

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 174
3445344

BETWEEN	CRAIG (ANDREW) CAMPBELL Applicant
AND	QUBE PORTS NZ LIMITED Respondent

Member of Authority: Simon Greening

Representatives: Angus Drumm, counsel for the Applicant
John Gray-Smith, counsel for the Respondent

Investigation Meeting: On the papers

Submissions received: 20 March 2026 by AVL

Determination: 24 March 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Craig Campbell was employed by Qube Ports NZ Limited (Qube) as a stevedore. Mr Campbell commenced employment with Qube in March 2023.

[2] Mr Campbell is a member of the Maritime Union of New Zealand Incorporated (MUNZ). His employment was covered by the terms set out in the collective agreement (CA).

[3] On 18 February 2026, Mr Campbell was dismissed by Qube on the ground of medical incapacity.

[4] Qube is a stevedoring contractor based at the Port of Tauranga (the Port).

[5] Qube handles a range of products at the Port which include logs for export, bulk discharge of palm kernel, wheat, distilled dried grains, and soybean.

[6] Mr Campbell's role involved working across a wide range of stevedoring tasks including operating cranes, excavators, forklifts, and operating hoppers, cleaning out bulk vessels, rigging and securing cargo, and manually handling cargo.

[7] Mr Campbell has a history of childhood asthma, which was disclosed to Qube at the time of his pre-employment medical.

[8] On 6 January 2024, while working in a ship's cargo hold during palm kernel (PK) operations, Mr Campbell experienced acute respiratory and facial irritation consistent with an allergic or irritant response.

[9] After this event, Mr Campbell received a medical certificate from his doctor advising him not to do bulk work where PK was present.

[10] Bulk work involves handling, storing and transferring unpackaged products from a ship's cargo hold.

[11] From January 2024 until early April 2025, Mr Campbell was exempted by Qube from undertaking bulk work. During this period, Mr Campbell did other forms of work for Qube which included driving vans and working as a general hand on log trailers.

[12] Dean Carter is employed by Qube in the position of General Manager – Industrial Relations. On 9 April 2025, Mr Carter met with Mr Campbell to discuss his exemption for undertaking bulk work.

[13] Qube was of the opinion that Mr Campbell's bulk work exemption could not continue indefinitely because working with bulk products was a significant part of its business and therefore Mr Campbell was not able to perform all of the tasks required of his position.

[14] On 14 April 2025 Mr Campbell sustained a work-related finger injury and did not return to work. Mr Campbell was on sick leave and received ACC payments. On 21 May 2025, Mr Campbell sustained a non-work-related foot injury.

[15] On 3 December 2025 Mr Campbell provided a medical certificate to Qube confirming he could return to work the next day.

[16] However, Mr Carter still had concerns about Mr Campbell's asthma, his bulk work exemption, and what duties Mr Campbell could safely perform. As a consequence, Mr Campbell did not return to work on 4 December 2025.

[17] Mr Campbell agreed to attend a medical assessment, undertaken by Dr Roderick Douglas, to ascertain whether he was able to perform his duties effectively and safely, and any potential implications that his allergies/asthma may have on his ongoing employment with Qube.

[18] Qube received Dr Douglas's report on 30 January 2026.

[19] On 3 February 2026, after considering Dr Douglas's report, Mr Carter wrote to Mr Campbell setting out Qube's preliminary view that termination of employment on the ground of medical incapacity was appropriate in the circumstances.

[20] On 11 February 2026, Mr Carter's legal counsel provided written submissions to Qube in response to its letter of 3 February 2026.

[21] Qube considered Mr Carter's submissions. Based on Dr Douglas's report, Qube concluded that Mr Campbell was unable to work in any dusty environment, including bulk cargo environments.

[22] Qube considered whether Mr Campbell could safely perform all aspects of his role, the significant proportion of its work which involved dealing with bulk cargo work, whether the bulk work exemption could continue, and any reasonable alternatives that would allow Mr Campbell to remain in employment.

[23] On 18 February 2026, after considering all of the information received, Mr Carter wrote to Mr Campbell terminating the employment agreement on the ground of medical incapacity.

[24] On 19 February 2026, Mr Campbell raised a personal grievance for unjustified dismissal.

[25] On 20 February 2026, Mr Campbell lodged an application for interim reinstatement with the Authority.

The Authority's investigation

[26] For the Authority's investigation, affidavits were lodged by Mr Campbell, Mr Carter, and Mr Graham McKean. An investigation meeting, conducted by AVL, was convened to provide an opportunity for legal counsel for the parties to speak to their written submissions.

