

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2025] NZEmpC 274
EMPC 420/2025**

IN THE MATTER OF a challenge to a determination of the
 Employment Relations Authority

BETWEEN ELIAS HUSSAIN
 Plaintiff

AND AUCKLAND TRANSPORT
 Defendant

Hearing: 28 November 2025
 (Heard at Auckland)

Appearances: M Ryan, counsel for plaintiff
 J MacGibbon, counsel for defendant

Judgment: 17 December 2025

JUDGMENT OF JUDGE HELEN DOYLE

[1] Mr Hussain was employed as a parking officer at Auckland Transport from 2013 to 22 May 2024. He worked as part of the night team and was accompanied by contracted security guards for health and safety reasons as he undertook his duties. Mr Hussain was summarily dismissed from his employment on 22 May 2024 following a complaint and an email from two security guards.

[2] Interim reinstatement to the payroll of Auckland Transport was sought by Mr Hussain from the Employment Relations Authority (the Authority) until the determination of his personal grievance for unjustified dismissal. The Authority in a determination dated 22 August 2025 declined Mr Hussain's application for interim

reinstatement.¹ Mr Hussain filed a challenge to the determination. Urgency was not sought. An undertaking as to damages was provided by Mr Hussain.

Legal principles

[3] The Employment Relations Act 2000 (the Act) provides for interim reinstatement in s 127. Section 127(7) provides that nothing in that section prevents the Court from granting an interim injunction reinstating an employee if, as in this matter, it is seized of proceedings dealing with the personal grievance.

[4] When deciding whether to make an order for interim reinstatement, the Court must apply the law relating to interim injunctions having regard to the object of the Act.²

[5] 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 employment relationships. Good faith is promoted by recognising that employment relationships are built on a legislative requirement for good faith behaviour. It is also achieved by acknowledging and addressing the inherent inequality of power in employment relationships.

[6] The Court of Appeal has stated that the approach to an application for an interim injunction is well established.³ 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.

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

¹ *Hussain v Auckland Transport* [2025] NZERA 513.

² Employment Relations Act 2000, ss 3 and 127.

³ *NZ Tax Refunds Ltd v Brooks Homes Limited* [2013] NZCA 90, (2013) 13 TCLR 531 at [12]–[13].

- (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.

Relevant background against which to assess whether there is a serious issue to be tried

[8] Affidavits were filed in support of, and in opposition to, the application for interim reinstatement. The affidavit evidence is untested. There is no requirement for the Court at this stage to resolve any disputes or conflicts that are apparent from the affidavit evidence. The background is set out from the untested affidavit evidence and documents appended to the affidavit evidence.

[9] The two security guards were referred to by the Authority in its determination as guard A and guard B to anonymise their identities. The Court will maintain that anonymisation and refer to them in the same way in this judgment.

[10] On 17 February 2024, Auckland Transport received a complaint in the form of a security incident report from a security guard (guard A), who had been assigned to escort Mr Hussain on the previous night's shift of 16 February 2024. Guard A complained amongst other matters that Mr Hussain was rude to him and he was concerned about Mr Hussain's driving of his personal car to the Auckland Transport vehicle. He wrote that he waited for nearly two hours for Mr Hussain in the car when he went into a residence. Guard A stated in his complaint that Mr Hussain on coming back to the car telephoned someone and then drove stopping at an ATM to withdraw cash. Guard A wrote that Mr Hussain drove from the main road to a street with no lights, a bumpy road and a dead end. Guard A wrote that he felt frightened and telephoned 111, and Mr Hussain dropped him back at the Auckland Transport office.

[11] Mr Flay is the parking complaint area manager at Auckland Transport. He felt that the complaint was serious enough to consider suspending Mr Hussain while it was investigated further.

[12] Mr Flay contacted Mr Hussain by telephone on 20 February 2024 to make him aware of the complaint and proposed suspending him on pay whilst it was investigated. Notes taken of the call appended to the affidavit of Mr Flay record amongst other matters that Mr Hussain thought what guard A said in his statement was wrong, that it was unfair and none of it was Mr Hussain's fault. Mr Hussain provided some feedback to his suspension and was placed on paid suspension for the duration of the investigation.

