

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 616
3240599

BETWEEN SUZANNE MARY BUXTON
Applicant

AND TE WHATU ORA (LAKES)
Respondent

Member of Authority: Rowan Anderson

Representatives: Myriam Mitchell, counsel for the Applicant
Mark Beech, counsel for the Respondent

Investigation Meeting: 15 September 2023 by AVL

Submissions and further information received: At the investigation meeting and up to and including 5
October 2023

Determination: 20 October 2023

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Suzanne Buxton was employed as a Midwife by Te Whatu Ora (Lakes) (Te Whatu Ora) with her employment agreement reflecting her role as being 0.2 FTE. Ms Buxton was dismissed from her employment on 22 June 2023.

[2] The dismissal followed an investigation by Te Whatu Ora into Ms Buxton's conduct and a finding that Ms Buxton deliberately misled Te Whatu Ora on 13 September 2022 in a conversation with Gail Corfe, Clinical Midwifery Manager at the Taupo Maternity Unit. It is alleged that Ms Buxton deliberately gave a false account of an interaction with Midwife A to undermine her reputation with Te Whatu Ora.

[3] Ms Buxton has lodged a statement of problem seeking, amongst other things, remedies for unjustified disadvantage and unjustified dismissal, including permanent reinstatement to her role as midwife. Ms Buxton seeks an order, on an interim basis, that she be reinstated to her employment.

[4] Te Whatu Ora denies that Ms Buxton was unjustifiably dismissed or disadvantaged in her employment. It says that it conducted a fair and robust investigation and that it was justified in terminating Ms Buxton's employment on trust and confidence grounds. It opposes Ms Buxton's claim for interim reinstatement.

[5] Mr Buxton's substantive claims are to be investigated at a future date and this determination deals only with her application for interim relief until such time as the substantive matter has been determined. Ms Buxton has provided an undertaking that she will abide by any order that the Authority may make in respect of damages.¹

The Authority's investigation

[6] Affidavits were lodged from Ms Buxton, five of her former midwife colleagues, and Caroline Conroy, Co-leader of the Midwifery Employee Representation and Advisory Service (MERAS), in support of her application for interim reinstatement.

[7] For Te Whatu Ora, affidavits were received from Jennifer Martelli, Service Manager for the Woman, Child and Family Services, and Cornelia Roodt, Clinical Midwife Director, and Midwife Manager. Abigail Corfe, Clinical Midwifery Manager, also provided an affidavit in lieu of attendance under summons.

[8] An investigation meeting took place on 15 September 2023 for the purpose of hearing oral submissions from the parties. On 25 September 2023 the Authority received further information from the parties, including a letter in response to the report produced by Te Whatu Ora, and submissions regarding that letter. I issued further directions providing Te Whatu Ora an opportunity to lodge any submissions as to that letter. Additional information was later provided by counsel for Ms Buxton as to a recruitment process being undertaken by Te Whatu Ora. Te Whatu Ora were provided an opportunity to make submissions as to that additional information.

¹ Employment Relations Act 2000, s 127(2) and (3); Suzanne May Buxton - undertaking in relation to application for interim reinstatement dated 15 September 2023, at [3].

[9] The evidence given has not been tested. The findings in this determination are provisional in nature and all relevant evidence will be subject to further investigation at the substantive hearing scheduled to commence on 19 December 2023.

The approach to interim reinstatement

[10] The Authority may order interim reinstatement pending the hearing of a personal grievance.² In determining whether to make an order for interim reinstatement, the Authority must apply the law relating to interim injunctions having regard to the objects of the Act.³

[11] To determine this matter, I must consider whether there is a serious question to be tried⁴. That requires consideration as to whether Ms Buxton has an arguable case, firstly, as to the substantive application for unjustified dismissal, and if so, secondly, as to her application for permanent reinstatement.⁵ If Ms Buxton has a serious case to be tried, I must then exercise my discretion by considering where the balance of convenience lies and, standing back from the case, consider what the overall justice of the case requires I do.⁶

Background

[12] Ms Buxton has been employed, on various arrangements, by Te Whatu Ora having first commenced employment in 1993. Most recently, Ms Buxton commenced employment on a 0.2 FTE basis in April 2019. Ms Buxton is also contracted to Te Whatu Ora separately as a Lead Maternity Carer (LMC). That engagement is currently suspended, Ms Buxton claiming unlawfully so.

