

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2020] NZERA 356  
**3111692**

BETWEEN                      WAYNE FOOTE  
   Applicant  
  
AND                              DEC PLASTICS LIMITED  
   Respondent

Member of Authority:        Eleanor Robinson  
  
Representatives:              Rose Alchin, counsel for the Applicant  
   Fiona Dalziel, counsel for the Respondent  
  
Investigation Meeting:        On the Papers and by Zoom  
  
Determination:                2 September 2020

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     Before the Authority is an application for interim reinstatement brought by the Applicant, Mr Wayne Foote, under s 127 of the Employment Relations Act 2000 (the Act).

[2]     Mr Foote was dismissed for serious misconduct by the Respondent, DEC Plastics Limited (DEC). Mr Foote claims that he was unjustifiably dismissed from his role as a Die Setter, and is seeking reinstatement on both an interim and a permanent basis.

[3]     DEC claims that Mr Foote's dismissal for serious misconduct was justifiable and followed a fair and reasonable process. DEC resists the claim for interim reinstatement and the substantive claim.

[4]     The application for an interim reinstatement was accompanied by an undertaking as to damages and an affidavit by Mr Foote/affidavits on behalf of Mr Foote. Affidavits were also filed in opposition by DEC.

The parties agreed to the Authority determining this preliminary issue of the interim reinstatement application based on the Statement of Problem and the Statement in Reply,

documents submitted by the parties, on affidavit evidence, and on submissions from the parties which were presented by telephone.

### **Note**

[6] Interim reinstatement applications are determined on the basis of the statement of problem, statement in reply, affidavit evidence from the parties, relevant documentation lodged and submissions from the parties.

[7] 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.

[8] The evidence before the Authority for the purpose of determining this interim reinstatement application has been presented as usual in such applications in affidavit form by witnesses on behalf of both Mr Foote and DEC.

[9] As the affidavit evidence presented must necessarily remain untested until the substantive investigation of the unjustified dismissal personal grievance, any findings of fact by the Authority in this determination are provisional only and may change later once the claims have been fully investigated and all witnesses have been examined on their evidence.

### **Principles**

[10] I granted Mr Foote's application for this matter to be dealt with on an urgent basis because this is the usual procedure for dealing with an application for an interim reinstatement. In determining this matter, I must apply the law relating to interim reinstatement as set out in s 127 (1) and (4) of the Employment Relations Act 2000 (the Act) which include recognising that employment relationships are built on the legislative requirement for good faith behaviour and addressing the inherent inequality of power in employment relationships.<sup>1</sup>

[11] At the Investigation Meeting held by telephone conference on 20 August 2020, I heard submissions from the parties' representatives in relation to the interim reinstatement application and tested these by questioning how the available untested evidence related to the relevant principles for determining an interim reinstatement application.<sup>2</sup> Those principles fall to be addressed by the answers to the following questions:

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<sup>1</sup> Employment Relations Act 2000 s 3

<sup>2</sup> *McInnes v Western Bay of Plenty District Council* [2016] NZEmpC 36 at [8] ERA Auckland 92 in which the Chief Judge referred to the Court of Appeal decision in *NZ Tax Refunds v Brooks Homes Ltd* [2013] NZCA 90.

(a) whether or not Mr Foote has established that there is a serious case to be tried in relation to the claim for unjustifiable dismissal; and if so:

(b) is there a serious case in relation to the claim for permanent reinstatement?

[12] Also noted as needing consideration are the balance of convenience and the impact on the parties, including any third parties, of granting, or not granting an order for interim reinstatement, and the overall justice of the matter.

## **Background**

### **Brief Background Facts**

[13] DEC provides injection moulded components and medical devices through high-specification engineering plastics and silicone rubber for a range of regulated industries, including pharmaceutical, medical device, food, healthcare and specialised agribusiness.

[14] As a result of the nature and requirements of the industries for which DEC provides components and medical devices, its product is subject to strict international manufacturing standards. It has audited management systems in place which require strict adherence to defined production processes, product testing regimes and distribution practices for all products.

[15] Registration to International Standard is vital to DEC's business operations as it is a prerequisite to gaining contract manufacturing work from customers.

[16] Many of the processes used by DEC use state-of-the-art robotic equipment to remove hot plastic mouldings from the moulding tool. DEC is reliant on employees inspecting the mouldings to ensure conformance to specification.

