

**NOTE: This determination contains an order prohibiting publication of certain information at [25].**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2025] NZERA 856  
3435185

BETWEEN	VPS LIMITED Applicant
AND	SIU Respondent

Member of Authority:	Sarah Kennedy-Martin
Representatives:	Alistair Hall, counsel for the Applicant (Ex Parte)
Investigation Meeting:	24 December 2025
Determination:	24 December 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] VPS has applied to the Authority *ex parte* on 24 December 2025 for an interim injunction and seeks orders restraining SIU from accessing or compromising VPS electronic systems, requiring SIU to provide a Source Code and to comply with the obligations set out in his individual employment agreement.

[2] The application for an interim injunction was made on an urgent without notice basis. This means that the requirement that SIU be advised of the application and given an opportunity to be heard will not be available if such an application is granted. Efforts were made to contact a representative for SIU but given the holiday season they were

unavailable. I consider this to be one of the very unusual cases where I have been persuaded by the affidavit of an officer of VPS that intervention is urgently required and necessary. If SIU is given notice of the application it would have a consequence of delay which has to be weighed against prejudice to VPS caused by delaying repair work to fix its electronic operating systems. Without the repair work VPS online retail business will continue to be significantly impacted.

[3] SIU has failed to provide the Source Code after three direct requests and at a time when the significant impairment to the operating systems could be fixed relatively quickly if the Source Code is available. This is affecting its retail operations at the busiest time of the year. The Source Code will resolve the most serious problems with VPS' online retail operating systems almost instantly.

[4] I am satisfied this application can be properly dealt with on an ex parte basis because requiring VPS to proceed on notice, in light of SIU's refusal to provide the code but at the same time SIU remotely accessing the electronic system, would cause undue delay and prejudice to VPS. This is particularly so given the time of the year, including the Christmas close down period and the ongoing impact the systems problems are having on VPS' sales and reputation. In these circumstances it is appropriate to determine the matter without serving notice of the application.

[5] SIU is employed by VPS. VPS operates a chain of retail stores throughout the country and also operates an e commerce platform through its website. SIU is employed as the Head of IT, Systems and Data and he reports directly to the Chief Executive Officer (CEO). That role is crucial to the operation of the business, and is integral to operation of the electronic systems and the ability to function and trade electronically. SIU is currently on leave but has corresponded with the CEO by email.

[6] VPS is currently receiving hundreds of online orders daily and December and January are two of its busiest months. The current systems failure is significantly impacting online sales.

[7] An external IT provider has been engaged to provide assistance in resolving the systems failures. A temporary fix has been identified which involves resetting the system several times each day and it needs to be undertaken by the external IT provider but this is not sustainable and customers are still affected.

[8] The software application that requires fixing has been actively worked on by SIU as recently as November 2025. The CEO deposed he was advised the Source Code cannot be located by the external IT provider and that with the Source Code the issues can be resolved almost instantly.

[9] On 12 December 2025 the CFO sent SIU a text message asking for assistance during this time. SIU responded saying he would speak to his lawyer first and then said “I suppose since you asked so nicely I can have a look” but then did not respond further.

[10] On 18 December 2025, as a result of further concerns about its IT systems VPS asked SIU to return his work laptop while on leave and until other matters could be resolved. VPS did not return the laptop but several hours later he logged into VPS system remotely. VPS say SIU was not required by VPS to do that and nor had he advised VPS he would be logging on.

[11] Later that night SIU and the CEO exchanged emails. It became clear SIU was not using a work laptop and instead was using a personal laptop to access the system. SIU says he was never given a work laptop but the CEO was unaware of that. SIU’s response recorded:

I have passed your request to my lawyer [name of lawyer] for urgent review and will respond as soon as possible. In the meantime, please do not make any account changes.

[12] Later that night SIU logged into another of VPS’ systems and made some changes which VPS say prevented its stores from completing their “End of Day” process through their POS systems (store tills).

[13] On 19 December 2025, access to Power BI reporting which VPS relies on for sales analysis nationally was not able to be accessed. Power BI took five days to reconfigure and work was required to fix the End of Day processing. VPS understands from the application service provider that the internal issue arose at the same time SIU was accessing VPS systems on 18 December 2025.