[13] Ms Buxton had an exchange with Midwife A in August 2022, following which, on 28 November 2022, Te Whatu Ora commenced a disciplinary process. On 28 November 2022, Te Whatu Ora wrote to Ms Buxton outlining a number of allegations, including:

² Employment Relations Act 2000, s 127(1).

³ Employment Relations Act 2000, s 127(4).

⁴ *NZ Tax Refunds v Brooks Homes Limited* [2013] NZCA 90, at [12] and [13].

⁵ *Western Bay of Plenty District Council v McInnes* [2016] NZEmpC 36, at [8].

⁶ *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd* [1985] 2 NZLR 129 (CA); *X v Y Ltd and the New Zealand Stock Exchange* [1992] 1 ERNZ 862 (EmpC), at 872.

- (a) That Ms Buxton, in an interaction with Midwife A in August 2022, declined to book an ambulance and get an incubator ready and failed to complete an ‘on -call’ form for the transfer of a patient.
- (b) That Ms Buxton on arrival at a meeting to discuss the above incident with Ms Corfe on 13 September 2023 “...indicated that [Midwife A] was hostile and demanded [Ms Buxton] arrange the incubator and the ambulance in an authoritarian and demanding manner...”

[14] Earlier, on 25 August 2022, Ms Martelli had emailed Ms Corfe outlining that she was aware of an issue occurring where Ms Buxton had responded to Midwife A’s requests that she book an ambulance and to get an incubator ready by saying “No, that’s your job”. The email from Ms Corfe requested, apparently informally, that Ms Corfe ask Ms Buxton about that “particular transfer”.

[15] Ms Martelli’s email of 25 August 2022 indicates a complaint had been made in one form or another by Midwife A. Ms Martelli followed up Ms Corfe on 6 September 2022 as to whether she had had the chance to speak to Ms Buxton, she advised the following day that she had not, but that she would try and meet with Ms Buxton as soon as possible.

[16] An email sent by Ms Corfe to Ms Martelli on 13 September 2022 recorded that Ms Corfe had met with Ms Buxton to discuss the relevant incident. Ms Corfe’s email included the following statement as to her meeting with Ms Buxton:

On arrival Suzanne says [Midwife A] was hostile and demanded she arrange the incubator and arrange ambulance in an authoritarian & demanding manner. She did not feel safe around [Midwife A]. She believes that when she said the [Midwife A] it was her job to arrange she meant that as everything else was done and she was busy that [Midwife A], who was effectively acting as a DHB midwife, could take over the care & arrange or ask [another specific person] to arrange...

[17] The letter in which the allegations were initially raised disclosed that an audio recording of the conversation between Ms Buxton and Midwife A had been made by Midwife A. Te Whatu Ora alleged that the recording indicated that Ms Buxton’s statements to Ms Corfe about Midwife A and her behaviour and manner were “...not correct”.

[18] On 16 December 2022, Ms Buxton responded to the allegations, including by denying that she had said that Midwife A was hostile on the relevant date, and instead that she had said that Midwife A had been hostile on other occasions. There was then, at least on one view, a delay in progressing the investigation and disciplinary process.

[19] Te Whatu Ora wrote to Ms Buxton again on 17 April 2023 setting out two allegations. The first simply repeated the allegation that Ms Buxton had misled Te Whatu Ora during her conversation with Ms Corfe on 13 September 2023.

[20] Ms Martelli asked Ms Corfe to confirm that the statements made in her email were true and correct on 1 May 2023. Ms Corfe responded on 3 May 2023 stating “[i]n response to your email 01/05/2023 I can confirm my statements were true and correct as at the time they were written”.

[21] On 17 May 2023 Ms Martelli wrote to Ms Buxton confirming that she believed Ms Buxton had been deliberately misleading and advising of her preliminary decision to dismiss. The letter noted that Ms Martelli had discussed Ms Buxton’s denial of the comments with Ms Corfe and that she did not accept that she had misheard Ms Buxton. Ms Martelli then referred to other statements made by Ms Buxton in a statement dated 10 February 2023 and confirmed her view that, based on a recording of the relevant exchange, that Ms Buxton’s statements about Midwife A’s behaviour and manner were not correct.