[13] On 27 February 2024 an email was received from another security guard from the same firm (guard B), explaining that, on the 17 February 2024 shift, Mr Hussain went somewhere and left his radio transmitter (RT) in the car. Guard B wrote in his email that Mr Hussain told him that if anyone calls Mr Hussain's name to let him know.

[14] Mr Flay proceeded to hold separate interviews with guard A and guard B on 7 and 12 March respectively.

[15] Mr Flay also ran a brief global positioning system (GPS) tracking report regarding the fleet vehicle Mr Hussain was assigned and his RT on the dates he had been working with the two security guards 16 and 17 February 2024. He concluded that there was "at least some consistency" between what the guards had said and the fleet vehicle GPS and RT GPS data. For example it showed the vehicle was parked in the one area with its ignition off for a period of time on 16 February 2024 for approximately 50 minutes although not the two hours guard A had stated. It also showed the vehicle driving to Massey down a dead-end gravel road on 16 February 2024.

[16] Mr Flay, in consultation with his manager, escalated the matter to Mr Strawbridge, the group manager parking services, and provided him with relevant information.

[17] Mr Strawbridge, under Auckland Transport's delegation's manual, has authority to make decisions up to and including termination of employment.

[18] Mr Strawbridge wrote to Mr Hussain on 20 March 2024 inviting him to a meeting on 27 March 2024 to discuss five allegations. It was stated in the letter that if the allegations were proven individually or collectively, they would constitute serious misconduct. Auckland Transport's code of conduct and its policies were referred to with concern that these may have been breached. Possible outcomes up to termination of Mr Hussain's employment were referred to. Information was provided to assist Mr Hussain to prepare for the meeting, including the transcript of interviews with guards A and B, GPS reports and policies and the code of conduct.

[19] The first allegation in the letter of 20 March 2024 was that Mr Hussain may have used inappropriate language and exhibited intimidating and confrontational behaviour when interacting with guard A during the shift on 16 February 2024. Examples of these concerns were set out. The letter stated that the accumulation of these listed events led guard A to feel frightened and in danger, and guard A telephoned the police.

[20] The second allegation was that Mr Hussain entered private property on a road in Massey on two separate occasions during two separate shifts without instruction or authority to do so. It was stated that there was no reasonable justification for Mr Hussain to have entered the private property.

[21] The third allegation was that Mr Hussain may have taken extended breaks on at least 14 occasions without prior approval being given.

[22] The fourth allegation was that Mr Hussain may have, at the beginning of his shift, used his personal vehicle during his shift to reach the Auckland Transport fleet vehicle carpark without authority to do so.

[23] The fifth allegation was that Mr Hussain may have left his place of work during his shift on 17 February 2024 without prior approval or authority to do so.

[24] Mr Ryan was instructed by Mr Hussain as his counsel. A mutually convenient date for the meeting referred to in the letter of 20 March could not be found. Mr Hussain was invited to provide his responses in writing.

[25] Mr Ryan wrote to the employment relations lead at Auckland Transport on 12 April 2024 with responses to the allegations.

[26] In the letter of 12 April 2024, Mr Hussain rejected all the allegations and any breaches of the policies and code of conduct. He said that guard A's attitude changed whilst he was talking to him. He explained that he offered to take guard A back to the office if the guard felt unsafe, but the guard declined. He accepted that guard A made a 111-call to the police and remained on the phone to the police until arrival at the Auckland Transport office. He said that he was in a new subdivision area to get some tickets, and he took an authorised break for a meal at his parents' home. Mr Hussain was of the view that guard A was untruthful, and his panicking showed he was not capable of being an escort guard for parking officers.

[27] In a letter dated 29 April 2024 Mr Strawbridge acknowledged the letter from Mr Ryan dated 12 April 2024. He set out the allegations and the explanations provided for each one. Findings then followed in respect of each allegation. All allegations were found to be substantiated. It was noted that there was no explanation from Mr Hussain in respect of the GPS fleet and RT data provided. A preliminary decision was arrived at that summary dismissal was the appropriate outcome. A meeting was to be held for Mr Hussain to provide feedback to the preliminary decision on 8 May 2024.

[28] It was agreed between Mr Ryan and the employment relations lead that Mr Hussain would provide his response to the preliminary decision by 10 May 2024.