[27] An application for interim reinstatement proceeds on the basis of untested affidavit evidence, the evaluation of that evidence is therefore made on a provisional basis.¹

[28] As permitted by s 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Legal principles

[29] In an application for interim reinstatement, Mr Campbell must first establish that there is a serious question to be tried. Then the balance of convenience must be considered. This requires a consideration of the impact of, and the refusal to grant, an interim order until Mr Campbell's claims are resolved following a substantive hearing. Finally, an assessment of the overall justice of the making of an interim order is required.²

Is there a serious question to be tried?

[30] In a claim for interim reinstatement, the question of whether there is a serious question to be tried raises two sub-issues:³

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

¹ *Stellar Elements New Zealand Limited v Amesbury* [2024] NZEmpC 136 at [20].

² *NZ Tax Refunds Ltd v Brooks Homes Ltd* [2013] NZCA 90 at [12].

³ *Humphrey v Canterbury District Health Board* [2021] NZEmpC 59 at [7].

Qube's position

[31] Qube submits Mr Campbell may have an arguable case that he was unjustifiably dismissed, however his case cannot be regarded as particularly strong. In support of this over-arching submission, Qube says:

- (a) There was clear medical evidence in support of the conclusion that Mr Campbell was unable to safely perform the duties required by his role.
- (b) This is because Qube's work environment presents an unreasonable risk to the health and safety of Mr Campbell.
- (c) No modifications, including personal protective equipment, are considered sufficient so as to enable Mr Campbell to perform the duties of his role.
- (d) No reasonable alternative roles were available for Mr Campbell.
- (e) Qube has no requirement or operational need for a limited or partial duties role.

[32] I consider each of these submissions in turn.

Did the work environment present an unreasonable risk to the health and safety of Mr Campbell?

[33] The parties had different interpretations of Dr Douglas's report.

[34] Qube's understanding of the report, is that Dr Douglas reached the conclusion Mr Campbell was unable to perform tasks in particularly dusty environments and the avoidance of high dust environments was the only practicable solution.

[35] Mr Campbell's understanding of the report is that Dr Douglas concluded he was fit for the majority of his duties but should avoid particularly dusty environments, specifically the hopper area and the ship's hold when organic dust is airborne.

[36] The conclusion to Dr Douglas' report is set out below:⁴

I would expect his asthma condition to remain well managed if he is able to avoid the high dust environments beneath the hopper and in the ship hold when

⁴ Dr Roderik Douglas, *Occupational Medical Assessment* (Report to QUBE Ports NZ, 30 January 2026) at 5.

bulk organic products are being loaded. There is a small chance that he has developed recent sensitisation to the palm kernel or other organic dust present in the Port environment and if that is the case he may continue to have asthma symptoms which could potentially become worse over time. As noted above, if his asthma remains more troublesome than it was prior to the exacerbation in January 2025 then he should undergo further investigation to try and identify the problematic allergen. If this is the case, there is a small possibility that he will not be able to work in the Port environment at all.

[37] It is clear from Dr Douglas's report that it was too early to conclude, due to his asthma condition, that Mr Campbell was unable to work in the Port environment at all.

[38] Dr Douglas also noted:⁵

Mr Campbell is fit for the majority of his usual work roles. At this time the only exception is working in particularly dusty environments such as beneath the hopper or in the ships hold when significant amounts of airborne organic dust are present.

[39] In his affidavit, Mr Carter says the entire work environment at the Port has exposure to dust, and dust is often visible in the air or its presence evident on vehicles parked almost 500 metres from a vessel.⁶

[40] Mr Campbell disagrees with Mr Carter's comment that the entire work environment at the Port is dusty. Mr Campbell accepts that bulk work is inherently dusty, but from his experience this applies only when working in the hold of a ship and beneath the hopper.

[41] During the period in which the bulk work exemption was in place, between January 2024 and April 2025, Mr Campbell undertook alternative duties in the Port environment and did not report any asthma related incidents.

[42] Dr Douglas says Mr Campbell is fit for the majority of his work duties and should only avoid working particularly dusty environments such as the hold of the ship and beneath the hopper.⁷

[43] Dr Douglas further noted in his report, that after the asthma incident in January 2024 and the bulk work exemption that followed, Mr Campbell has not had the opportunity to try other types of PPE or respiratory protection.⁸

⁵ Above n 5 at [3].

⁶ Above n 1 at [10].

⁷ Above n 5 at [2].

⁸ Above n 5 [1].

[44] The work environment at the Port did not present an unreasonable risk to the health and safety of Mr Campbell.

[45] Based on the findings contained in Dr Douglas's report, Mr Campbell has an arguable case his dismissal was unjustified.

Did Qube consider alternative duties?

[46] Prior to making its decision to dismiss Mr Campbell on the ground of medical incapacity, Mr Carter says Qube considered alternative duties that Mr Campbell might be able to perform.⁹

[47] Qube says that upskilling Mr Campbell to perform crane and/or digger work was not feasible because of Mr Campbell's inability to work in particularly dusty environments.

