

NOTE: This determination contains an order prohibiting publication of certain information

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2024] NZERA 424
3301100

BETWEEN DEI
 Applicant

AND ZOM
 Respondent

Member of Authority: Helen Doyle

Representatives: Ashleigh Fechney, advocate for the Applicant
 Julia Hurren, counsel for the Respondent

Investigation Meeting: 8 July 2024 in Christchurch

Submissions Received: On the day

Determination: 12 July 2024

PRELIMINARY DETERMINATION OF THE AUTHORITY

Application for non-publication

[1] The applicant seeks an interim order for non-publication of her name, identifying details and medical information. The grounds are that if the applicant's name was published it would negatively impact her mental health and cause her to worry about media exposure and small-town gossip. This would make it difficult for her to focus on reinstatement and reintegration into the workplace. It is also submitted that the grounds for non-publication at this point only need to meet the lower threshold required for an interim order.

[2] The respondent says it will abide by the decision of the Authority about non-publication, but submits that the starting point is open justice and that no good reasons

have been provided for displacing the presumption of open justice. It is recognised, however, that it may not be appropriate to publish medical information.

[3] The respondent submits that if the Authority is minded to make a non-publication order with respect to the applicant's name then it would be appropriate to apply the same order to the respondent. This would be on the basis that the applicant worked in a small team and if the respondent is identified, there is a risk that the applicant, as well as the respondent shareholders who deal with the team, would also be identified.

[4] The Authority's discretion to grant non-publication orders is found in clause 10 of the second schedule of the Employment Relations Act 2000 (the Act). The discretion must be exercised on a principled basis with the onus on those seeking to obtain an order to show that one should be made.

[5] There is a general principle that justice should be administered openly and if there is a departure from that general principle, specific adverse consequences should be identified. The Employment Court has stated where the application is for an interim non-publication order, the principle of open justice has less weight than at a later stage in the proceedings. A more cautious approach is taken about non-publication before final determination of the Authority or Employment Court.¹

[6] There is medical evidence that pertains to the applicant and a risk that identifying the respondent could identify the applicant. I conclude it appropriate to make interim orders for non-publication at this stage of the names and identifying details of the applicant and respondent and the medical evidence.

[7] Until further order of the Authority, the names and any identifying details of both parties and the medical evidence with respect to the applicant is prohibited from publication.

[8] The parties shall be referred to by random three letter strings which bear no resemblance to their names as DEI and ZOM.

¹ *FVB v XEY* [2020] NZEmpC 182 at [11].

Employment relationship problem

[9] DEI commenced employment with ZOM on 6 April 2022 as a customer experience specialist on a permanent full-time basis. She was party to a written employment agreement with ZOM dated 4 March 2022.

[10] Between April 2022 and October 2023 DEI worked in the support office of ZOM for three days a week and at home for two days a week.

[11] On 14 October 2023 DEI suffered a medical event. She was cleared to resume full duties from 18 October 2023 and returned to her duties on 20 October 2023. She undertook these from home as she was unable to drive.

[12] Various discussions took place between DEI and ZOM about how she could be supported while she was unable to drive. DEI was asked to, and did, organise an appointment with her treatment provider to complete a workability statement to assess her physical and psychological capacity to perform her role. This was completed and it was confirmed on 6 March 2024 that DEI was fit to complete all duties and had no psychological or physical issues impacting her employment or ability to perform her role.

[13] There was medical advice that DEI was still unfit for driving until 15 October 2024 which advice is to be reviewed on 14 October 2024. On 7 March DEI provided ZOM with a medical certificate dated 5 February 2024 advising she was required to complete a one-year driving standdown following the medical episode of 14 October 2023. ZOM continued to permit DEI to work from home full time while she was unfit for driving.

[14] In January 2024 DEI expressed an interest in processing deceased estate cases. ZOM saw this as an opportunity for her to increase her skills and potential remuneration. DEI started that work in January 2024.

[15] In April 2024 DEI's manager, who I will refer to as C, was concerned about the workload of the specialist team and wanted to review the resourcing for the team which included the deceased estate work. A report was run to assess the workflow, identify the number of cases closed by team members and other such tasks such as inbound and outbound phone calls, applications, and software use.

[16] The report indicated that between 1 January 2024 and 17 April 2024 DEI's outputs were minimal and significantly lower than the rest of the team. ZOM says that DEI appeared to have completed less than one percent of the total number of cases closed by the three members of the deceased estate's team.