### *Reject Process*

[17] In his untested affidavit Mr Dennis Smith, Technical Manager, stated that the machine manufactures the product and is programmed to recognise and automatically reject any product that has not been produced to specification. Where a product has been identified as out-of-specification, the machine will deposit it into the reject bin. Good product is automatically deposited to the product bin by the machine.

[18] Samples are regularly taken from the product bin and examined against product specifications and measured using a digital callipers as part of the quality control procedures in place performed by Quality Control personnel.

[19] Die Setters' job responsibilities include:

- a) Preparation of the machine, tooling and ancillary equipment.
- b) Cleanliness is a vital part of the changeover.
- c) Tool changes and set up of ancillary equipment.
- d) Start up of machines with the assistance of the Process Technician.
- e) Basic insert changing when required.
- f) Machine operation when required ...

[20] Die Setters are responsible for performing a 'shift clean' for all machines running through their shift. This involves wiping down all machine and ancillary equipment, including the reject bin. The Die Setter accesses the reject bin through the cage, the entrance to which is at the back of the machine. There is a large red button to push which unlocks the door to allow entry to the cage and also automatically stops the machine.

[21] Once inside the cage the Die Setter removes the reject bin containing the rejects and carries it around to the workbench to swap it for the empty reject bin positioned under the workbench. The Die Setter then carries the empty reject bin around the machine and positions it inside the cage. The Die Setter then closes the cage and presses the green button which relocks the cage and restarts the machine.

[22] After replacing the reject bin containing rejects with the empty reject bin, the Die Setter will return to the workbench where the retrieved reject bin is sitting, remove the objects contained in it, count them, record the number of rejects and dispose of them by placing them in the yellow bin.

[23] The reject bin containing rejects is placed directly under the workbench to ensure that there is no rejected product could accidentally fall onto the work bench and subsequently be packed as good product.

[24] Each Machine is assigned an Operator. The Operator's role is predominantly to package the product. The Operator tips the product from the product bin into the sink on the workbench at the end of the machine. When the product is cool to touch, the operator will bag and box the product, label the box and place it on the pallet at the end of the machine to be collected.

[25] Mr Smith stated that the only person who has any interaction with the reject product in the usual course of their duties is the Die Setter. While undertaking the shift clean, the Die Setter accesses the reject bin through the cage which is opened at an entrance behind the machine. Unlocking the door to the cage is done manually by the Die Setter pressing a button.

[26] Unlocking the door to the cage automatically stops the machine which remains stopped until the Die Setter has swapped the reject bin for a replacement bin and placed the emptied rejected product bin into the cage and manually locked the cage.

[27] Mr Foote commenced employment with DEC in 2000 and at the time of the termination of his employment was a Die Setter.

*Preceding events*

*(i) Restructure Proposal*

[28] DEC conducted a review of its structure and developed a plan for its business to operate 24/7 from 6 January 2020 rather than Monday to Friday. DEC informed all employees in a meeting, and wrote to Mr Foote by letter dated 12 December 2019 setting out the proposed variation on or about 12 December 2019.

[29] Mr Foote did not respond until 18 December 2019 stating that he would not be able to consent to the change for reasons including lacking sufficient time to consider his response. Mr Foote was due to have cancer treatment over the Christmas/New Year break, returning to work on light duties in early February 2020. Mr Foote remained on light duties until April 2020.

[30] DEC spoke to Mr Foote on 7 April 2020 regarding the proposed amendments, however the proposed variation was not signed by Mr Foote.

*(ii) Health and Safety Issue*

[31] DEC was granted essential service status which allowed it to operate during the Level 4 lockdown in response to the Covid-19 pandemic. DEC stated that it implemented a number of measures to ensure the health and safety of its employees while at work during the lockdown.

[32] On 2 April 2020 WorkSafe, and the following day, 3 April 2020, the Police, visited DEC. Both visits were in relation to a complaint received regarding social distancing in the workplace.

[33] Mr Foote stated in his untested affidavit evidence that he was concerned due to his compromised immune system, about social distancing practices at DEC not being observed.

[34] On 9 April 2020 Mr Marra and the Production Manager, spoke to Mr Foote about photographs he had been taking in the workplace. Mr Foote had admitted taking photographs and deleted them.

