

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2026] NZERA 251
3446524

BETWEEN

MARK JOHN BETTI
Applicant

AND

G&S BROTHERS LIMITED
Respondent

Member of Authority: Claire English

Representatives: Conor Lennon, counsel for the Applicant
Paul McBride, counsel for the Respondent

Investigation Meeting: On the Papers

Submissions received: 20 March and 2 April 2026 from Applicant
31 March 2026 from Respondent

Determination: 28 April 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Mr Mark Betti, is employed by the respondent G&S Brothers Limited (G&S), a furniture removal business. He was initially employed on 2 October 2025, as a business developer, removal worker, and driver, but was then asked to take on the role of general manager as of 23 December 2025.

[2] Mr Betti says he was promised a pay increase and a new employment agreement. A pay increase was implemented, however, a new employment agreement had yet to be finalised as at the time of writing this determination.

[3] On 9 February 2026, Mr Betti was provided with a letter raising allegations of serious misconduct, being that he had committed serious health and safety breaches on a recent removal job, by arranging for furniture to be removed from a premises by being passed through a first floor window to himself while he was standing on the roof of the removal truck, which furniture he then dropped down to other staff.

[4] Mr Betti was placed on agreed special leave for two days, and asked to surrender his company credit card, phone, and keys, to his manager Mr Scarlett.

[5] On 11 February 2026, he received a second letter raising further allegations of serious misconduct, namely that objectional pornography had been found on his work phone.

[6] G&S advises that it is conducting an investigation into these allegations (including a forensic examination of Mr Betti's phone), and that there is a disciplinary process currently underway. In the interim, it has asked Mr Betti to work performing removals, and not to perform managerial duties.

[7] Mr Betti objects to this. He says that he has been told by G&S to either take leave without pay or be demoted, and this amounts to a suspension. He says he has not agreed to this suspension and there is in any case no provision for suspension in his employment agreement, therefore it is unlawful.

[8] He seeks interim reinstatement to the payroll after being unjustifiably suspended from his role as general manager, while the disciplinary process is resolved.

[9] G&S object to Mr Betti's application for interim reinstatement. It says that Mr Betti has not been suspended and is free to return to work at any time and to be paid in full when he does so. It says that Mr Betti's work would be closely supervised and would require him to undertake (supervised) removal work, but that this has been a key component of his role all along and is not a demotion. G&S says that it is Mr Betti who has chosen not to return to work, and that these conditions are entirely reasonable in the circumstances.

The Authority's investigation

[10] For the Authority's investigation affidavits were lodged from Mr Betti, and from Mr Louie Scarlett, Mr Betti's manager on behalf of G&S. The representatives also provided submissions.

[11] As permitted by s 174E of the Employment Relations Act 2000 (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.

The issues

[12] The issue to be determined by the Authority is whether the applicant has been unlawfully suspended?

[13] If the answer to this question is "yes", then there is a further question as to what remedies should properly follow, with the applicant claiming remedies of: reinstatement to the payroll; reimbursement of lost wages; and compensation for hurt and humiliation.

[14] I record that the respondent also raises the issue of costs.

Background and Key Facts

[15] The approach to an application for interim reinstatement has been set out by the court as follows¹:

The applicant must first establish that there is a serious question to be tried or, put another way, that the claim is not vexatious or frivolous. The balance of convenience must be considered with the impact on the parties of the granting of, and the refusal to grant, an order. An assessment of the overall justice by standing back is required as a final check.

For interim reinstatement applications, the question as to whether there is a serious issue to be tried is considered as two questions:

“(a) Whether there is a serious question to be tried in relation to the claim for unjustified dismissal.

(b) Whether there is a serious question to be tried in relation to the claim for permanent reinstatement.”

¹ Hussain v Auckland Transport [2025] NZEmpC 274 at paragraphs [6] and [7]

[16] In the present case, the relevant questions for consideration are therefore as follows:

- a. Is there an arguable case that Mr Betti was unlawfully suspended?
- b. Does the balance of convenience support interim reinstatement?
- c. Does an assessment of the overall justice of the case support interim reinstatement?

[17] Mr Betti's employment agreement is brief. It employs him on a casual basis to perform business development, load and unload goods, operate a Class 2 truck, and lead a team, on an hourly rate. There is no dispute that this agreement has not been updated to take into account the new role Mr Scarlett asked Mr Betti to take on as of 23 December 2025. Mr Scarlett says that this was because he was initially away from the business on leave, and then needed unexpected medical treatment which delayed his return. In the event, this was overtaken by the serious misconduct concerns.

[18] The employment agreement does not contain any provision for suspension, either on pay or without pay.