[17] On 29 April 2024 C wrote to DEI outlining serious concerns in the context of her employment:

- (a) She has resolved a total of 7 cases and the other members of the team had resolved an average of 364 cases each with her direct comparator resolving an average of 184 cases and approximately 20 cases per week.
- (b) DEI has made a total of 4 outbound calls in comparison to her direct comparators who made 60 inbound and 15 outbound calls respectively.
- (c) That she has received payment for work that she has not done.
- (d) Of the 22 active cases assigned to DEI there was little or no evidence of work to resolve these.
- (e) There are days when she has logged on to work yet there is no evidence that she had sent any emails or made any calls to customers. Four days were referred to 20 and 27 March 2024 and 10 and 11 April 2024.

[18] It was explained in the letter that the matter had reached a disciplinary stage and that, if established, these actions may amount to a breach of its disciplinary policy specifically:

- (a) Serious neglect, indolence, inefficiency, or incompetent behaviour in the discharge of her duties.
- (b) Conduct that undermines the relationship of trust and confidence.
- (c) Deceitful or dishonest behaviour in that she has received payment for work that she has not been doing to what is considered an acceptable standard.

[19] DEI was invited to a disciplinary meeting on 2 May 2024 and provided with relevant documents. She attended with her husband and responded to the concerns.

[20] Following the meeting C sent a letter dated 9 May 2024 to DEI in which she set out DEI's explanations and ZOM's response to them. C had formed a view that the

allegations were made out and the behaviour was serious misconduct and consideration was being given to termination of employment. A meeting was proposed for 13 May 2024 to provide feedback on the proposed disciplinary outcome or written submissions could be provided.

[21] DEI instructed Ms Fechny who provided written submissions in response to the proposed disciplinary outcome in a letter dated 17 May 2024. Ms Fechny did not dispute there were performance issues with respect to the processing of the deceased estates however said this is not evidence of serious neglect, indolence, inefficiency, or incompetent behaviour in the discharge of DEI's duties. The primary submission was that the concerns should have been dealt with in accordance with the performance management policy, that there was no deceitful or dishonest behaviour and the allegations do not amount to serious misconduct. Ms Fechny referred to a recent improvement with the processing of deceased estates by DEI since a relevant template was provided. There was an issue raised as to whether C had complied with her own managerial duties in the performance management plan to provide timely feedback where an employee is not meeting expectations and whether it was appropriate that C be involved with the decision making.

[22] Ms Fechny set out in her submission that DEI was committed to continuing in her employment. She recognised that she will be required to undergo a performance management process in accordance with ZOM's performance management policy or be required to discontinue with the processing of the deceased estate work and return to performing her previous work. Ms Fechny also reiterated what DEI had said during the disciplinary meeting that she loved her role and was looking forward to returning to the office in October 2024 and being fully immersed as part of the team. It appears for the first time there was an issue raised that DEI had experienced a concussion which had impacted her short-term memory.

[23] In a letter to DEI dated 22 May 2024 C did not accept that the matter was one of incompetence or poor performance but was one of serious neglect, indolence, and inefficiency. There was a conclusion reached that there was deceit and dishonesty with reference to the behaviour amounting to time fraud rather than slow working. It was accepted that there was a level of improvement since receiving the invitation to the disciplinary meeting but that was not attributed in any significant way to the template

DEI received but because DEI was informed of concerns about conduct and limited work output. C did not accept that she should not be involved with the decision making.

[24] The conclusions in the preliminary decision that the allegations amounted to serious misconduct were upheld and the decision was made to terminate the employment summarily.

[25] DEI wants to be reinstated on an interim basis pending a substantive investigation and determination of her employment relationship problem for unjustified dismissal. The statement of problem lodged with the Authority includes a claim for permanent reinstatement.

[26] The application for interim reinstatement is opposed by ZOM on the basis that there is no seriously arguable case for unjustified dismissal or permanent reinstatement. Further, that there are significant trust and confidence issues as a result of DEI's fundamental breach of her employment obligations and the resulting workload pressure on other staff.

The investigation meeting

[27] The statement of problem was lodged on 31 May 2024. The Authority held a case management conference on 10 June 2024. Both parties were directed to urgent mediation. An investigation meeting was set down for 8 July 2024 in the event that the matter did not resolve.