*Incident on 17 April 2020*

[35] On 17 April 2020 the Quality and Assurance and Systems Manager had seen a large amount of reject product mixed in with good product at Machine #3. She had asked the Operator on the machine, Ms Shante Te Hau, what had occurred. Ms Te Hau, said that she had witnessed Mr Foote tipping defective product from the red reject bin onto the work station which contained the good products awaiting packaging.

[36] DEC undertook initial investigations which involved speaking with Ms Te Hau and Mr Foote, and examining the product. DEC said that it was faced with a situation in which contamination had occurred, and Ms Te Hau was saying Mr Foote had done it and Mr Foote said he did not do it.

[37] DEC suspended Mr Foote on full pay on 21 April 2020 pending the outcome of a disciplinary investigation which it considered to be appropriate while there remained a question over how the contamination occurred and whether Mr Foote was responsible.

[38] DEC wrote to Mr Foote on 21 April 2020 inviting him to an investigation meeting to discuss two allegations, the first of which was stated to be in relation to the photographs which Mr Foote had taken and deleted, and the second allegation was stated as:

On Friday 17<sup>th</sup> April 2020 between 6 am and 7 am, you were seen at Machine #3 grabbing the reject bin that was on the caged side of the machine and proceeded to tip all the reject products into the bin where the good product is kept. You then proceeded to tip the good products from the good product bin into the reject bins.

[39] DEC carried out an investigation meeting with Mr Foote and his representative on 27 May 2020.

[40] Mr Foote was invited to attend a disciplinary meeting on 2 June 2020 but he declined to attend and the remainder of the process was carried out in writing with Mr Foote's written response to the allegation being provided on 11 June 2020. Mr Foote's response was that he denied the allegation and believed that Ms Te Hau may have been responsible for the contamination.

[41] By letter dated 12 June 2020 DEC provided its preliminary decision, stating:

We believe your actions have resulted in breach of the following:

- Company Handbook, which states this allegation is considered serious misconduct under clause 6.3 (j) performing acts in the knowledge that they adversely affect product quality or safety, and (n) acts of vandalism. ...

When coming to our preliminary decision, we took the following into account:

- Your performance in the role to date has been of an acceptable standard.
- There has been no previous history of these behaviours.

- On balance we have decided the accounts provided to us by the witness were more believable than the one provided by you. We believe the witness to be upstanding and positive member of the team with no reason to deceive us as an employee.
- We believe the incident was intentional behaviour on your part due to you being witnessed to put the reject (highly contaminated and defective) product into the good product bench bin due to the standardised reject bin position at the bottom of every product packing bench as described in the witness statement and your preconceived ideas about our intentions about other HR processes.

[42] Mr Foote provided feedback on the preliminary decision which was that he had not been responsible for what had occurred and stating that he had been employed longer than Ms Te Hau and his account should therefore be preferred.

[43] On 18 June 2020 DEC confirmed its preliminary decision that the allegations relating to the contamination of product be upheld and constituted serious misconduct and advised in writing of its decision and of the termination of Mr Foote's employment.

**Is there a serious question to be tried in relation to the claim of unjustifiable dismissal?**

[44] As a matter of principle, Mr Foote must establish that there is a serious question to be tried in respect of his claim of unjustifiable dismissal and for permanent reinstatement. A serious question was described in *Brooks Homes Ltd v NZ Tax Refunds Ltd* as an arguable case.<sup>3</sup>

[45] The threshold for a serious question or arguable case as stated in *Brooks Homes* and *Western Bay of Plenty District Council v Jarron McInnes* is that the claim is not frivolous or vexatious. As stated in *Western Bay of Plenty*:

[9] ... However, as *Brooks Homes Ltd* makes clear, an applicant must establish that there is a serious question to be tried, in that the claim is not vexatious or frivolous. The merits of the case (insofar as they can be ascertained at an interim stage) maybe relevant in assessing the balance of convenience and overall interests of justice ...<sup>4</sup>

[46] My findings expressed in this determination are solely for the purposes of resolving Mr Foote's application for interim reinstatement. At the substantive hearing there will be opportunity to fully test the relevant evidence and disputed questions of fact and law.

[47] Mr Foote submits he has an arguable case that he was unjustifiably dismissed and that the untested affidavit evidence surpasses the threshold of a *prima facie* case.