[19] Mr Scarlett says that G&S has never suspended Mr Betti. Instead, he made it clear that Mr Betti would be able to work under his supervision, primarily performing furniture removal work. In other words, Mr Scarlett was not amenable to Mr Betti carrying out unsupervised managerial duties following the raising of the serious misconduct allegations.

[20] Mr Betti says that this amounts to either a suspension or a demotion. Mr Betti says that when he was promoted to the role of general manager, this meant that his role became fully office-based. He says he has therefore been told that he is not to perform his general manager role, and that by being asked to perform removals work he has been demoted without consultation.

[21] Mr Scarlett disputes that he ever told Mr Betti that his role as general manager was entirely office-based and says that it was always to be a mixed role, comprising of both removal work and office-based work depending on business needs. He says that the business has two removal trucks and four other staff, with two staff (Mr Betti and another) licenced to drive those trucks. Therefore, it is implausible and unrealistic for Mr Betti to say he would be entirely office-based.

[22] Mr Scarlett points out that Mr Betti has continued to perform furniture removal work as needed, including the removals job that gave rise to the serious misconduct concerns around health and safety. He says that continuing to perform such work under supervision is neither a demotion nor a suspension, and is an entirely appropriate response to managing risk while the investigation and disciplinary process continues. He says that he has made it clear to Mr Betti that he may work under supervision, but that Mr Betti has refused. However, this is not a suspension, and it is simply a matter Mr Betti not attending work, and therefore, he is not entitled to be paid.

Is there an arguable case that Mr Betti was unlawfully suspended?

[23] I find that the difference of opinion between the parties stems from a difference of opinion as to what Mr Betti's role is. Mr Betti says that when he was promoted to the role of general manager on 23 December 2025, he was given a role that was entirely office-based and did not involve or require him to perform any removal work. Therefore, being asked to perform removal work is so different from his current role that it amounts to either a suspension or a demotion.

[24] Mr Scarlett says that this is not correct as the role was a mixed role, requiring both office-based and/or managerial tasks, and removal work. Therefore, it is entirely reasonable for him to ask Mr Betti to continue to perform only part of his existing role in the circumstances, and for a period of time.

[25] The duties and responsibilities that Mr Betti was expected to perform as general manager have not yet been reduced to writing, contributing to this dispute.

[26] Having considered the matter, I find that relevant factors include the short length of time Mr Betti was employed for prior to the promotion to general manager, the small size of the business with a limited number of other staff, the business need to have two licenced drivers for two trucks of which Mr Betti was one, that Mr Betti's own evidence is that he continued to perform removal work of his own recognisance when he felt it was required, and that he accepts Mr Scarlett never referenced suspension in discussions with him.

[27] Taking all these factors into account, I do not find it strongly arguable that Mr Betti had been promoted to an entirely office-based role in all the circumstances such

that a request to perform removal work under Mr Scarlett's supervision for a period of time necessarily amounts to an unlawful suspension or unlawful demotion.

[28] Having found that Mr Betti's claim to have been suspended or demoted is not strongly arguable, this points against interim reinstatement.

[29] Having reached this point, I now turn to consider whether the balance of convenience favours interim reinstatement. There is an obvious burden on Mr Betti of being without pay, however, he is able to mitigate this by returning to work with Mr Scarlett's evidence being that G&S will continue to pay Mr Betti at his current higher hourly rate. I also take into account that there is the potential of for negative impacts on G&S in that it has a small number of staff and limited ability to pay, given that Mr Betti represents a significant percentage of all staff. This factor points away from interim reinstatement.

[30] The final test is that of the overall justice of the case. This is described as an overall check of the balance of the proposed outcome. I find that the overall justice of the case does not require orders that Mr Betti be restored to the payroll/full pay without working, in circumstances where G&S have work available for him and have invited him to work.

[31] At this early stage, I do not accept that the only possible interpretation of G&S's actions is that there has been either an unlawful suspension or unlawful demotion. Instead, I find it at least arguable that Mr Scarlett's direction that Mr Betti perform only part of his current role for a period of time (and to facilitate an investigation and disciplinary process) falls within a lawful and reasonable direction from an employer to an employee. This factor also does not support the orders sought by Mr Betti.

[32] In addition, this is not a matter where Mr Betti has applied for permanent reinstatement. He remains employed. This also points away from any interim orders being made.

Orders

[33] Mr Betti's claim for interim reinstatement to the payroll is not made out. No other orders are made.

Costs

[34] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[35] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the respondent may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum the applicant will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[36] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.²

Claire English
Member of the Employment Relations Authority

² For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1