[22] Ms Buxton provided a written response to the preliminary decision to dismiss. In that response, which dealt with several other issues, Ms Buxton denied any intention to mislead Ms Corfe, asserted that the conversation was casual in nature, said that she was unaware at the time that Midwife A had made any complaint or that the conversation with Ms Corfe was being taken as a response to the same, and that she herself had not been making a complaint about Midwife A.

[23] Ms Buxton was dismissed from her employment on 22 June 2023. The dismissal letter recorded Ms Martelli’s findings and decision:

...

I believe that you deliberately misled Te Whatu Ora in your conversation with Gail Corfe on 13 September 2022 as to the nature of your interaction with [Midwife A], which has undermined your employers trust and confidence in you as an employee.

Despite your denial, I believe that you made those comments to deliberately undermine [Midwife A’s] reputation with Te Whatu Ora. It is a matter of record that you have had

adverse relationship issues with [Midwife A] since 2021, and despite that you have stated that you “appreciate that it is important that I (you) have a good working relationship with [Midwife A]..... and I (you) have made it clear that I (you) commit to this”, I note that at a recent team meeting on 11 May 2023, you stated that you had reluctance to work with [Employee A] as you felt intimidated. This is a constant theme in how you describe your relationship with [Midwife A], and I do not accept that your commitment to maintain a good working relationship with [Midwife A] is genuine. There is a lack of insight by you as to how your behaviour impacts upon the service.

You have also placed great emphasis that you made no allegation against [Midwife A], however, given the language used to describe the interaction, the employer could not ignore what you said to Gail Corfe, and hence the reason to investigate your comments.

I therefore confirm your employment will be terminated on trust and confidence grounds. Your last day of work will be Friday 23 June 2023. The employer will pay you out in lieu of notice, together with any contractual entitlements.

[24] I now turn to the tests relevant to the issue of interim reinstatement.

Step 1 - Is there a serious case to be tried?

Does Ms Buxton have an arguable case as to her substantive claims?

[25] Ms Buxton submits that she has an arguable case in relation to both the procedural and substantive elements of the dismissal.

[26] Counsel for Ms Buxton referred to meeting notes from 20 December 2022 where issues were raised as to the timing of the allegations, and an assertion made that the allegations were deliberately held over pending the resolution process relating to other issues in the workplace. The exchange with Midwife A occurred in August 2022 and Ms Buxton’s discussion with Ms Corfe on 13 September 2022. Despite that, the allegations were not put to Ms Buxton until 28 November 2022.

[27] Ms Buxton submits that Te Whatu Ora should not have relied upon the audio recording that was made by Midwife A without Ms Buxton’s consent, which allegedly also recorded the relevant patients and/or visitors. Ms Buxton also points to the absence of any written complaint relating to the allegations. Further, she says that there was significant unfairness in the way the allegations were made, including that they morphed over time with the initial substantive allegations relating to the handover, the incubator, and the ambulance arrangements ultimately being dropped.

[28] Ms Buxton claims that Te Whatu Ora’s investigation was insufficient in that it failed to adequately consider an account provided by Yasmina Thebus, Administration Support, as to her observations of Midwife A on the day in question. She also says Te

Whatu Ora failed to put her responses to Ms Corfe. In effect, it is alleged that there was no testing of the relevant evidence as to the statements made by Ms Buxton to Ms Corfe on 13 September 2022.

[29] Ms Buxton also submits that Te Whatu Ora concluded that she had misled it without any evidence to support such a finding. Such as Ms Buxton says she made comments about hostility, she maintains such a perception is informed by more than the words spoken by Midwife A.

[30] The dismissal letter of 22 June 2023 records, as an apparently relevant factor in Ms Martelli's decision making, that Ms Buxton had said at a meeting on 11 May 2023 that she was reluctant to work with Midwife A as she felt intimidated. Ms Buxton says that that allegation was not put to her prior to the termination of her employment. Ms Buxton, having reviewed minutes of the relevant meeting after her dismissal, denies the allegation and says that her comments were taken out of context.

[31] Ms Buxton, as to Te Whatu Ora's claimed loss of trust and confidence, submits that there was no underlying misconduct, that any relevant conduct could not be said to be serious misconduct even if established, and that the asserted loss of trust and confidence is inconsistent with Ms Buxton continuing to work, including increased hours, for a significant period after the allegations were raised.

