

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2014] NZERA Christchurch 23
5444078

BETWEEN ANDREW MARTIN HOBBS
 Applicant

A N D ST CLAIR GOLF CLUB
 INCORPORATED
 Respondent

Member of Authority: Helen Doyle

Representatives: Simon Anderson, Counsel for Applicant
 Rhonda Harris, Counsel for Respondent

Investigation Meeting: 4 February 2014 in Dunedin

Submissions Received: From both parties on the day

Date of Determination: 10 February 2014

DETERMINATION OF THE AUTHORITY

- A The application for interim reinstatement is declined.**

- B Costs are reserved until after the substantive investigation and
 final determination.**

- C A telephone conference is to be arranged to progress the matter.**

Employment relationship problem

[1] Andrew Hobbs was employed as the course superintendent at the St Clair Golf Club Incorporated (the Club) from 2003 until 17 December 2013 when he was summarily dismissed for serious misconduct.

[2] Mr Hobbs says that his dismissal was unjustified and he has made an application for interim reinstatement under s.127 of the Employment Relations Act

2000 (the Act) to his position as course superintendent. Mr Hobbs has provided to the Authority an undertaking as to damages together with an affidavit in support and in reply to the one affidavit in opposition. A further five affidavits in support of the application for interim reinstatement were lodged by way of reply.

[3] Interim and permanent reinstatement is opposed by the Club which says that it carried out a fair and reasonable disciplinary process into allegations involving dishonesty and his dismissal was substantively justified.

[4] The parties attended mediation but the matter was unable to be resolved. At the commencement of the investigation meeting I advised the parties that I would be able to hold a substantive investigation in early May 2014.

Issues

[5] An injunction involves the exercise of a discretion. The answer to an interim injunction is not in the rigid application of a formula: *Klissers Farmhouse Bakers Limited v. Harvest Bakeries Limited* [1985] 2 NZLR 129 (CA). There are however broad inquiries that the Authority should make in the exercise of its discretion. These are as follows:

- Does Mr Hobbs have an arguable case of unjustified dismissal, and if found after substantive investigation to have been unjustifiably dismissed, an arguable case for permanent reinstatement - s.125 of the Employment Relations Act 2000;
- Where does the balance of convenience lie? This requires looking at the relevant detriment or injury that Mr Hobbs and the Club will incur as a result of the interim injunction being granted or not;
- Is an alternative adequate remedy available?
- Finally the Authority is required to stand back and ascertain where the overall justice of the case lies until the substantive matter can be determined.

Background

[6] The Authority dealt with this matter on the basis of untested affidavit evidence and submissions. There was no questioning/examining of those who provided affidavit evidence and as a result the Authority cannot, and is not required to, in the application of the tests resolve any disputes that may exist. What I have set out by background is from the documents provided and/or is, unless specifically stated, not in dispute.

[7] Mr Hobbs was party to an individual employment agreement (the agreement) with the Club dated 1 July 2006. It provided in clause 1.3 that Mr Hobbs was to perform the duties set out in the job description attached to the agreement.

[8] The Club has a Board made up of elected or appointed members. The Board manages the Club and made the decision to dismiss Mr Hobbs. The chairman of the Board is Stephen Brocklebank who provided an affidavit in opposition to the application for interim reinstatement. He has deposed in his affidavit to having done so in conjunction with all the members of the Board and to having their authorisation as they are in agreement with its contents.

[9] The general manager's role at the Club was restructured and he was not replaced. Mr Hobbs therefore communicated directly with the Board at the material time about matters they should be kept advised of including expenditure. There had been a member assigned to liaise with him.