[48] In regard to van driving, Qube says this is not a stand-alone full-time position.

[49] Qube did not consider driving a sweeper truck to be a reasonable alternative, because the sweeper truck operates in a highly dusty environment at the Port.

[50] Log work and kiwifruit operations were also considered unsuitable alternatives because the kiwifruit is seasonal and short in duration, and the majority of roles on log ships have been automated.

[51] Mr Campbell says there were alternative duties available, and notes:

(a) Crane or digger work is not too dusty. Qube did not assess dust levels properly. Staff doing this kind of work do not typically wear PPE, which suggests dust levels are low.

(b) Driving vans is a recognised duty for a stevedore. When Mr Campbell completes a 12-hour van shift, these hours count towards his annualised hours like any other rostered duty.

⁹ *Lyttelton Port Company Limited v Arthurs* [2018] NZEmpC 9 at [35].

(c) He has been trained and signed off for some sweeper tasks. The only limitation is PK dust, not sweeping per se. He operated a sweeper truck on 2 April 2025, without any incident.

(d) General hand tasks remain during log operations. Mr Campbell says this includes rigging and de-rigging, managing cages/lifting gear, assisting with paint and butt-marking, and coordinating truck drop-off/loading.

[52] Medical incapacity is a situation involving a no-fault dismissal.

[53] Therefore, if an employer decides to “fairly cry halt” and terminate the employment relationship on the basis of medical incapacity, it needs to have first carried out a fair enquiry which balances fairness to the employee and the reasonable dictates of its practical business requirements.¹⁰

[54] Qube’s assessment of alternative duties did not consider whether Mr Campbell could undertake bulk work where PK was not present, or whether he could undertake bulk work but not be involved in tasks carried out in the hold of a ship or beneath the hopper.

[55] Mr Campbell had been performing a range of alternative duties without incident or issue between January 2024 and April 2025. It is not clear from the evidence on what basis Qube had formed the view this work is no longer available and/or suitable for Mr Campbell.

[56] It is arguable Qube did not adequately consider alternative duties or the extent to which the bulk work exemption could be modified.

[57] In conclusion, Mr Campbell has an arguable case for unjustified dismissal.

Does Mr Campbell have a serious question to be tried in relation to the claim for permanent reinstatement?

[58] The next question is whether Mr Campbell has an arguable case for permanent reinstatement.

¹⁰ *Barry v Wilson Parking New Zealand [1992] Ltd* [1998] 1 ERNZ 545 at [549].

[59] Where an employee who succeeds in their claim of unjustifiable dismissal seeks reinstatement, that must be provided for wherever practicable and reasonable.¹¹

[60] For permanent reinstatement to be practicable, it must be capable of being carried out in action, be feasible and have the potential for the re-imposition of the employment relationship to be achieved successfully.¹²

[61] When assessing reasonableness, the Authority must consider the effects of permanent reinstatement on relevant parties, including Mr Campbell, Qube, other employees, and any relevant third parties.¹³

[62] Qube says the primary barrier to permanent reinstatement being practicable is Mr Campbell's inability, based on the medical information available, to safely perform work in dusty environments.

[63] Qube further submits that from all other perspectives, such as social integration and reintegration back into work, there are no serious barriers apart from the health and safety barrier.¹⁴

[64] Qube says permanent reinstatement is not reasonable because:

- (a) Mr Campbell is not able to perform his role safely.
- (b) There is insufficient non-bulk work available.
- (c) Qube cannot employ Mr Campbell to solely undertake alternative duties.
- (d) The uncertainty around prognosis and possible requirement of surgery for his foot.

[65] Qube says the primary issue in regard to whether reinstatement is practicable, concerns the risk to Mr Campbell's health and safety if he is reinstated. I have already determined the work environment at the Port did not present an unreasonable health and safety risk to Mr Campbell.

[66] In regard to whether reinstatement is reasonable, a key submission for Qube is the lack of non-bulk work available for Mr Campbell. Qube says it cannot employ Mr Campbell on a full-time basis to undertake alternative duties.

¹¹ Employment Relations Act 2000, s 125(2).

¹² *Christieson v Fonterra Co-Operative Group Limited* [2021] NZEmpC 142 at [39].

¹³ Above n 13 at [39].

¹⁴ Above n 8 at [28].

[67] Mr Campbell only needs to work three 12-hour shifts per week to meet his annualised hours.¹⁵

[68] Mr Campbell met his annualised hours in 2024. This was the period in which he was carrying out alternative duties for Qube.

[69] During a meeting in December 2025, Mr Carter provided Mr Campbell with information about work undertaken by casual employees during the month of December 2025.