[48] Mr Ryan Marra, Chief Operations Officer, stated in his untested affidavit evidence that Mr Foote was highly trained and in a position of high trust within DEC. As a Die Setter he had extensive access to product and machines and was trusted to act with a high degree of integrity and in the best interests of DEC and its customers at all times.

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<sup>3</sup> *Brooks Homes Ltd v NZ Tax Refunds Ltd* [2013] NZSC 60 at [6]

<sup>4</sup> See n2 and n3 above

[49] DEC regarded Mr Foote's actions during the incident on 17 April 2020 as serious misconduct. Serious misconduct is conduct that: "deeply impairs or is destructive of that basic confidence or trust that is an essential of the employment relationship."<sup>5</sup>

[50] Having found serious misconduct following investigation, a fair and reasonable employer in considering what action to take, may do so in accordance with s 103A of the Act, that is, he or she may take action that is within a range of reasonable responses. This action may include dismissal.

[51] Mr Foote held a position of high trust responsibility as a Die Setter for the Plant and was employed in a safety sensitive area. He had extensive access to the product manufactured by DEC, and the product is subject to strict international manufacturing standards. As a Die Setter Mr Foote also had access to defective product.

[52] Mr Foote, a long serving employee of 20 years' service had an unblemished work record prior to the incident on 17 April 2020.

[53] Mr Foote submits that DEC had no objective grounds to prefer Ms Te Hau's statement over that which he provided. He submits that there was no corroboration from any other employee and no independent witnesses to what occurred. Nor had it been established by DEC that there was reject product mixed with good product: no photographs were taken at the time, nor was Mr Foote invited to inspect the area containing the alleged contaminated product.

[54] Mr Foote submits that the suspension was unjustifiable and had tainted and prejudiced the subsequent disciplinary process. As such it is a compelling reason to grant interim reinstatement.

[55] DEC submits that Mr Foote does not have a strongly arguable case. DEC reached its decision at the conclusion of a full and fair process and having taken all relevant considerations into account. The only way in which reject product could be present with good product on the workstation is either by mistake, or it was put there deliberately.

[56] DEC submits that it was entitled to rely on the eye witness account of Ms Te Hau who gave clear evidence of what she had observed Mr Foote to do. However I note that Ms Te Hau did not provide affidavit evidence.

[57] DEC submits that it carried out a full and fair investigation in which it considered fully all relevant information, including the statements from the various employees, its knowledge

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<sup>5</sup> *Northern Distribution Union v BP Oil NZ Ltd* [1992] 3 ERNZ 483 (CA) at [487]

of the respective roles and functions of both positions and their respective access to reject and good product, and submits it was entitled to and justified in reaching the conclusion it did on all the information available to it.

[58] This is a situation in which one employee attributed what had occurred to an action of another employee, Mr Foote. Mr Foote denied responsibility for what had occurred. DEC suspended Mr Foote on 21 April 2020 on the basis that there were unanswered questions as to how contamination occurred and whether Mr Foote was responsible. Despite this lack of clarity in relation to the incident however Ms Te Hau was not suspended.

[59] The issue of why DEC chose to suspend only Mr Foote and not also Ms Te Hau prior to carrying out its full investigation into what had occurred will be subject to full investigation at the substantive investigation meeting, however it is a factor to be weighed at this stage.

[60] An investigation took place after the suspension had been initiated and it was at the conclusion of that process that it was concluded Mr Foote had committed an act of serious misconduct.

[61] In the circumstances of this case and having considered the submissions of both parties, I find there is a serious issue to be tried in respect to whether or not the decision to dismiss was justifiable.

[62] The threshold in respect of whether there is a serious question is relatively low. I find in the circumstances of this case, Mr Foote has an arguable case for unjustifiable dismissal.

**Is there a serious issue to be tried for permanent reinstatement?**

[63] Mr Foote must not only establish an arguable case for unjustifiable dismissal but must also establish that he would be reinstated if successful in such a claim.

[64] Reinstatement is now the primary remedy and s 125 (2) of the Act states the Authority must provide for reinstatement if it is practicable and reasonable. These include an assessment of whether or not workplace relationships can be restored.