[32] Te Whatu Ora submits that the comments made to Ms Corfe by Ms Buxton could not be ignored. In submissions, Te Whatu Ora referred to the various responses provided in the course of its investigation and alleged inconsistencies on the part of Ms Buxton as to the statements she made. It says that the allegations were serious, that its trust and confidence was impacted, and that if that is accepted then Ms Buxton has no arguable case.

[33] It is arguable that there was no substantive justification for the dismissal. The basis given for the dismissal was an alleged lack of trust confidence in Ms Buxton on the basis that she deliberately misled it in relation to her interaction with Midwife A.

[34] Based on the material currently before the Authority, Ms Corfe's email of 13 September 2022, even taking into account her email of 3 May 2023, does not appear to be a verbatim account of what Ms Buxton said to her. Ms Corfe's email of 3 May 2023

confirms that her statements were correct, not necessarily that her email reflected a verbatim record of the words used by Ms Buxton.

[35] It is arguable that Te Whatu Ora misconstrued what were said to be Ms Buxton's statements by failing to have adequate regard to Ms Buxton's alleged statements in the context of the wider history of the various relationships. Additionally, it is arguable by concluding that Ms Buxton was seeking to deliberately misled, which would require intention, and despite Ms Buxton's denial of the same, such a conclusion was not open to it. This is particularly so given that Ms Buxton went to some lengths to explain her feelings and perceptions relating to Midwife A.

[36] A letter dated 22 May 2023 from Ms Thebus records that she was working on 22 August 2022 and that Midwife A's demeanour towards her "came across as cold and harsh towards [Ms Buxton]...". The dismissal letter of 22 June 2023 notes that Ms Thebus had been spoken to on the phone and had confirmed her statement. The letter does not otherwise address the statement.

[37] It is arguable that Te Whatu Ora's stated conclusion that it had lost trust and confidence in Ms Buxton was a finding that was not open to it having regard to the nature of the exchange between Ms Buxton and Ms Corfe and the allegations and findings having been based on, in effect, a single conversation. Te Whatu Ora dismissed Ms Buxton on "trust and confidence" grounds. It is arguable that Ms Buxton's actions simply were not of a character or nature such as any reasonable employer could reach such a conclusion.

[38] In addition to the grounds noted above, Ms Buxton has an arguable case on the basis of the procedural issues identified above as contended by Ms Buxton, including on the basis that the investigation conducted was inadequate.

[39] I consider there Mr Buxton has an arguable case that she was unjustifiably dismissed both in relation to the substantive reasons for the dismissal and procedure followed. I find that Ms Buxton has an arguable case that she was unjustifiably dismissed having regard to the test of justification at s 103A of the Act. I conclude that Ms Buxton has a moderately to strongly arguable case.

[40] Whilst I consider Ms Buxton's case to be arguable, there matters that require the testing of evidence in the substantive proceedings that may heavily influence the determination of this matter.

Does Ms Buxton have an arguable case for permanent reinstatement?

[41] Section 125 of the Act requires the Authority to provide for reinstatement wherever practicable and reasonable.⁷ Reinstatement is the primary remedy.

[42] Ms Buxton submits that reinstatement is practicable and reasonable. She points to her experience, supporting statements from other midwives and co-workers, in support of that submission. She also points to her length of service with Te Whatu Ora, albeit that her employment has not been continuous, and to her having continued working, in her view without issue, for a significant period after the allegations of misconduct were first raised. Further, Ms Buxton submits that over that period, notwithstanding the allegations raised, that her hours of employment with Te Whatu Ora were extended from 0.2 FTE to essentially full-time hours.

[43] Te Whatu Ora do not challenge Ms Buxton's clinical skills as such but does submit that there may be a resulting risk to patients and staff should Ms Buxton be reinstated.

[44] Te Whatu Ora dispute the proposition that Ms Buxton, due to an increase in her hours of work, was effectively a full-time employee or that she should be reinstated on that basis. It submits that changes have occurred in the workplace meaning that such additional hours would not be available in any event.

[45] Ms Buxton, after the hearing of submissions, lodged information confirming that Te Whatu Ora had initiated a recruitment process for the FTE 1.2 roles. Te Whatu Ora were provided an opportunity to respond to that new information confirming the same. That process of course may result in other persons being engaged. However, that is not certain on the evidence currently before me and ultimately Te Whatu Ora are on notice that Ms Buxton claims reinstatement and therefore assume the risk in relation to any appointment they may make in the interim and expenditure on the recruitment process.