[10] On 21 November 2013 Mr Hobbs was given a letter from Mr Brocklebank which set out two allegations as below:

We have had two serious issues brought to the notice of the Board of management as set out below. The allegations are as follows:

- 1) On at least 3 occasions in October 2013 you asked an employee to work during the Golf Club's normal working hours at properties outside of the Club's property. You further instructed the employee to falsify his timesheet with the result being that some or all of this time working outside of the property was paid for by the Club. You also instructed the employee not to advise other Club employees of this situation.*
- 2) On 29th October 2013, according to a packing slip from Prebble Seeds Ltd, 10 bags of Sierraform GT Anti-stress fertiliser was delivered to the Club. The packing slip appears to be ticked off as correct by yourself and for the amount of \$899.00 plus GST*

- 3) *(along with another amount of \$585.13 for "Vixen 20L"). While there is no evidence of the above product being stored at the Club there is a new Fertiliser Spreader, as yet unpacked in the workshop. On enquiry we have been advised that you requested the Prebble Seeds Ltd salesman to invoice the spreader as fertiliser "as the Board would not approve the Spreader as it was capital expenditure". Not only is this instruction questionable, we would ask why you would purchase a second spreader when there is a perfectly acceptable spreader already at the Club.*

[11] The letter invited Mr Hobbs to attend a meeting on Friday 22 December 2013 and to bring a representative with him to the meeting. It advised Mr Hobbs that the Club believed both of the allegations, if accurate and correct, constitute serious misconduct and as such, if the Club was not satisfied with his explanations, could result in his summary dismissal.

[12] A disciplinary meeting was in fact held on 2 December 2013. Prior to that date Mr Brocklebank had supplied Mr Hobbs through his solicitor with copies of Mr Hobbs' employment agreement, the relevant packing slip, delivery docket and invoice related to what was believed to be the spreader but was for fertiliser and the dates on which the employee Mr Smith was asked to work outside the property with timesheets supplied. Mr Hobbs had prepared a written response to the allegations which is annexed to his affidavit as exhibit A.

[13] Mr Hobbs in addition to working at the Club has a separate turf contracting business which was known about by the Board.

[14] In respect of the first allegation Mr Hobbs in his written explanation stated that when he talked to Mr Smith about the position at the Club he mentioned the possibility of extra work after hours with him working as a landscaper. He wrote that he offered this work to Mr Smith on three occasions late in the day around 3.30pm. He explained that Mr Smith asked him what to do with his timesheet and that he explained he should record it accurately and said that he could *vividly remember this conversation*. He wrote that on one occasion *we went out during a morning to pick up the last load of turf and I borrowed [Mr Smith] to give me a hand for just over an hour*. He explained that on that occasion he told Mr Smith when he asked, not to bother with recording that [absence] on his timesheet *as it was a short time and in the grand scheme of things we would make up the time during the season*.

[15] Mr Hobbs in his explanation wrote that as far as not telling assistant greenkeeper Steven Woodford *about it* this was in an effort to keep harmony in the workplace as he did not want *Steven to get his nose out of joint*. Mr Hobbs referred to several instances where staff have gone off site to lend a hand to other staff and members alike during work time. I do not find on careful reading that the written explanation went as far as Mr Anderson's written submission to suggest that the engagement of club staff in the business was not a secret. Mr Hobbs did not on the untested affidavit evidence and written explanations depose or explain that the Board was aware that he was using staff in his business. Mr Hobbs does depose to often having used club staff to work for him over the years in para 6 of his first affidavit and that they were always paid by him and not the Club.

[16] Mr Anderson accepted that there was no clear explanation about whether the Board knew and consented to the use of its employees in this way. Mr Hobbs further set out several matters that were causing him stress at the time that he attributed to failing to pick up the inaccuracy in Mr Smith's timesheets. I was not clear what that referred to.

[17] In relation to the second allegation Mr Hobbs wrote that the spreader that the Club owned was the oldest one in town and that the purchase process method was the same as the purchase of other capital equipment. He wrote that he did think at the time that he may be better to pay for it himself but was under time pressure and significant stress.

[18] Mr Hobbs proposed in his explanation that the best way forward would be for him to wind up his landscaping business and focus his efforts at the Club and at home. He provided a variety of documents including a list of 30 referees, a letter from Stephanie Wade who had been employed on a contract basis by the Club from November 2011 to August 2012, a copy of a text message to support the date that Mr Smith had attended work for his business and evidence of weather, and a medical certificate.