[29] On 7 May 2024 Mr Ryan wrote to the employment relations lead attaching a handwritten and signed statement made by guard A that Mr Ryan stated was in stark contrast to what guard A said in his security report. Mr Ryan wrote in his letter that this brings guard A's veracity into dispute. There was reference to a failure to carry out a full and fair investigation into the allegations and the preliminary decision of summary dismissal being illustrative of pre-determination.

[30] The employment relations lead responded to Mr Ryan on 7 May 2024. They stated that they had not seen the undated handwritten statement before and enquired how Mr Hussain had come into possession of it. It was not accepted that the statement

now provided was in “stark contrast” to what guard A said in his statement provided to Auckland Transport. It was stated that, if anything, the handwritten statement confirmed the broad pattern of events provided from guard A. It was noted that no explanation had been provided for the GPS data. Auckland Transport denied any predetermination.

[31] On 10 May 2024 Mr Ryan wrote back to the employment relations lead. He stated that his instructions were that the handwritten letter was sent to Mr Hussain by a temporary supervisor at the security company and provided their first name. Mr Ryan wrote that he was instructed that Mr Hussain denied that he had committed any behaviours or actions that amounted to serious misconduct. It was also stated that Auckland Transport had failed to carry out a full and fair investigation and that the preliminary decision of summary dismissal was inconsistent with the actions of a fair and reasonable employer. It was stated that Mr Hussain stood by his responses to the allegations when he was first spoken to about guard A’s allegations.

[32] On 22 May 2024 the decision to summarily terminate Mr Hussain’s employment for serious misconduct was confirmed in a letter from Mr Strawbridge.

Serious questions to be tried – unjustified dismissal

[33] When the Authority carries out its substantive investigation, it will be required to apply the justification test in s 103A of the Act and objectively assess whether the actions of Auckland Transport, and how it acted, were what a fair and reasonable employer could have done in all the circumstances at the time that dismissal occurred.

[34] Auckland Transport acknowledges that the threshold for an arguable case in respect of the unjustified dismissal is low, but it does not accept that Mr Hussain has an arguable case for unjustifiable dismissal. Auckland Transport’s view is that the termination of his employment was procedurally and substantively justified.

[35] It is arguable that the allegations were raised clearly with Mr Hussain by way of letter on 20 March 2024 and that relevant documentation and data were attached to that letter. It is arguable that Mr Hussain was given an opportunity to respond to the

allegations, documentation and RT and fleet vehicle GPS data at a meeting in person or in writing. It is arguable that the GPS data was not specifically responded to.

[36] Mr Hussain says that the investigation was not what a fair and reasonable employer could have undertaken, and further investigations should have been carried out because of his explanations.

[37] Mr Hussain says that a transcript of the emergency 111-call made by guard A should have been obtained. Auckland Transport does not accept that the procedure is undermined by the fact that it was not. That is because the 111-call was acknowledged to have taken place by Mr Hussain and guard A, and therefore further evidence to affirm that was not required. Auckland Transport, as submitted on its behalf, is not required to conduct a forensic examination.

[38] From the untested evidence, Mr Hussain's explanations about what led up to the 111-call are different to guard A's version of the events. The first allegation in the letter of 20 March 2024 refers to an accumulation of the events leading to guard A feeling frightened and in "serious danger." Arguably what was said during the 111-call could be relevant to aspects of the allegations.

[39] Mr Hussain also says that Auckland Transport should have discussed the handwritten note with guard A. Auckland Transport says that, given the handwritten note was confirmation of a broad pattern of events already described by guard A, a further interview would be of little value.

[40] It is arguable that a full and fair investigation could, amongst other matters, have included discussing the later provided handwritten note with guard A and obtaining a transcript of the 111-call.

[41] The threshold to establish an arguable case is not high. I conclude, as did the Authority, that there is an arguable case that Mr Hussain was unjustifiably dismissed.

Arguable case for permanent reinstatement

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

[43] Mr Hussain submits that reinstatement is reasonable and practicable and that there would be other roles available at Auckland Transport.

[44] Auckland Transport does not accept that reinstatement is practicable or reasonable because of the serious misconduct engaged in and the absence of an adequate explanation. It says that Mr Hussain acknowledges in his statement of claim that his interim reinstatement could not be a return to normal duties, and interim reinstatement is premised on significant financial hardships he has suffered rather than a desire to perform the role.

