

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2026] NZERA 382
3452004

BETWEEN HAYDEN SARCICH
 Applicant

AND FULTON HOGAN LIMITED
 Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Richard Roil, counsel for the Applicant
 John Gray Smith and Kirsty McDonald, counsel for the
 Respondent

Investigation Meeting: 11 May 2026 in Wellington

Submissions: Up to 20 May 2026 from the Applicant
 Up to 15 May 2026 from the Respondent

Determination: 16 June 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Hayden Sarcich seeks interim reinstatement to his role pending determination of his personal grievance claim. Mr Sarcich was employed by Fulton Hogan Limited (FHL) and was summarily dismissed on 10 February 2026 after an employment investigation into concerns about his conduct.

[2] The allegations that were found to be made out at the completion of the employment investigation included that he knowingly falsified and approved the improper payment of a personal invoice, resulting in the falsification of company records and an unwarranted cost to FHL of approximately \$12,000 and that he accepted subcontractor funded personal travel, and failed to disclose this in accordance with the Gift and Gratuities policy.

[3] Mr Sarcich says his dismissal was unjustified. In relation to the invoice allegations he says he was at arm's length from the arrangement for an employee to purchase concrete from FHL. He was unaware FHL had not been paid for the concrete and was of the understanding his manager had approved the arrangement. He says the allegation could not be substantiated based on the information FHL had.

[4] His main arguments in relation to a trip to the USA partially funded by a subcontractor focus on issues of fairness in that he has been singled out when his manager knew about the trip. He can also show that another employee, who received a similar benefit by way of subcontractor funded personal travel, that was also a breach of the Gifts and Gratuities Standard was dealt more leniently and short of dismissal.

[5] Mr Sarich raised a number of alleged procedural flaws in relation to both allegations. He was initially not provided with five witness statements. After his representative continued to make requests these statements were provided to him before the final decision was made. One further witness statement was not provided to him until after the Authority's investigation meeting. He says these statements contained relevant information that should have been provided to him in a timely way during the investigation. FHL say the statements were not provided to the decision maker so did not form part of the material that was relied on by the decision maker and/or these statements were not deemed to be relevant to the allegations being investigated.

[6] Mr Sarcich also says while FHL clearly had a range of concerns about his conduct to start with, all the other allegations fell away because they were not able to be substantiated. He says what resulted was that the analysis of whether the remaining two allegations reached the level of serious misconduct on their own and that dismissal was the appropriate outcome is not able to be justified.

The Authority's investigation

[7] Mr Sarcich says his dismissal was substantively unjustified and procedurally flawed and he seeks reinstatement to his position to preserve his position and mitigate against continuing harm to his reputation and financial position pending substantive determination of his grievances. Mr Sarcich has provided an undertaking as to damages.

[8] The parties were directed to urgent mediation but were unsuccessful in resolving the matters between them. Affidavit evidence was lodged from Mr Sarcich and for FHL from Blair Gregory, General Manager, Lower North Island.

[9] The affidavit evidence is untested. There is no requirement for the Authority at this stage to resolve any disputes or conflicts that are apparent in the affidavit evidence. The background is set out from the untested affidavit evidence and the documents attached to the affidavits lodged with the Authority.

Principles applicable to granting interim reinstatement

[10] The approach to interim injunctions is well-established.¹ Mr Sarcich must establish there is a serious question to be tried in relation to the claim his dismissal was unjustified and the claim for permanent reinstatement.

[11] The Authority is also required to consider where the balance of convenience between the parties lies. This involves consideration of the impact on the parties of the granting of, and the refusal to grant, the interim order. Finally, the overall interests of justice are considered, standing back from the detail required by the earlier steps.

[12] Reinstatement is the primary remedy under s 125 of the Employment Relations Act 2000 (the Act). Section 125(2) of the Act applies if the remedies sought by an employee include reinstatement and it is determined that the employee has a personal grievance. In those circumstances the Authority must provide for reinstatement wherever practicable and reasonable, irrespective of whether any other remedy is provided.