[28] The matter did not resolve at mediation and the investigation meeting proceeded on the basis of the affidavit evidence and submissions directed to the usual test for an interim injunction.

[29] The Authority received an original affidavit and an affidavit in reply from DEI. The Authority also received an affidavit from a person who resided on the property occupied by DEI and her husband.

[30] The Authority received for ZOM three affidavits. There was an affidavit from the decision maker, C, and affidavits from two other customer experience specialists who undertake the same work as DEI.

[31] DEI provided an undertaking as to damages.

[32] Ms Fechny and Ms Hurren provided comprehensive and helpful submissions.

The issues

[33] The Authority may, on the application of an employee who has raised a personal grievance, make an order for the interim reinstatement of the employee pending the hearing of the personal grievance.² When determining whether to make an order for interim reinstatement, the Authority is required to apply the law relating to interim injunctions with regard to the object of the Act.³

[34] The object of the Act is found in s 3 and is to build productive employment relationships through the promotion of good faith in all aspects of the employment environment and of the employment relationship.

[35] The Act provides that reinstatement is to be the primary remedy and the Authority or Court must provide for it wherever practical or reasonable.⁴

[36] The approach to an application for an interim injunction is that the employee will need to establish a serious question to be tried, or in other words, that the claim is not vexatious or frivolous. The balance of convenience needs to be considered with the impact on the parties of granting or refusing to grant an order. Finally, there is an assessment of the overall justice by standing back having analysed the balance of convenience and serious question to be tried.⁵

[37] These matters form broadly the issues for the Authority to consider. Whilst the power to make an order for reinstatement is a discretionary one, the assessment there is a serious issue to be tried is not, and requires judicial evaluation.⁶ For a claim of interim reinstatement, the question of whether there is a serious question to be tried needs to be considered as two issues:

- (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 of permanent reinstatement.

² Employment Relations Act 2000 section 127(1).

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

⁴ Employment Relations Act 2000, s 125.

⁵ *NZ Tax Refunds v Brooks Homes Limited* [2013] NZCA 90 at [12]-[13].

⁶ Above, n4 at [8].

Serious question to be tried in respect of unjustified dismissal

[38] The evidence at this interim stage is untested as there was no questioning or examination of the deponents of the affidavits. This is not the time for resolution of disputes between the parties.

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

[40] The Authority at this stage focuses on whether there is a serious issue to be tried about the justification of the dismissal in the sense of a case that is not frivolous and vexatious.

[41] Ms Hurren submits that DEI has failed to establish that she has an arguable case for unjustified dismissal or alternatively the arguable case is weak.

[42] Whether the matters of concern are performance or conduct issues will be a key aspect in an assessment of justification of the dismissal at the substantive investigation meeting.

[43] DEI accepts that she failed to meet the required performance standards with respect to the deceased estate work and that in hindsight “failed miserably” by not communicating that she required assistance.

[44] The untested affidavit evidence discloses some different views about concerns and how they developed.

[45] DEI explained at some length in her affidavit that she found the deceased estates work more complicated than her previous work. C in her affidavit did not accept the work is new or technically more difficult and that it was part of the DEI’s existing job description and DEI continued working in the same systems, accounts, and processes.

[46] DEI stated in her affidavit she only had limited training. C stated in her affidavit that DEI was provided with adequate training and her colleagues were able to assist her with the work.

[47] C states that DEI was asked to but did not update notes, likely because she had not done the work earlier to do so. DEI states that she did not always add notes to the excel spreadsheet, but she had started to add more, and she kept a paper record of the files assigned and progress.

[48] From the affidavit evidence C says there were team meetings, deceased estate meetings and one-on-one meetings with C during which DEI represented that she was completing the work assigned and did not ask for help. DEI accepts that she could have asked for help and failed in that respect. She says that C could also have monitored her performance and provided a metric to base her work against. DEI says that she thought she was struggling but without seeing what her colleagues were doing could not grasp how far behind she was falling.

[49] The number of emails and outbound calls were low and on four days there was none of this activity. DEI says that she was always working and investigating accounts.

[50] ZOM concluded the conduct of DEI between January and April 2024 was serious neglect, indolence, inefficiency and serious incompetent behaviour and dishonesty that impacted trust and confidence. DEI says that the concerns were performance issues and not serious misconduct.