[19] By letter dated 4 December 2013 addressed to Mr Hobbs and signed by Mr Brocklebank, a preliminary decision was provided. It is helpful in this case to set out what is written under the heading:

Allegations and Your Explanations

We have considered your explanations as provided in writing in preparation for the above mentioned meeting and respond as follows;

Firstly, we alleged that you used a St Clair Golf Club employee on, at least 3 occasions during normal club working hours to assist you with your personal business activities during the course of his employment at the course. You advised that you took the employee off the course only after afternoon smoko and you admitted that you were aware the club paid for this time and that you also paid the employee. The employee has advised he was taken off the course ... "twice in the mornings after our morning tea break and before lunchtime. The other occasions were from about 2.00pm". The employee stated that following that and after challenging you and advising he was not happy to continue this practise "working on the course after this was very uncomfortable as Andrew was obviously unhappy about my stand".

We would expect our Course Manager who is also running his own business to be aware of the potential for conflicts of interest in this regard and to keep a clear distinction between the activities as an employee and those as a business owner, as has been requested on numerous occasions previously. This has not occurred as evidenced by this allegation and we have not been convinced that similar situations will not reoccur.

Secondly we alleged that you ordered and received a new fertilizer spreader and requested the supplier record the invoice as fertilizer. You have responded by trying to justify the purchase of the spreader as critical and the method of ordering and paying being based on precedent. We do not accept either response. We are inclined to see these actions as designed to mislead the Board in relation to the need for and the recording of this capital expenditure.

[20] The preliminary view expressed by Mr Brocklebank in the letter was that the Board was not prepared to accept dishonesty from employees and regarded both of the allegations as dishonesty which constitutes serious misconduct. Mr Brocklebank wrote *We have considered the alternatives to dismissal both ours and yours as expressed at the disciplinary meeting, however in our view none of these are adequate because of the risk that you will do something like this again to further damage relationships within the workplace. Our preliminary view is that dismissal is the appropriate outcome.*

[21] Mr Hobbs was invited to reply to the preliminary decision either in writing or to attend a meeting on 5 December 2013 at 4pm.

[22] After receipt of that letter and before a response was made by Mr Hobbs to the preliminary decision Ms Harris provided Mr Anderson with a copy of a statement

from Thomas Smith dated 27 November 2013 for the first time and also advised that the Board had contacted Stephanie Wade to discuss her letter of 26 November 2013. There was also some concern expressed in Ms Harris's email that the manager of Firth Concrete, Aaron Charteris had contacted the Club's marketing/public relations coordinator and advised he had just heard from Mr Hobbs that his contract with the Club with had been terminated. As a result Mr Charteris advised that he was getting a transport operator to pick up Firth's pallets of bricks for the retaining wall and take them off the premises and had asked for his corporate membership to be revoked.

[23] The main points of Mr Smith's written statement were contained in the letter of 21 November 2013. There was a difference in the times as explained by Mr Hobbs and written by Mr Smith, Mr Hobbs only agreeing there was one morning when work was undertaken for his business and Mr Smith saying two. Mr Smith wrote that Mr Hobbs had asked him to written in his normal hours as if he was working normally for the Club. He wrote that he was unhappy about this request.

[24] Mr Hobbs provided a written response to the preliminary decision and that was provided by Mr Anderson to Ms Harris. There was an opportunity for a further meeting to discuss this but that was not taken up by Mr Hobbs.

[25] In the response to the preliminary decision Mr Hobbs did not accept that he had given the explanation to the first allegation as set out. In this regard he took issue with the times/dates that he had used Mr Smith in his business. Mr Hobbs said he had used Mr Smith on 10, 16 and 17 October from about 3.30pm and on 23 October 2013 in the morning for approximately one hour. and said that he certainly did not state that this was following afternoon smoko as they did not have afternoon smoko. He also advised that it was only the one occasion on 23 October 2013 when Mr Smith was told not to exclude the time spent working for his business from his Club timesheet because it would be made up later. He referred to another occasion when Mr Smith had left just after 4pm to assist a club member with a tree. Mr Hobbs said that on the afternoon occasions Mr Smith should have recorded his time accurately and only been paid for that time worked.