[13] While the power to order interim reinstatement is discretionary the assessment of whether there is a serious question to be tried requires evaluation by the decision maker. When considering whether to make an order for interim reinstatement, the Authority must apply the law relating to interim injunctions having regard to the object of the Act.² The object of the Act is to build productive employment relationships through the promotion of good faith in all aspects of the employment environment and of the employment relationship.

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

² Employment Relations Act 2000, ss 3 and 127.

Background

[14] FHL is a large infrastructure construction business which operates throughout New Zealand. Mr Sarcich had been employed by FHL since 2022, initially in the position of Drainage Manager then as Contracting Divisional Manager followed by a transfer to Major Projects. At the time of his dismissal, he was employed in Major Projects, which was a senior position in the Otaki to north of Levin project. The matters that were investigated related to his time in his previous role of Contracting Divisional Manager.

[15] On 13 October 2025, FHL wrote to Mr Sarcich advising him it had commenced an investigation into his conduct. At that stage there were four allegations. Two related to subcontractor funded trips outside of work, a third related to the concrete invoices and a fourth one that related to unexplained absences from work. On 15 October 2025, he was suspended from the workplace while the investigation took place. On 12 November 2025, the parties met and Mr Sarcich provided a response to the allegations. On 2 December 2025 draft investigation report was provided to Mr Sarcich. It was recorded that the allegations regarding the concrete invoice and the USA trip were made out.

[16] A number of issues with FHL's process were raised with it by Mr Sarcich's representative. These included the lack of a transparent methodology, improper merging of cases, failure to address context and practice, insufficient engagement with Mr Sarcich's evidence, unsubstantiated adverse credibility findings, over reliance on witness recollection and failure to investigate or acknowledge systemic issues.

[17] On 12 December 2025, the final investigation report was provided to Mr Sarcich. On 18 December 2025, FHL wrote setting out its concerns, that if the findings of the investigation report were accepted Mr Sarcich may have breached the terms of his employment agreement and FHL's values and this may amount to serious misconduct under FHL's code of conduct standard.

[18] In particular, Mr Gregory, FHL's General Manager, was concerned about four things. The first was that Mr Sarcich had improperly approved two invoices (the concrete invoices) knowing the concrete had been delivered to an employee's private

property. Mr Sarcich says he did not know the employee had not paid for the concrete and that it was his understanding his manager had approved the transaction.

[19] The second was in relation to personal travel to USA which was partially funded by one of FHL's subcontractors. There were two other concerns about a golfing trip that was also partially funded by a subcontractor and multiple occasions when Mr Sarcich had been absent from work without approval. The last two allegations were later found not to be substantiated.

[20] On 22 December 2025, a personal grievance for unjustified disadvantage arising from Mr Sarcich's suspension was raised with FHL.

[21] On 20 January 2026 the parties met. Mr Sarcich provided his responses. In relation to the concrete invoice Mr Sarcich says the arrangement did not involve him other than approval of the invoices and he approved them after understanding payment had been made by the employee purchasing the concrete. He was not involved with where the cash was kept and the code he used for the invoice was standard and in line with the local practices at that time.

[22] In relation to the USA trip he said he informed his manager about the trip on three specific occasions, he had no knowledge of a formal declaration process beyond verbal notification to his manager. He knew of another employee who had accepted a similar arrangement from a subcontractor who had been dealt with leniently and short of dismissal. Mr Sarcich requested further information at the meeting in relation to the absences from work. On receipt of that information Mr Sarcich's representatives raised a number of concerns about the material said to support that allegation. A disadvantage personal grievance was also raised in relation to the allegation regarding unexplained absences.

[23] On 27 January 2026, FHL responded saying it was satisfied with its investigation and it was providing five additional interview transcripts to Mr Sarcich. The first one was from another employee, Heather Bloor. After the disciplinary meeting a further statement had been obtained from Ms Bloor on 23 January 2026. Her statement was said to contradict Mr Sarcich's statement regarding handling of cash and details around the job, including for the concrete invoices in relation to the first

allegation. The other four statements had been collected during the initial enquiry but were excluded from the final report by the investigators, because they deemed the statements to be irrelevant. They had not been relied on to form the preliminary view and therefore not provided to Mr Sarcich previously.