[51] The disciplinary policy provides for incompetence or poor performance:

Incompetence or poor performance

Is defined as when an employee fails to meet required level of performance. Before initiating a disciplinary process, ZOM will provide the employee with feedback on areas of poor performance and give adequate opportunity and tools to meet the required standards of performance. Issue of incompetence may result in one or more formal warnings being issued with dismissal a possible outcome if issues remain unaddressed.

[52] ZOM has a performance management policy that provides for two different paths to be followed. The first is a coaching conversation and the second a formal performance management which may result in a disciplinary process. The formal performance management processes involve a performance improvement plan that may include expectations of the level of required performance, an action plan about how the expectations will be met and details of any support such as training and such.

[53] In her affidavit C explained she only discovered the tool to report on the number of cases closed by team members in or about April 2024 shortly before the concerns were raised with DEI. It is arguable that DEI did not understand that issues with her performance were as serious as they were and once she did was not given an opportunity to meet the required standards of performance. It is arguable that the discovery of the tool at a later point resulted in the issues of concern being much more serious than if they had been raised earlier and there had been performance management and improvement. Had the concerns been identified at an earlier point the disparity between the performance of DEI and others in the team would not have been so marked. It is arguable whilst there were performance concerns the level of performance may need to be more carefully examined.

[54] DEI explained on 2 May 2024 at the disciplinary meeting that she was at all times actively working and the IT team should be able to verify this by reviewing her activity logs. It is arguable that this investigation was not carried out. It is arguable that ZOM would have been able to establish from DEI's laptop what activity she was involved in and for what periods which was relevant for the conclusions about serious misconduct including a finding of dishonest and deceitful conduct.

[55] There is an arguable case that the concerns were performance issues which would require a different process to that which was undertaken.

[56] I conclude a seriously arguable case in relation to the unjustified dismissal.

Arguable case for permanent reinstatement

[57] Reinstatement is a primary remedy and under s 125 of the Act must be ordered if it is practicable and reasonable irrespective of whether the Authority provides for any other remedy under s 123 of the Act.

[58] The Employment Court in *Christieson v Fonterra Co-operative Group Limited* stated the following about the meaning of practicable and reasonable:⁷

Practicability and reasonableness are two separate considerations.⁸ For reinstatement to be practicable, it must be capable of being carried out in action, be feasible and have the potential for the re-imposition of the employment relationship to be achieved

⁷ *Christieson v Fonterra Co-Operative Group Ltd* [2021] NZEmpC 142 at [38] and [39].

⁸ *Hong v Auckland Transport* [2019] NZEmpC 54 at [65].

successfully. There may be considerations separate from the reasons for the dismissal that are germane to this question.⁹ In looking at reasonableness, the Court needs to consider the respective effects of an order, not only on the individual employer and employee in the case, but also on other affected employees of the same employer and, in some cases, perhaps third parties who would be affected by the reinstatement.¹⁰

[59] Ms Hurren submitted that there is no arguable case for permanent reinstatement if DEI is successful in her grievance of unjustified dismissal. The primary barrier she submits is the mutual loss of trust and confidence.

[60] She submits that DEI has made ongoing misrepresentations during and after employment in what was a “high trust position.” In this respect she refers to a number of matters. DEI actively represented to her manager and colleagues that she was busy working and understood what was required when she was not completing her work and directly misled ZOM over an extended period of time. DEI was permitted to work from home five days a week but has now offered to come into the office on a Monday. Further, DEI blames the situation on a lack of training and felt that she could not ask colleagues questions about her work.

[61] Two matters in DEI’s affidavits were also referred to as misleading. The first is that DEI represented in her original affidavit that her husband worked full time in a business that ran at a loss but the reply affidavit stated that he worked as a truck driver but his income went to the mortgage payments. DEI did not accept in her reply affidavit that she had deliberately omitted this from her original affidavit but stated that she did not think about his income that was used for mortgage commitments.

[62] The original affidavit did give the Authority the impression that DEI’s husband worked full time for a business that ran at a loss, and it was unclear that he had a full time job as well. The reply evidence clarified the situation so that the Authority has not been left unclear in its decision making. Two aspects of DEI’s original affidavit point away from this being a deliberate attempt to mislead. In paragraph 42 there is reference to the time that DEI’s husband leaves for and returns from work suggesting that he did not remain on the property to work in the business. There is also no reference in the original affidavit to DEI’s income paying the mortgage.

