented the process, and did not let Mr Pirie know. It is unclear to me how frequent a disciplinary event could occur during the ordinary course of a field operation manager's working week. However, Mr Byham made clear in his first meeting with Mr Pirie on 23 October 2025 that he knew where he had gone wrong and would do things differently and by the employee handbook. If reinstated on an interim basis, I am satisfied that Mr Byham would investigate all disciplinary matters, big or small, in a formal manner which minimises the need for oversight in my view.

[38] I did not get the impression that Omexom had any wider concerns with Mr Bryham's ability to otherwise direct the day-to-day operations of some 38 employees for whom he is responsible. On balance, I find reinstating Mr Bryham to be practical but reinstatement must also be reasonable which requires me turn to the effect an order for interim reinstatement would have on any third party.

[39] Here, the concern is the impact on Mohammed Hussein, one of Mr Byham's direct reports who attests that the prospect of having his former manager return has resulted in significant distress for him. Mr Hussein states that he would feel that Mr Bryham would target him. However, a good indicator of future conduct is past conduct and there is no evidence of any previous issues between Mr Hussein and Mr Bryham in the 10 years they have worked together.

[40] It was submitted that reinstatement would have a reputational impact for Omexom particularly with Vector. However, in the absence of affidavit evidence from Vector to support this claim, it has not been established that reinstating Mr Bryham would harm the business relationship between Omexom and Vector particularly when AVM, who was solely responsible for the illegal connection incident, has been dismissed and is no longer employed by Omexom.

[41] It was further claimed by Mr Pirie that since Mr Bryham's departure, there has been improved team morale, a greater sense of accountability, and a stronger commitment to compliance and safety. It was claimed that reinstating Mr Bryham would have a disruptive effect on the team's operations. However, the information and evidence before me indicates that Mr Bryham had a good working relationship with those with whom he worked and was responsible for. Since the employment relationship came to an end, there has been no post-employment conduct of concern on Mr Bryham's part and he attests that he harbours no ill will against any individual.

Where does the balance of convenience favour?

[42] The balance of convenience requires an assessment regarding the impact on each party if interim reinstatement is granted or not. The Supreme Court has held that the merits of the case (in so far as they can be ascertained at the interim injunction stage) may be relevant in assessing the balance of convenience and the overall interests of justice.⁶

[43] Mr Bryham's affidavit in support of his application for interim reinstatement records that he has financial obligations comprising mortgage repayments of \$3,000 per month and household bills of \$4,000 per month which includes the cost of supporting his son who is at university. It is understood that Mr Bryham's wife's income is irregular and I accept that the New Zealand job market is particularly challenging at this point in time especially for Mr Bryham who is 55 years of age and whose skills are specialised narrowing the pool of prospective employers for him.

[44] Although this part of the analysis requires me to also assess whether damages would be an adequate remedy, reinstatement is the primary remedy in New Zealand and it has long been acknowledged by the courts that money is a poor substitute for loss of a job.⁷ In *DQJ v The Commissioner of Inland Revenue* it was recently stated:⁸

As has previously been observed routinely declining orders of reinstatement in the face of unlawful action monetises the employment relationship. That, in turn, serves to undermine the dignity of workers, contrary to fundamental precepts of employment law. And it incentivises unlawful behaviour.

⁶ *Brooks Homes Ltd v NZ Tax Refunds Ltd* [2013] NZSC 60 at [6].

⁷ *Humphrey v Canterbury District Health Board* [2021] NZEmpC 59 at [37].

⁸ *DQJ v The Commissioner of Inland Revenue* [2025] NZEmpC 10 at [58].

[45] There is a dignity in work which cannot be compensated for in monetary terms and for Mr Bryham, he would see reinstatement as an opportunity to restore his reputation in the business. He attests that he is more than ready to return to work.

[46] It was submitted that if an order of interim reinstatement is made, that Mr Bryham be reinstated to the payroll only. While reinstatement to the payroll would alleviate Mr Bryham's present financial difficulties, allowing him to work would remove the financial risk of having to repay Omexom if his claims are not substantiated at the investigation meeting scheduled for 12-13 May 2026, some two months away.

[47] Mr Bryham's personal circumstances, the natural delay for the substantive matter to be both investigated and determined, and his 16-year work history with Omexom, lead me to conclude that the balance of convenience on this occasion lies with Mr Bryham.

Where does the overall justice lie?

[48] I need to stand back and consider the overall justice of the case. For the reasons given above, Mr Bryham has a reasonably arguable case of unjustified dismissal and for permanent reinstatement and the balance of convenience weighs in his favour. The overall justice of the case favours interim reinstatement.

Conclusion and orders

[49] Mr Bryham's application for interim reinstatement succeeds. Omexom is ordered to interim reinstate Mr Bryham to the role of field operations manager that he was dismissed from and he is to be rostered on to work within seven days of the date of this determination. During this period, the parties are expected to engage with each other in good faith about how to achieve Mr Bryham's successful return to the workplace.

[50] The order for interim reinstatement is to remain in place pending the Authority's determination of Mr Bryham's substantive claims or by further order by the Authority. In accordance with the undertakings given, Mr Bryham will abide by any order that the Authority may make in respect of damages.

Costs

[51] Costs with respect to Mr Byham's interim reinstatement application are reserved pending the outcome of the Authority's investigation of his substantive claims.

Peter Fuiava
Member of the Employment Relations Authority