[14] On 19 December 2025 the CEO says due to concerns SIU was using a personal laptop and that VPS’ systems had malfunctioned after SIU remotely accessed VPS

systems, he emailed SIU and directed that he not access any systems and confirmed that changes to SIU access to the systems had been made.

[15] Shortly after SIU emailed saying he was sorry if there was fall out from his locking himself out of systems but he made the changes to make sure “no blame could be apportioned to him should things go wrong.” He also listed some further changes he wanted the CEO to make.

[16] On 20 December the CEO emailed SIU asking for the Source Code. It was required to fix the ongoing IT issues that were interfering with the online business and customer orders. He sent another email on 21 December asking for an urgent response to the email seeking the Source Code. SIU emailed back about a different matter and did not respond about the Source Code.

[17] On 22 December the CEO directed SIU to provide the Source Code by 3.00pm that day and give an undertaking that SIU would comply with his contractual and legal obligations as an employee of VPS including not doing anything which might damage VPS’ interests or compromise its systems.

[18] The CEO is concerned SIU is refusing to provide the Source Code at a time when he accepts he accessed VPS’ systems remotely and the Source Code is urgently required to fix significant IT issues that VPS is experiencing.

[19] The Authority is required to consider the usual tests for an interim injunction.

### **Arguable case**

[20] I note SIU is currently on leave from work but that he has been responding at times to the CEO’s emails but not about the Source Code. He also accessed VPS’ systems after he was instructed by email not to do that. In these circumstances and because of his role in the company as head of IT, the requests and communications while on leave are not likely to be unreasonable.

[21] I am satisfied from the affidavit evidence that there is an arguable case that SIU has breached his contractual obligation to comply with reasonable instructions and act in the best interest of VPS and in good faith by not responding to the request for the Source Code and accessing VPS systems despite being instructed not to do so.

## **Balance of convenience**

[22] I find that the balance of convenience strongly weighs in favour of granting the interim orders sought. There will be significant financial and reputational impact to VPS during a period where traditionally there are high sales, if the systems failures are not able to be fixed. The Source Code will allow the current issues to be fixed almost instantly. There is significant risk to VPS business if the Source Code is not provided by SIU.

[23] There is also risk to VPS should SIU continue to access its systems remotely in the interim until the matter can be investigated which necessarily includes meeting with and consultation with SIU.

## **Overall justice**

[24] I am satisfied, standing back, that overall justice does support the making of orders for a reasonably limited period until the Authority can hear from both parties. An investigation meeting is to be held on 8 January 2025 at which time the Authority can hear from SIU on a limited basis.

## **Orders**

[25] I make the following orders taking into account the undertaking as to damages:

- (a) I order that the names of the parties not be published on an interim basis.
- (b) An interim injunction is issued until further order of the Authority requiring SIU to:
  - (i) Provide the Source Code for the Integration application or the location of the Source Code to the CEO of VPS by email or by delivering that information on a memory stick to the CEO;

- (ii) Refrain from accessing VPS electronic systems or from performing any set of operations on any part of VPS systems or on any related third-party system, for any purpose, including using accessing, searching, reviewing, copying, sharing, publishing or amending any part of those systems;
- (iii) Refrain from taking any steps which might compromise the effective operation of VPS electronic systems;
- (iv) Comply with the obligations set out in the individual employment agreement between the parties, including in relation to express employee obligations, confidential information and intellectual property.

[26] The orders that the Authority has made are to take effect immediately and will remain in force until further order and until an investigation meeting which is to be held in Wellington at 9.30am on Thursday 8 January 2026, either in-person or by AVL. A notice of investigation meeting is attached.

[27] SIU is to attend that meeting and may be represented at that time. The Authority will hear any further evidence at that time and will review these orders and whether they should be discharged or continue for a longer period. Discussions will also take place about whether mediation would be constructive.

[28] The Authority directs that VPS is to serve SIU personally and by email with this Determination, a copy of the application and all other documents including the affidavit lodged in the Authority on 23 December 2025.

### **Costs**

[29] Costs are reserved.

Member of the Employment Relations Authority