⁹ Above 8 at [66].

¹⁰ *Angus v Ports of Auckland Ltd (No 2)* [2011] ERNZ 466 at [68].

[63] The second aspect Ms Hurren submits about is the identification in the affidavit in reply that DEI may have mild concussion identified in January and February and that was inconsistent with the medical evidence supplied to the respondent. DEI stated in her reply affidavit that she did not think there were issues relating to memory or concentration and she did not raise this with ZOM on that basis.

[64] From the untested affidavit evidence there will likely be some issues of trust and confidence but I do not conclude they are at the level of those considered by the Employment Court in *Maddigan v Director General of Conservation*.¹¹ Importantly DEI has acknowledged the performance concerns and that she failed to raise concerns that she was struggling. I do not conclude the trust and confidence issues are such that there is no arguable case for the potential for permanent reinstatement and the successful reimposition of the employment relationship.

[65] Ms Hurren submits that if there are performance issues, which ZOM denies, the mere assertion that DEI is willing to participate in a performance management plan does not support an arguable case for permanent reinstatement. Ms Hurren refers to an Employment Court judgment and an Authority determination to support this. The Employment Court in *Li v The Vice Chancellor of Auckland University of Technology* concluded that reinstatement was not a practicable remedy.¹² There was reference to the very serious work performance issues that would have made Ms Li's continued employment long-term "a tenuous proposition." In *Li* an important additional impediment to reinstatement was that there was personality disaffections that were so significant the reinstatement would be disruptive to staff relations and a subsequent restructuring. There were factors when the judgment is considered as a whole that meant reinstatement was not practicable that are not apparent in this matter on the untested affidavit evidence. *Li* is distinguishable.

[66] The other case referred to was an Authority determination in *McGrannachan v Farmlands Co-operative Society Ltd*.¹³ Permanent reinstatement was not granted by the Authority following an unjustified dismissal for performance concerns. Reinstatement was not a primary remedy at that time and there was a particular and important aspect of the role that the employee struggled with and was fearful about.

¹¹ *Maddigan v Director General of Conservation* [2019] NZEmpC 190 at [86].

¹² *Li v Vice Chancellor of Auckland University* (2006) 3 NZELR 66 (EmpC).

¹³ *McGrannachan v Farmlands Co-operative Society Limited* [2014] NZERA Christchurch 75.

The Authority was not confident those struggles would not continue. There was no evidence that there was enjoyment of at least that aspect of the role and after the performance process continued, the employee struggled to ask for help. I do not conclude that matter on all fours with this.¹⁴

[67] Ms Hurren submits that there had been a fundamental break down in the working relationship between DEI, C, and her key colleagues in the deceased estate team. C states in her affidavit that DEI and her husband took an aggressive and combative approach at the disciplinary meeting and did not acknowledge the concerns or demonstrate a real understanding of the issues. DEI does not accept that there was an aggressive approach at the disciplinary meeting, in her reply affidavit. The meeting was recorded.

[68] Although there is a concern raised in submissions from Ms Hurren of a risk the conduct could be repeated DEI's work did improve shortly before her employment was terminated and only deteriorated from January 2024 when she took on the deceased estates work.

[69] It is perhaps unfortunate from the untested affidavit evidence that the key colleagues came to know about DEI's performance levels. There may be a good reason for that. The key colleagues carried heavy workloads and they can see that DEI appeared to be doing very little whilst representing that she was working hard and they have concluded not doing her fair share. There is a sense of grievance on their part. They have expressed concerns in their affidavits about DEI's continuation in the workplace and a lack of confidence in her being able to change.

[70] DEI does recognise she will need to improve her performance. It is arguable that she has taken some responsibility for the situation. She has insight that she has not reached out whether because of pride or being concerned about doing so. DEI will need to be more responsive and communicative about difficulties. It is arguable the relationships with C and DEI's colleagues are capable of being repaired. DEI in her reply affidavit evidence says that she is able to have a professional relationship with C and her colleagues and her issue is with the process. There was reference to the effect of reinstatement on third parties, but I could not conclude from the untested affidavit

evidence that is a significant factor weighing against an arguable case for permanent reinstatement.

[71] C has raised in her affidavit concerns about permanent reinstatement not being practicable and reasonable because of the need for close supervision and support being an unfair and unreasonable imposition on her time. There is concern in this regard that DEI would not be in the office and instead working from home.