[24] A further disclosure of the Gifts and Gratuities policy and register showing two instances where Mr Sarcich had made previous declarations was also provided. Mr Sarcich's representatives responded on 30 January 2026 raising a number of concerns about the additional statements.

[25] On 4 February 2026, the preliminary view letter was sent to Mr Sarcich. The findings were that the two allegations regarding the concrete invoices and the USA travel were substantiated. The golf trip allegation and the unauthorised absences allegations were not substantiated. It was recorded FHL's trust and confidence in Mr Sarcich had been damaged. Summary termination of employment was proposed. Consideration had been given to a final written warning as an alternative to dismissal however this was discounted on the basis that it would not have been appropriate given Mr Sarcich's seniority, the level of trust FHL needed to have in him, the seriousness of his conduct, and the impact on FHS's ability to have trust and confidence in him in the future.

[26] Mr Sarcich's representative responded raising the issue again about the late disclosure of relevant material and in relation to the finding noted that the USA travel had been disclosed to Mr Sarcich's manager in good faith and consistent with past practice, that it was disputed there was a requirement to register the trip under the gifts and gratuities process but in any event he denied any attempt to conceal or improperly benefit from that. Documents demonstrating transparency were provided and he raised a concern about inconsistent treatment compared to other employees on similar trips which had been permitted. A number of procedural concerns were also raised.

[27] It was said that dismissal would be disproportionate in the circumstances, that there was no basis for finding the trust and confidence had been irreparably damaged, that no final decision should be made under all the concerns were addressed. FHL was put on notice that if Mr Sarcich was dismissed he would pursue reinstatement as a primary remedy, as well as an application for interim reinstatement.

[28] On 10 February 2026, FHL confirmed in writing the final outcome of the disciplinary process. The allegations regarding the concrete invoices and the USA travel had been substantiated. FHL considered these amounted to serious misconduct and that summary dismissal was an appropriate outcome.

[29] On 18 February 2026, Mr Sarcich gave notice of his personal grievance in relation to the dismissal. On 20 March 2026, he filed a statement of problem in the Authority seeking reinstatement.

[30] At the investigation meeting, an email dated 9 September 2025 authored by Mr Sarcich but discovered after his dismissal was considered to be relevant. Both Mr Gregory and Mr Sarcich lodged supplementary affidavits in relation to the email. FHL also attached an additional statement from Angela Howell, a regional Divisional Manager for Road Maintenance, that had been obtained during FHL's employment investigation but had never been provided to Mr Sarcich or Mr Gregory, the decision-maker.

Arguable case for unjustified dismissal

[31] Section 125 of the Act provides that if the remedy sought by an employee includes reinstatement and it is determined the employee did have a personal grievance, the Authority or Court must provide for reinstatement wherever practicable and reasonable.

[32] Mr Sarcich says that the dismissal is unjustified on both procedural and substantive grounds. He does not accept Mr Gregory's characterisation of 9 September email, his role, or the significance of the failure to provide Angela Howell's transcript. He says both those matters support his position that FHL's case against him has been overstated, that the local business region operated informally and inconsistently, and that relevant evidence was not disclosed to him during the disciplinary process.

[33] It was submitted on his behalf that FHL has not acted as a fair and reasonable employer and dismissing him for alleged serious misconduct without notice. In particular he refers to the broader enquiry that FHL started that was narrowed down to

just two allegations, and says there was a failure to reassess the overall seriousness of the case once the other allegations fell away. Numerous process defects were referred to including the provision of five witness statements at a very late part in the investigation, and the provision of Angela Howells statement after the interim reinstatement investigation meeting. His representative had asked for Ms Howell's statement to be provided on more than one occasion.

[34] Relevant information was not taken into consideration because the witness statements that were disclosed late confirmed Mr Sarcich's position that the region was disorganised, rapidly growing, and operating informally without proper application of company policies. The investigation was said to have relied upon unsafe assumptions and selected treatment of witness evidence as well as adverse credibility findings without adequate explanation as to why others were considered more credible. FHL was said to have not engaged in the responses provided or with the evidence including bank statements showing that Mr Sarcich had contributed to the USA trip financially. This led to the submission that these were not minor process points that the employer had not sufficiently investigated its concerns and it had not given a reasonable opportunity for Mr Sarcich to respond and nor had it genuinely considered the explanations given.