⁷ Employment Relations Act 2000, s 125.

[46] I am not persuaded at this stage that Te Whatu Ora's recruitment process or any subsequent engagement of another employee present a substantial obstacle to reinstatement if Ms Buxton is successful with her substantive claims. Whilst another midwife may ultimately be engaged, I do not consider that will necessarily be an impediment to Ms Buxton's reinstatement. Although I do not give it any significant weight, it is reasonably clear that Te Whatu Ora in recent times has had some difficulty in the recruitment of suitably qualified and skilled workers in this area.

[47] Ms Martelli's affidavit referred to incidents involving Ms Buxton as far back as March 2008 and alleged negligence resulting in leaving the unit short staffed. Other events referred to include an investigation into alleged serious misconduct relating to a complaint from Midwife A in March 2021 which she says resulting in an agreed outcome between the two. Ms Martelli says she has concerns about Ms Buxton's ability to maintain a professional relationship with Midwife A, and that Midwife A has expressed similar concerns.

[48] A report relating to four allegations of misconduct relating to Ms Buxton's separate LMC role was submitted by Te Whatu Ora. The report was only recently completed, albeit that the relevant incidents subject to the report are said to have taken place in late 2022. Whilst there are numerous issues dealt with in the report, I summarise them as concluding that Ms Buxton's actions and behaviours relating to a number of incidents as to communication and relationship issues were established, but that suggestions of inadequate clinical competence on the part of Ms Buxton were not. The themes or concerns summarised in the report suggest there are culture issues in the workplace that are not limited to Ms Buxton's behaviours.

[49] Te Whatu Ora referred to evidence from Ms Corfe's expressing concern, as Clinical Midwifery Manager, that Ms Buxton continues to have an underlying hostility towards Midwife A and that she believes there is a real risk of disruption if Ms Buxton is reinstated. Ms Corfe's evidence at this stage goes no further than raising a likelihood, in her view, of 'further disruption'. Ms Corfe's affirmation provides some context to that in noting distress relating to the disciplinary process and an unhealthy relationship between Ms Buxton and Midwife A.

[50] Ms Roodt, Clinical Midwife Director, and Midwife Manager, referred to several dealings with Ms Buxton she says were challenging. The examples provided include

alleged roster manipulation and issues associated with Ms Buxton's private patients, and a complaint relating to a student midwife as to an alleged negative atmosphere when Ms Buxton was present. Ms Roodt claims that the examples evidence a "concerning professional picture" and the potential for destabilisation.

[51] Ms Martelli says she is confident that community needs are being met despite Ms Buxton's absence, and that Ms Buxton has overstated the staffing issues. Ms Martelli says that Ms Buxton also worked as a private LMC and had an LMC access agreement that was suspended on 19 December 2022. She referred to an investigation into alleged serious misconduct. The relevant report into those issues has now been completed and a copy was provided to the Authority.

[52] Ms Buxton has an arguable case as to both the substantive and procedural justification for the dismissal. Whilst Te Whatu Ora has raised a number of other concerns, at least in large part, they are not matters that raised in the context of Ms Buxton's dismissal. They do not appear, at least at this stage, to have been matters of such significance that any employment process was initiated or progressed in recent times. At this point the affidavit evidence is untested, and I conclude that there is a serious issue to be tried as to permanent reinstatement.

[53] I consider Ms Buxton's case for permanent reinstatement, should she be successful in her unjustified dismissal claim, to be arguable.

Step 2 - Who does the balance of convenience favour?

[54] Ms Buxton submits that the longer she is excluded from the workplace, the more difficult reintegration will become. She submits that interim reinstatement would cause minimal, if any, inconvenience to Te Whatu Ora, and that it would in fact benefit from her return. It is submitted that reinstatement is the primary remedy and that the focus should be on putting the employment relationship back together rather than on compensation.

[55] Ms Buxton submits that there is no evidence that her presence in the workplace would be disruptive and that she has the overwhelming support of her team. It is submitted that the concerns raised by Te Whatu Ora are conflated and that several issues identified by Ms Martelli have been resolved, are not supported, or otherwise amount to bare assumptions.