[72] DEI is not allowed to drive for a year until at least October 2024 because of the medical event. She lives rurally in an area without public transport or arguably other workable options. It is unclear if that restriction on driving will be ongoing after October 2024. Arguably DEI will be able to drive by the time of the substantive investigation meeting and/or determination.

[73] Even before the medical event DEI worked a hybrid model with two days at home. DEI has said in her affidavit evidence, if reinstated on an interim basis, she could attend the office on Mondays. Her husband has offered to take and pick her up from work on Mondays because sometimes he does not work. It is arguable that would provide an opportunity for her, her colleagues and C to raise any issues of concerns and provide a level of monitoring at least one day a week. A performance plan is a two-way process. DEI can also be required to report on her activities to C thereby reducing placing the full burden on C.

[74] On the untested affidavit evidence a seriously arguable case is established that it is practicable and reasonable to permanently reinstate DEI.

Balance of convenience

[75] The Authority is required to look at the relevant detriment or injury each party will suffer from the granting or refusal to grant interim reinstatement under this test. Detriment to other parties such as employees and third parties is also a factor to be weighed in the balance.

[76] At this stage the earliest dates for a substantive investigation would be November but could be later. That delay favours interim reinstatement.

[77] I do not conclude the arguable case for unjustified dismissal or permanent reinstatement to be weak. That is a factor that favours interim reinstatement.

[78] I accept notwithstanding the potential for some misunderstanding in the affidavit evidence that DEI will face financial hardship. Her income paid for food, schooling for the children and their extra-curricular activities, vet bills for the business and all other necessities. She deposes to a risk of losing the house if she cannot have an income.

[79] Whilst Ms Hurren urges me to place little weight on the driving restriction, I consider it is a factor to weigh. DEI says that her ability to find alternative employment is challenging because she can't drive and Uber and taxis would be a prohibitive cost. I also weight DEI refers to some issues about finding similar other employment due to the impact on her self- esteem and confidence because of her dismissal.

[80] I have weighed that ZOM says that there has been a complete loss of trust and confidence in DEI and reinstatement would impact morale in the team who have been let down by her. Ms Hurren refers in her submission to a GIF sent on 11 April by DEI to her colleagues saying *work, work ,work* which was a day where she did not send a single email or have a single phone call. I accept that there will be some challenges but do not conclude they are at the level that they cannot be overcome. DEI has some insight into her failings and has accepted management of her performance is likely.

[81] Further Ms Hurren says that the Authority should consider the impact on bereaved shareholders and customers whose accounts have not had action on them for some months and the potential risk for this to continue. I acknowledge that is a concern but performance management, the existing tools for assessment of performance and DEI's commitment to attend at work one day a week will reduce the likelihood of any continuation of the delays.

[82] I conclude that the balance of convenience weighs in favour of interim reinstatement.

Overall interests of justice

[83] I now stand back to assess the position reached following consideration of the serious issues to be tried and the balance of convenience.

[84] I conclude that the overall interest of justice favour making an interim order for the reinstatement of DEI. There is a seriously arguable case that DEI's dismissal was unjustified and a seriously arguable case for permanent reinstatement. The balance of convenience favours DEI. The financial issues because of the dismissal for DEI are exacerbated by her inability to drive and obtain other employment.

[85] DEI accepts that on return she may be subject to a performance management plan if she continues to perform the deceased estates work. She has agreed that she will attend physically at the workplace on Mondays which will assist in performance management and re-establishing relationships with C and her colleagues. DEI needs to be responsive and communicative and reach out as soon as she needs help or finds herself struggling.

Orders made

[86] I order that DEI is reinstated to her former position with ZOM in accordance with her undertaking and pending further order of the Authority. She is to be reinstated to the payroll from Monday 15 July 2024. Before she actually returns to work the parties will need to discuss performance management and/or whether in the interim period DEI performs her previous work about which there were no performance issues. Mediation may assist the parties. Once these matters are discussed and DEI returns to work she is to attend physically at the workplace on Mondays of each week.

[87] I reserve the right for either party to return to the Authority if further orders are required.

Further steps

[88] The Authority will arrange for a further telephone conference as soon as possible to discuss dates for a substantive investigation.

Costs

[89] I reserve the issue of costs to be dealt with after the substantive investigation and determination.

Helen Doyle
Member of the Employment Relations Authority