[65] As stated by the Employment Court in *Angus v Ports of Auckland Limited (No 2)*<sup>6</sup>:

In practice this will mean that not only must a grievant claim the remedy of reinstatement but, if this is opposed by the employer, he or she will need to provide the Court with evidence to support that claim or, in the case of the Authority, will need to direct its attention to appropriate areas for its investigation. As now occurs, also, an employer opposing reinstatement will need to substantiate that opposition by evidence although in both cases, evidence considered when determining justification for the dismissal or disadvantage may also be relevant to the question of reinstatement.

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<sup>6</sup> *Angus v Ports of Auckland Limited (No 2)* [2011] NZEmpC 160 at [66]

[66] The onus of proof of practicability rests with the employer.<sup>7</sup> In this case DEC submits that Mr Foote does not have an arguable case for permanent reinstatement on the basis that it genuinely and honestly holds the belief that Mr Foote was responsible for the contamination of product.

[67] In the normal course of production, the contamination of product cannot occur by mistake given the robotic systems and employee training in place. It could only occur through gross negligence or by being a deliberate and wilful act. In light of its view that Mr Foote was responsible for what occurred in the 17 April 2020 incident, DEC claims that it had lost all trust and confidence in Mr Foote such that reinstatement to any degree would be untenable.

[68] It is submitted for Mr Foote that he is a long serving employee who had no formal disciplinary action taken against him during that period, and that DEC had no objective and reasonable grounds to question its trust and confidence in him.

[69] Further that prior to the incident on 17 April 2020, the parties had a positive, functional and effective relationship.

[70] Taking all the submissions into consideration, and on the basis of the untested affidavit evidence as presented to the Authority, whilst I find that Mr Foote has an arguable case that he was unjustifiably dismissed, I find that there are significant trust and confidence concerns based upon serious health and safety considerations.

[71] As a result there is a real risk that even if Mr Foote's claim of unjustifiable dismissal was upheld, he may not be reinstated. As a result, I am unable to conclude that he has a strongly arguable case that he would be reinstated permanently.

[72] Accordingly while I find that Mr Foote has an arguable case for unjustifiable dismissal, I am unable to conclude that he has a strongly arguable case for interim reinstatement.

### **Balance of convenience**

[73] As set out in the Employment Court case *X v Y Limited*<sup>8</sup> this principle requires that the Authority balance the relative inconvenience, in terms of detriment or injury, to DEC who will have to bear the burden of an order reinstating Mr Foote until the substantive case is heard, against the inconvenience to Mr Foote who may have a just case, of having to bear the detriment of unjustifiable action until the case is heard.

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<sup>7</sup> *Lewis v Howick College of Board of Trustees* [2010] NZCA 320

<sup>8</sup>[1992] 1 ERNZ 863, at pg 10

[74] It is submitted on behalf of Mr Foote that the balance of convenience lies with him because:

- a) During his 20 years with DEC he has developed specialised and particular work skills relating to the machines and operations of DEC. These skills and work know how are not readily transferable to other machinery and work sites.
- b) There is only one other similar company in the Waikato where Mr Foote may be able to use some of his specialised skills. He would in all likelihood only be able to obtain unskilled, lower paid position in the wider workforce, and his prospects of alternative employment will be adversely affected as a result of the Covid-19 effects on employment generally.
- c) Mr Foote would be unlikely to obtain the significant entitlements contained in his employment agreement, including redundancy, medical insurance, superannuation (which included a retirement savings plan), death and disablement plan and sickness income plan. At the time of dismissal Mr Foote had an entitlement in the event of redundancy to a payment of 44 weeks. Medical insurance is extremely important to Mr Foote who is receiving cancer treatment.
- d) Mr Foote has been well regarded in DEC and prior to the events on 17 April 2020 and thereafter, the parties had a positive relationship.

[75] It is submitted for DEC:

- a) Trust and confidence are fundamental for maintaining a functional employment relationship. Mr Foote's role requires a high degree of trust given the level of access Mr Foote has to DEC's product, and the importance of maintaining the integrity of that product.
- b) On the basis that DEC has a genuine belief that Mr Foote intentionally sought to compromise its product and has thereby lost all trust and confidence in him, it would be unconscionable for him to be reinstated, and thereby have his access to DEC's product reinstated.
- c) There are no reasonable or cost-effective safeguards that could be implemented to monitor and supervise Mr Foote during a period of reinstatement, and there are no suitable alternative positions available for him to undertake pending the substantive hearing.