[35] In relation to the concrete invoice allegation it is submitted FHL has failed to establish Mr Sarcich had the knowledge that FHL says he did about the cash and there is a witness who was not interviewed who could likely have provided information about whether Mr Sarcich knew that the cash had not been banked. It is also noted that the loss of approximately \$12,000 is contested based on the information in the investigation report which refers to \$9000. This is said to go towards whether FHL's framing of the alleged loss and seriousness was fair and proportionate.

[36] In relation to the USA travel allegation it appears there is a conflict in the evidence between Mr Sarcich and his manager that is material to the outcome and significant from Mr Sarcich's perspective. Mr Sarcich also says there has been insignificant explanation about why his verbal notification to his manager was deemed to be insufficient. He did not understand there to be a formal declaration requirement beyond that. In a similar vein he also raised a specific employee's situation that involved travel funded in a similar way that was dealt with informally. That employee's

travel was also subsequently discovered and he was given the benefit of the doubt by Mr Maggs.

[37] FHL says it has acted as a fair and reasonable employer under s103A of the Act. Its decision to summarily dismiss Mr Sarcich for serious misconduct was justified in the circumstances and one that a fair and reasonable employer could make. It notes in particular the nature of the allegations against Mr Sarcich. In relation to the late disclosure of the additional witness statements and then the further statement from Angela Howell disclosed after the investigation meeting, it says they were deemed to be immaterial and therefore not included in the final investigation report. They were also not provided to Mr Gregory therefore they were not before him as part of the disciplinary or decision-making process.

[38] With regard to the other procedural flaws that are claimed by Mr Sarcich FHL is confident that it would be able to show that it acted as a fair and reasonable employer at any substantive hearing of Mr Sarcich's claims. It says Mr Sarcich has failed to establish he has an arguable case for unjustified dismissal and in the alternative even if it was considered there was an arguable case, the case is weak.

[39] The threshold for an arguable case is low and requires only that the claimant be more than frivolous and vexatious. With reference to the late disclosure of witness statements despite FHL's submission that they were deemed to be immaterial and not provided to the decision maker. Mr Sarcich says they contain information that was relevant in terms of his response to the allegations. He says they included information about context and local practices and that his conduct was in line with those local practices.

[40] In relation to the concrete invoice allegation, there are a number of conflicts between what Mr Sarcich says, and what others say in particular his manager. It is likely that further evidence would need to be heard as to the basis for credibility findings made in order to prefer one witness's evidence over Mr Sarcich's. This is particularly so when Ms Howell's statement, that was not disclosed during the employment investigation, records that she independently knew there was conflict between Mr Sarcich and his manager.

[41] Of note with regard to procedural and substantive fairness is Ms Howell's statement being disclosed after the investigation meeting and the fact the investigator had access to additional statements before completing investigation report. Decisions were made after Mr Gregory met with Mr Sarcich but matters proceeded on the basis of the findings recorded by the investigator in the investigation report. There is a material conflict in evidence about whether Mr Sarcich's manager knew about the USA trip. Although what that means in terms of a finding of a breach of the Gifts and Gratuities Standard is a matter that will require further submissions and evidence at a substantive investigation meeting.

[42] In relation to the allegation about the concrete invoice, Mr Sarcich's assertion there is a witness who likely has relevant information regarding cash kept in the draw is important. Mr Sarcich maintains he was unaware of this.

[43] While further evidence would need to be heard at this stage based on the untested affidavit evidence, the threshold for an arguable case has been met.

Arguable case for reinstatement

[44] Reinstatement must be both practicable and reasonable and they are two separate requirements. In *Hong v Auckland Transport* the practicableness and reasonableness as it relates to reinstatement were described as follows:³

[66] Practicality is not given a narrow meaning. It means more than simply being possible. For 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 done or carried out successfully. A wide range of considerations may be brought to bear on the question of practicality, including matters which, although they may not have formed reasons for the dismissal, are nevertheless germane to the prospects of a renewed employment relationship.