[56] In terms of the asserted loss of trust and confidence, Ms Buxton submits that it is yet to be tested and that that should not prevent reinstatement in the interim. She also submits that given the location and nature of her work, there are no alternative employers that she can work for in the Lakes region, that there are no alternative hospitals she can work in, and that practicing as a Midwife in the Lakes region would be unsustainable. Ms Buxton's evidence is that she has lived in the region for 31 years with her husband. She says that the Taupo Maternity Ward is short staffed and that her absence, as opposed to her presence, creates a clinical risk.

[57] Ms Buxton says she has no issues working with other staff and that she continued to do so for a significant period of time after the allegations were initially raised. Ms Buxton says that she willing to engage in measures to ensure there is a good relationship with Midwife A and that she has previously made that commitment.

[58] Should Ms Buxton not be reinstated on an interim basis she will be deprived of the regular income that she had been receiving from her employment with Te Whatu Ora. However, the extent of any consequences flowing from that are not clear to me given her limited evidence on that point.

[59] Te Whatu Ora submits that Ms Buxton was engaged on a 0.2 FTE basis and that the majority of the work she actually performed is no longer available having regard to changes resulting from a national initiative. It says that since her dismissal, the workplace has stabilised. It also refers to concerns raised by relevant management staff as supporting the position that reinstatement is not reasonable or practicable.

[60] Ms Roodt says that the maternity unit has settled down since Ms Buxton left. She says that Ms Buxton's return will put women and staff at risk. The examples provided by Ms Roodt, which are noted above in the context of whether there is a serious question to be tried as to permanent reinstatement, are alleged to have occurred in 2023, and therefore since the allegations that led to her dismissal were first raised.

[61] An investigation meeting as to Ms Buxton's substantive claims has been scheduled to commence on 19 December 2023. The consideration of Ms Buxton's substantive claims is not to be impacted, at least foreseeably, by significant delay. That is not necessarily a significant period of time in terms of what might be expected for

the resolution of such proceedings, but I acknowledge it is a long period for Mr Buxton to be absent from the workplace.

[62] I accept that there are significant factors such as the unavailability of alternative work in the local area that favour Ms Buxton. I also consider Ms Buxton's ongoing performance of work for a period of approximately nine months after the allegations were initially raised. More significant in my view is that Ms Buxton continued to be offered work well in excess of the 0.2 FTE that she was initially employed for. I do not consider that irrelevant, and it potentially casts significant doubt as to the purported concerns raised by Te Whatu Ora as to her return to the workplace.

[63] Ms Buxton will have the opportunity, in the relatively near future, to test those concerns and have the Authority determine any relevant matters Te Whatu Ora relies upon in relation to the question of permanent reinstatement. Further, I am not persuaded, based on the evidence currently before me, that Ms Buxton has serious concerns regarding her financial situation in the interim.

[64] I consider that the balance of convenience favours Te Whatu Ora, including for the reasons put forward as to potential disruption to the workplace, the concerns that Ms Buxton has unresolved issues with Midwife A, and having regard to the limited time before the scheduled investigation meeting. However, I note that Te Whatu Ora's concerns may ultimately be found not to be an impediment to Ms Buxton's permanent reinstatement.

[65] Considering and balancing all the relevant submissions and evidence, I find the balance of convenience favours Te Whatu Ora.

Step 3 - Where does the overall justice lie?

[66] I have concluded that Ms Buxton has an arguable case in relation to both her claim of unjustified dismissal and in relation to permanent reinstatement. However, I have also concluded that the balance of convenience in this case favours Te Whatu Ora. I must now, standing back from the case, consider what the overall justice of the case requires I do.⁸

⁸ *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd* [1985] 2 NZLR 129 (CA); *X v Y Ltd and the New Zealand Stock Exchange* [1992] 1 ERNZ 862 (EmpC), at 872.

[67] Having regard to the overall justice of the matter, I consider declining interim reinstatement to be appropriate.

Conclusion

[68] Ms Buxton's application for interim reinstatement is unsuccessful.

Next steps

[69] Directions have already been made as to the procedural arrangements for the hearing of the substantive claims. A further case management conference will be scheduled should either party request any variation to those directions.

Costs

[70] Costs are reserved pending consideration of Ms Buxton's claims.

Rowan Anderson
Member of the Employment Relations Authority