- d) Mr Foote has denied the allegation of contaminating product and accepted no responsibility for wrong-doing. A return to the workplace would necessitate his working along with and being supervised by staff who were involved in the disciplinary process and this litigation and who genuinely believe that he engaged in the conduct alleged and who have lost trust and confidence in him as a result.
- e) If Mr Foote were to be reinstated, he would need to be physically shadowed to ensure that he was under continuous supervisions. This would be a significant cost to DEC.

### *Damages*

[76] It is submitted on behalf of Mr Foote that damages would not be an adequate remedy because he intended to remain in the employ of DEC until the end of his working life, and that he would be unlikely to be able to replicate the considerable terms and conditions of employment which he has with DEC in any new employment.

[77] Further, payment of damages only would deprive him of the right to be properly consulted over changes to his shift pattern, which in the absence of agreement he would be entitled to redundancy compensation of 44 weeks.

[78] DEC submits that in the event that Mr Foote is successful in his claim, financial remedies are available. DEC is in a position to meet any financial damages which might be awarded. These might be considerable if the investigation meeting does not take place for some months.

[79] DEC submits that prior to the incident on 17 April 2020 it had been committed to working with Mr Foote in regard to the changes to his shift pattern and therefore the redundancy aspect is not relevant because it was not contemplated.

[80] I accept that the loss of his medical insurance cover would be a concerning factor for Mr Foote, although I also accept DEC's submission that Mr Foote would be able to continue his existing cover, albeit at his own cost.

[81] I have found that Mr Foote has an arguable case for unjustifiable dismissal but not that there is a strongly arguable case that, even were I to find that he had been unjustifiably dismissed, Mr Foote would be reinstated permanently.

[82] There are significant safety considerations in this case which include any risk to third parties, and these are an important factor.

[83] Having considered all the circumstances and the submissions put forward by the parties, balancing the potential prejudice to Mr Foote of not reinstating him, against the potential prejudice to DEC of so doing, I find that the balance of convenience favours not reinstating Mr Foote on an interim basis.

### **Overall Justice**

[84] The Authority must assess the overall justice of the case from a global perspective.

[85] Mr Foote submits that the overall justice favours him because there is no evidence that he was disgruntled with DEC. DEC is a very large and international company. He worked in a large team in which he was constantly surrounded by colleagues and co-workers. It is not accepted that he would need to be individually monitored in order to contain risk.

[86] Mr Foote further submits that the overall circumstances include the increased value of reinstatement given the economic difficulties in the country and the associated difficulty he will face obtaining employment in the current situation.

[87] DEC submits that the overall justice favours it. It submits that it reached a decision to dismiss after completing a fair and proper process in which all relevant circumstances were considered.

[88] It submits that ensuring the integrity of its product is crucial to it. Product safety had been compromised as a result of incident on 17 April 2020 which, given the nature of the product manufactured would have had extremely serious repercussions in health and safety, reputational and financial respects.

[89] DEC further submits that it operates a high trust model with its employees, particularly with Die Setters who have a higher level of access and direct contact with the machines and product than the other positions. It is of the firm belief that product integrity would be at serious risk if Mr Foote were to be reinstated, whether on an interim or permanent basis.

[90] Safety considerations are of paramount importance and I find that the overall justice of the case subsists in declining Mr Foote's application for interim reinstatement.

### **Interim Reinstatement**

[91] It may be some months before the Authority will be able to offer a date for the substantive investigation. The possibility of being able to offer an early substantive investigation meeting can be a factor weighing against interim reinstatement, however that is not a factor I can consider in this case.

[92] I appreciate the impact of not being reinstated will have on Mr Foote, especially when there is the possibility of a delay in the Authority being able to offer a date for the substantive hearing, however having taken into consideration all the circumstances, particularly the health and safety implications, I find that the overall justice of the case subsists in declining the application for interim reinstatement.

### **Next Steps**

[93] The Authority will convene a case management conference to set timetable directions in preparation for the investigation of Mr Foote's substantive claims.

### **Costs**

[94] Costs are reserved for determination following the substantive investigation meeting and its outcome or until this matter otherwise ceases to be before the Authority.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**