[67] Looking at reasonableness, the Court needs to consider the prospective effects of an order, not only upon the individual employer and employee in the case, but on other affected employees of the same employer, and in some cases, perhaps third parties who would be affected by the reinstatement.

...

³ *Hong v Auckland Transport* [2019] NZEmpC 54 at [66] to [67].

The Court must broadly inquire into the equities of the parties' cases insofar as the prospective consideration of reinstatement is concerned, and balance the interests of the parties and the justice of their respective cases.

[footnotes omitted]

[45] Mr Sacich says he has an arguable case that permanent reinstatement would be practicable and reasonable. He gave notice that he was seeking reinstatement as is primary remedy and he is ready willing and able to return to work. He says that reinstatement is the remedy that is of greatest importance to him because it preserves his career, continuity of service, income and professional reputation.

[46] FHL say there is a real risk to its reputation and the nature of allegations mean Mr Sarcich cannot be reinstated. Reinstating him at this interim stage would expose FHL to ongoing governance and compliance risks while the substantive issues remain unresolved. While Mr Sarcich suggests a number of controls could be put in place to address any concerns about financial integrity, FHL does not consider there is a plausible pathway to managed reintegration that could be said to be a practicable solution.

[47] Mr Sarcich is willing to return to work under the following suggested conditions:

- (a) a change in reporting lines;
- (b) no authority to approve subcontractor invoices or purchase orders without secondary approval;
- (c) removal or reduction of delegated financial authority for the interim period;
- (d) no direct engagement with Graham Civil or any other identified subcontractor unless approved in advance;
- (e) work in a role not involving the Manawatu regional business;
- (f) a staged return to work;
- (g) confidentiality obligations; and
- (h) any other conditions the Authority thinks appropriate.

[48] Mr Sarcich does not accept that reinstatement would require FHL to jeopardise its relationship with NZTA or any other alliance partner. He also made the point that his change in role matters because he is not asking to be returned to the role in which

the allegations arose. He had already moved to Major Projects which is separate from the regional role where the conduct of concern arose.

[49] While Mr Sarcich has indicated he would work under any conditions should interim reinstatement be ordered and it is likely there would be a role available if he was reinstatement, FHL's main submission is that the conduct in issue goes to governance and integrity rather than isolated interpersonal behaviour.

[50] FHL rely on the case of *McCormack v Reserve Bank of New Zealand*⁴ to support its submission that at an interim stage when the justification for dismissal has not been tested, the practicability and reasonableness of such a reintegration is significantly reduced.

[51] The arguments Mr Sarcich has put forward go towards both the procedural fairness and the substantial merits of the case. It is not denied that the Gifts and Gratuities Standard was triggered by the USA trip but rather that it was unfair that he was singled out and that dismissal was considered to be the appropriate outcome. He raises a number of issues to do with the factual findings in relation to the concrete invoice matter.

[52] I agree that the nature of the conduct in issue is relevant in this case. What that means is that permanent reinstatement is not likely to be reasonable unless the dismissal is found to be both procedurally and substantively unjustified. Although financial delegations could be put in place the issues of concern are wider than compliance with financial delegations and approving invoices and extend to concerns about judgement and perceived conflicts of interest. These are not so easily managed and the nature of the allegations mean the concerns would be universal and it would not necessarily matter which role he was in.

[53] The 9 September email is of concern to FHL. Mr Gregory became aware of it after Mr Sarcich's dismissal. It is an email from Mr Sarcich to a subcontractor with a list of questions that Mr Sarcich suggests the subcontractor could ask FHL and a client FHL contracted with. The context to the email is that shortly before the email was sent the client had advised FHL the contract was to be reduced to a minimum level of

⁴ *McCormack v Reserve Bank of New Zealand* [2025] NZEmpC 159 at [92]

service. The questions in the email appear to be aimed at assisting the subcontractor who would be directly affected by the changes to the contract.