[70] The key figures from the information provided show:

- (a) 41% of the work was bulk work.
- (b) 12% of the work was skilled work.
- (c) 47% of the work was general hand work.
- (d) There was an average of 12.6 hours per week of non-bulk general hand work.

[71] Mr Campbell was willing to attempt a trial return to non-bulk work to assess whether he could meet his annualised hours. Qube did not take steps to facilitate this option.

[72] In relation to Mr Campbell's current foot injury and his ability to return to work, the most recent medical certificate supplied to the Authority confirms he is fully unfit for work until 24 March 2026.

[73] A return-to-work plan has already been formulated. However, due to the dismissal being an intervening event, the parties have not yet had the opportunity to implement the return-to-work plan.

[74] According to Dr Douglas's report, it is premature to conclude Mr Campbell's asthma condition would prevent him from continuing his employment at the Port. Over a period of 18 months Mr Campbell has undertaken alternative duties at the Port. There is also further room for the parties to explore the scope of the bulk work exemption because, according to Dr Douglas's report, it remains unclear whether Mr Campbell's asthma is triggered by an allergy to PK, or another something else.

[75] Based on the untested evidence before the Authority, it is both practicable and reasonable to reinstate Mr Campbell.

¹⁵ Above n 2 at [13].

Does the balance of convenience favour reinstatement?

[76] The balance of convenience is a question which is concerned with the relative positions of the parties during the interim period. The issues for consideration include the adequacy of damages, preservation of the status quo, and the relative strength of the parties' cases.¹⁶

[77] Qube submits significant weight should not be given to Mr Campbell's financial position, given his financial position is typical in a dismissal case.

[78] Mr Campbell is yet to be advised whether he will continue to receive ACC. He has two mortgages costing him \$878 per fortnight, other monthly expenses of \$5150.43, and a loss of \$2106.36 per fortnight.

[79] If Mr Campbell is reinstated, Qube says this would have a significant operational impact on its business given the nature of its work. For example, if Mr Campbell is working in a gang and it is moved during a shift to a ship to undertake bulk work, then Mr Campbell would be unable to continue working and this would cause significant disruption to Qube's operations.

[80] Mr Campbell disagrees with Qube's assessment of the situation. He explains the example provided by Qube happened on one occasion. On 3 December 2024, Mr Campbell was assigned to a log ship and then redirected to a ship which involved offloading PK. Mr Campbell was reassigned to van duties for the remainder of his shift. Mr Campbell says this example shows there are practical solutions when a bulk-related constraint arises mid-shift.

[81] Qube has not provided any additional evidence in support of its submission that reinstatement would have a negative impact on its business and operations.

[82] Mr Campbell retains the skill and ability to do the job. Qube also has an obligation to make necessary adjustments to the role in order to reasonably accommodate Mr Campbell.

¹⁶ *Stellar Elements New Zealand Limited v Amesbury* [2024] NZEmpC 36 at [104].

[83] I also refer to Qube's contractual obligation to give Mr Campbell opportunities to be trained and upskilled, which is a relevant factor when Qube is considering alternative duties.¹⁷

[84] I have also considered Mr Campbell's submission that money is a poor substitute for the loss of a job.¹⁸ Further to this, the point of an interim injunction is to preserve the status quo.¹⁹

[85] Considering all of these factors, the balance of convenience lies with Mr Campbell.

Where does the overall justice lie?

[86] This is a case involving no-fault dismissal. Mr Campbell cannot control his medical condition.

[87] It is difficult to form the view that it would be unjust to reinstate Mr Campbell, given there seems to be sufficient work available and although Qube has concerns for his health and safety, Dr Douglas is of the opinion that Mr Campbell is able to carry out most of the duties assigned to him.

[88] I also note that Qube did not put in place a return-to-work plan. A return-to-work plan would have provided the parties further opportunity to work constructively in addressing Mr Campbell's asthma condition and his work at the Port.

[89] I am satisfied that overall justice favours interim reinstatement.

Summary and orders

[90] I order Qube to reinstate Mr Campbell to payroll within 2 days of the date of this determination.

[91] The parties are directed to mediation. Mediation is to occur within 14 days of the date of this determination.

¹⁷ ISO Ltd and Maritime Union of New Zealand Incorporated, Collective Employment Agreement 2022-2024 at cl 6.2.

¹⁸ *Vegepod NZ Ltd v Lowe* [2025] NZEmpC 76 at [73].

¹⁹ Above n 17 at [122].

[92] Within 21 days of the date of this determination Qube is ordered to reinstate Mr Campbell to the Port on an interim basis.

[93] A case management conference is to be convened within 21 days of the date of this determination to progress this matter to a substantive investigation meeting.

[94] Costs are reserved.

Simon Greening
Member of the Employment Relations Authority