[45] Auckland Transport refers additionally to delay on the part of Mr Hussain in progressing his application for interim reinstatement and a request from the security company that their security guards no longer be paired with Mr Hussain. It says that Mr Hussain's conduct does not meet its requirement for it to issue a statutory warrant of appointment that is required to complete the duties of a parking officer.

[46] All these matters will need to be assessed and considered when the Authority holds its substantive investigation meeting. As Mr Hussain submits, Auckland Transport would have other roles that may be suitable and no less advantageous.

[47] On the untested affidavit evidence, I conclude that there is an arguable case that is more than vexatious or frivolous for permanent reinstatement if Mr Hussain establishes his personal grievance.

Balance of convenience

[48] The Court is required to consider the impact on the parties of the granting of, and the refusal to grant, interim reinstatement.

[49] Mr Hussain and Auckland Transport both say the balance of convenience falls in their favour and they would suffer the greater impact by the granting of, or refusal to grant, an interim injunction.

[50] Mr Hussain refers in his evidence to his financial position and the burden on him to pay his outgoings, including his mortgage, after his dismissal without an income. He says that his financial position has deteriorated, and it cannot be adequately compensated for by damages.

[51] The financial hardship to Mr Hussain with the loss of his income after his dismissal is acknowledged. He owns a home and liabilities flow from that and other everyday expenses. The financial difficulties that Mr Hussain is facing mean that the balance of convenience in that respect favours him.

[52] It was submitted on Mr Hussain's behalf that it is difficult to find employment in the current economic environment. The untested affidavit evidence discloses Mr Hussain made about 14 job applications over the period since his dismissal on 22 May 2024. That is quite a low number even considering the job market and the details in a medical certificate annexed to the affidavit evidence. Seeking reinstatement can impact on, and explain, decisions to apply or not for other roles before a substantive hearing is able to take place.

[53] In this matter, there were delays in progressing the application for interim reinstatement set out in the evidence that do not sit particularly comfortably with the financial difficulties Mr Hussain set out in his evidence. Mr Hussain's counsel says that the delays were in the main because of his hearing commitments and that criticism about delays should not be visited on Mr Hussain.

[54] Delay is a relevant factor for consideration. The evidence indicates the application for interim reinstatement was filed on 5 August 2024. Urgency was not sought in respect of the interim reinstatement application in the Authority or in the Court. The Authority suggested an early substantive date for investigation instead of proceeding with the interim reinstatement application. It is recorded in the directions

of the Authority that Mr Hussain's counsel stated his preference was not for an early substantive investigation but to have the interim reinstatement application set down.⁴

[55] A medical certificate dated 30 June 2025 was attached to Mr Hussain's affidavit dated 2 July 2025 filed in the Authority and in the Court to explain the delays. Whilst it could arguably explain the initial delay in filing the application for interim reinstatement, it does not provide a clear basis for subsequent delays. In any event, counsel for Mr Hussain has advised these delays were in the main due to hearing commitments rather than medical issues.

[56] The Court asked Mr Ryan to enquire of the Authority about dates for the substantive hearing. The response forwarded to the Court from the Authority is to the effect that a date has not been able to be provided at this stage. A substantive hearing and a decision will likely be some months away. Mr Hussain's current counsel indicated that he will not be available for a substantive hearing and a new counsel will be instructed.

[57] Mr Hussain has been away from Auckland Transport for a little over one and a half years. By the time there is a substantive hearing and a decision, that period will likely increase to two years. Delay impacts on the ultimate likelihood of successful integration back into the workplace and the strength of the arguable case for permanent reinstatement.⁵ The balance of convenience favours Auckland Transport in that respect.

[58] It is submitted on behalf of Mr Hussain that reinstatement to the payroll in the interim means that there is no downside to Auckland Transport in respect of issues of trust and the statutory warrant of appointment.

[59] The evidence for Auckland Transport discloses a concern that there would be further delays and failure to comply with timetables set for progressing a substantive claim if Mr Hussain is reinstated to the payroll. The evidence is that Auckland

⁴ Notice of direction from the Authority dated 15 November 2024 annexed to the affidavit of Mr Strawbridge sworn on 19 November 2025.

⁵ *Humphrey v Canterbury District Health Board, Te Poari Hauora O Waitaha* [2021] NZEmpC 59, [2021] ERNZ 153 at [5].