[54] Mr Sarcich says he accepts the email records proposed questions for FHL and the client but says it was not confidential commercial information being passed to a subcontractor to undermine Fulton Hogan but rather a practical list of issues. It was intended these could be discussed so that FHL, the client and the subcontractors could understand what was happening and how the contract should be managed. He says it was not improper.

[55] FHL say Mr Sarcich was not involved in this contract and should not have been talking to the subcontractor about the contract where as Mr Sarcich says he was involved generally because the contract was within the region that he was responsible for. The difficulty for Mr Sarcich to overcome is that it is the same subcontractor that funded the USA trip.

[56] All that needs to be established is that Mr Sarcich has an arguable case for reinstatement. If Mr Sarcich was successful with his claims he would have an arguable case for reinstatement. However, the overall context of the 9 September email may be relevant to the case for reinstatement. At this stage based on the untested evidence, the 9 September email could undermine the case for reinstatement as a remedy. The issues it raises in terms of overall judgement and awareness of the perceptions that can arise in roles that involve engaging with subcontractors on behalf of the employer may count against reinstatement as being an appropriate remedy.

Balance of convenience

[57] This part of the analysis involves a weighing exercise and requires consideration of the impact on the parties of the granting of, and the refusal to grant, interim reinstatement. It also requires consideration of whether adequate alternative remedies exist. What would happen if the interim position is reversed in the later substantive determination must also be assessed.

[58] Mr Sarcich says the prejudice to him is significant. He has lost his employment and income, continuity of service and has been excluded from his profession and workplace. His reputation has been damaged and there is a stigma attached to a

summary dismissal for serious misconduct. He has concerns about rumours and misinformation that he says have spread widely and impacted on his standing in his local community. Any delays in reinstatement also impact on the likelihood of reinstatement when the substantive matter is heard.

[59] He is firmly of the view that compensation would not adequately remedy any of those matters and that interim reinstatement would help ameliorate what he sees as the ongoing reputational harm by preserving the employment relationship until the Authority determines whether FHL acted as a fair and reasonable employer.

[60] The potential prejudice to FHL lies the number of controls and oversight which would need to be put in place to ensure there was sufficient oversight. FHL says this is significant in view of FHL operating in what it described as a “regulated and governance sensitive environment” and it would arguably bear a risk given the concerns arising from the nature of the concerns Mr Sarcich was dismissed for.

[61] Nonetheless the apparent strength of Mr Sarcich’s case provides some weight to the balancing exercise but the underlying concern regarding the nature of the allegations provides weight to the balancing exercise in FHL’s favour. This is particularly so taking into account the 9 September email.

[62] In this case, noting that compensation would be available if Mr Sarcich is successful with his unjustified dismissal claims, and that the substantive matter will be heard in approximately three months the balance of convenience weighs against interim reinstatement.

[63] Both parties made submissions on interim reinstatement to the payroll but the nature of the concerns appear to be such that FHL could point to reputational concerns on its behalf and to a loss that it would suffer if reinstatement was to the payroll. On the basis of that loss together with the fact Mr Sarcich’s unjustified disadvantage and dismissal claims are yet to be heard, the balance of convenience falls in favour of FHL.

Overall justice

[64] The overall justice assessment is a final check on the position reached following the analysis of the earlier steps. It requires stepping back and considering the strengths of each party's case to ascertain where the overall justice lies.

[65] On the strength of the untested evidence Mr Sarcich has an arguable case he was unjustifiably dismissed, and an arguable case for reinstatement, although weakly arguable at this stage. FHL have provided reasons why the nature of the conduct creates a number of issues for it particularly at the stage when the evidence is untested and the unjustified dismissal grievance has not been heard. This tips the balance of convenience in favour of FHL.

[66] Standing back from these matters and noting the issues that arise with the 9 September email, the overall justice tends to favour FHL and Mr Sarcich's application for interim reinstatement is declined.

Next steps

[67] The Authority will contact the parties to timetable the evidence for the substantive matter.

Costs

[68] Costs are reserved pending a final determination on the substantive matters.

Sarah Kennedy-Martin
Member of the Employment Relations Authority