Transport's funds largely come from Auckland ratepayers and that payments made are transparent and subject to audit and public scrutiny. There was no confidence expressed in the evidence that if Mr Hussain was not ultimately successful the money would be repaid, although there is an undertaking as to damages.

[60] Reinstatement to the payroll requires Auckland Transport to make payment without the benefit of Mr Hussain's work. Auckland Transport is likely to be paying twice: once for the replacement employee performing the work, and again for Mr Hussain, who is not working. If Mr Hussain is not ultimately successful with his substantive claim, then the focus would fall on his undertaking as to damages, and he may be asked to repay money to Auckland Transport.

[61] The respective strengths and weaknesses of the cases are relevant; however, any view about this can only be assessed on the untested affidavit evidence until it can be fully tested at the substantive hearing. If the cases impress at this stage as strong, then that will have an impact on the assessment of the balance of convenience.

[62] There is an arguable case for unjustified dismissal. The strength of the case must be considered with the lack of explanations about the GPS data in circumstances where Auckland Transport was concerned amongst other matters where Mr Hussain was at certain times and why he was at various locations.

[63] There is an arguable case for permanent reinstatement; however its strength is weakened somewhat by the period already away from the workplace and the potential impact of that on successful reintegration to the workplace. Mr Hussain only seeks reinstatement for the interim period to the payroll. This is not a case where the failure to provide that would clearly further undermine the prospect of permanent reinstatement.

[64] I have balanced the respective hardships that each party will suffer if interim reinstatement is granted or not. Mr Hussain will continue to suffer financial difficulties if he is not reinstated to the payroll until a substantive hearing. Financial hardship to Mr Hussain could, however, be remedied by an award of lost remuneration if he is successful in his claim that he has been unjustifiably dismissed. Auckland

Transport would be able to make payment to him of any awards. There has been delay in progressing Mr Hussain's claim for interim reinstatement. The evidence does not show Auckland Transport has contributed to any delay to conclude that they would not accept a prompt date for a substantive hearing.

[65] Auckland Transport will need to pay Mr Hussain if he is reinstated on an interim basis even though he is not performing work. Given the delays in the progression of the case to date, Auckland Transport is concerned these would continue if there was interim reinstatement to the payroll. There are arguable cases for unjustified dismissal and permanent reinstatement, but they do not impress at this interim stage as strongly arguable cases.

[66] In *DQJ v The Commissioner of Inland Revenue*, the Chief Judge noted that a large public sector organisation can be expected to have the resources to handle complexities surrounding reinstatement.⁶ Reinstatement to the payroll was granted in that case. While the same may be said about Auckland Transport, I find that the case is distinguishable. In that matter, the Court identified a "strongly arguable" case for unjustifiable dismissal, and there was no delay in the application being heard. Furthermore, the dismissal in *DQJ* was in a "no-fault" context, which differs from the allegations here of serious misconduct involving questions of honesty. Notwithstanding the defendant's resources, these factors materially alter the balance of convenience.

[67] Overall, the balance of convenience favours Auckland Transport.

Overall Justice

[68] The assessment of overall justice, as the Court of Appeal stated in *NZ Tax Refunds*, is essentially a check on the position that has been reached following the assessment of the serious questions to be tried and the balance of convenience.⁷

⁶ *DQJ v Commissioner of Inland Revenue* [2025] NZEmpC 10, [2025] ERNZ 39 at [55] and [67].

⁷ *NZ Tax Refunds Ltd*, above n 3, at [47].

[69] There has been an assessment of the serious questions to be tried. The finding with respect to the balance of convenience favours the decline of the application for interim reinstatement of Mr Hussain to the payroll of Auckland Transport or, for completeness, his former role. There has been some delay in progressing the application.

[70] I am satisfied that the overall justice of the case requires that the application for interim reinstatement is declined.

Conclusion

[71] The application by Mr Hussain for interim reinstatement is declined.

[72] The challenge to the Authority determination is unsuccessful.

Costs

[73] Costs are reserved.

[74] Ms MacGibbon has asked that costs be awarded following this judgment rather than being reserved pending the substantive hearing in the Authority.

[75] Counsel should discuss the issue of costs to see if agreement can be reached, failing which memoranda can be filed.

Helen Doyle
Judge

Judgment signed at 11.55 am on 17 December 2025