[26] Mr Hobbs wrote that when Mr Smith advised he did not wish to do further work for him, he told him that it was fine and not a requirement of his job with the Club. Mr Hobbs wrote that no issue had been raised with him running a separate contracting business and no issue had been raised with him about keeping a clear

distinction between activities as an employee and those as a business owner. He wrote that as explained at the meeting on the occasions he has used Club employees, which he described as generally being seen as a positive in the past, being a way for employees without fixed Club hours to earn a greater income, he has always paid them. He wrote that the only occasion an employee had not clocked off when working for him is that described above and then only on the basis that he would make up the time later.

[27] Mr Hobbs explained a new spreader was necessary and that there has been past practice of having capital purchases invoiced as consumables. Mr Hobbs wrote about the spreader *it was stupid. It was not dishonest. It was a dumb mistake which occurred when I was under significant pressure and stress.* Mr Hobbs suggested the appropriate course would be to issue written directions as to future conduct and processes to be followed and *I take full responsibility for my actions, have been up front as to the details surrounding the incidents raised.* He also wrote that he understood his job was seriously at risk and that he had put forward giving up his contracting business. He wrote that his employment ending would effectively bring an end to his greenkeeping career which is his passion and that he had advised Mr Charteris that it was a preliminary decision. He further wrote that he considered that Mr Smith may well not have filled in his timesheets daily and that there were some discrepancies in them. He provided a written statement from one of his employees, Connan Brownie as to work carried out for the business by Mr Hobbs and Mr Smith on the various days.

[28] The Board then proceeded to make a decision and that was relayed to Mr Hobbs in a letter dated 17 December 2013. Again, in this case it is helpful for the decision to be set out.

You have answered the first allegation concerning taking an employee off-site to work on your personal business. The Club has paid this employee's wages while you were personally using his services. There has been no reimbursement of his wages and the Club has lost the value of his time and subsequently, the employee's services. You state there was (to be) some arrangement where the employee would make up the time to the Club. The employee was obviously not happy with your explanation of this arrangement with him and the Board is not satisfied with your explanation.

The Board is not satisfied with your explanation regarding the fertilizer spreader purchase. It is clear that you intended to mislead the Board by covering up the purchase of this machine. You stated

that such invoicing of capital items is common practice at the Club, however there has been no permission given for this type of activity by this Board. We can only speculate as to your motives for this. You will recall a clear message given to you in August 2012 when you purchased a workshop heater without the Board's knowledge or consent. You were instructed not to purchase capital items without the Board's consent. (In that particular case Board members were aware of other options available at a lower cost). As recorded in the Board minutes October 2013 and discussed with you by Paul Brouwer and Phillipa Calvert, you were asked to complete a purchase order before booking purchases to suppliers of the Club. This request was in response to a number of cases where personal purchases had been booked to the Club's accounts and where miscoding of invoices was discovered by the office staff. Your refusal to follow this direction can only lead the Board to speculate on your motives and leads us to question the trust and confidence we have placed in you. It is not something we expect or can tolerate from a person in your position.

[29] The letter further set out the Board's view that the responses by Mr Hobbs to the allegations were attempts to mitigate his activities and downplay their seriousness. It was further set out that the above actions were intended to mislead the Board and whether intentionally or not, resulted in or would have resulted in loss to the Club to Mr Hobbs personal benefit.

[30] Dismissal was written to be the appropriate outcome and was to be effective from that day.

Arguable case of unjustified dismissal

[31] Mr Anderson submits that there is a strong arguable case of unjustified dismissal because the only misconduct was that involving the spreader and in the circumstances that was insufficient to justify dismissal and there was an alternative available to the respondent. Further he submits that the respondent did not put all matters and information to Mr Hobbs and failed to consider his response and investigate the matters at issue. Mr Anderson submits that the Club proceeded on the basis that the conduct was admitted which was *simply not the case*.

[32] Ms Harris submits that there is no arguable case as the dismissal was both procedurally and substantively fair. She submits that the conduct was for the most part admitted and was serious misconduct.

[33] An arguable case was described in the Employment Court judgment of *X v Y Ltd* [1992] 1ERNZ 863 at 872 as *...a case, with some serious or arguable, but not necessarily certain, prospects of success.*

[34] I turn firstly to whether there is an arguable case that the conduct described as serious misconduct was not admitted. The manner of purchase of the spreader was not from the untested affidavit evidence and annexures denied. Mr Hobbs did not deny the sales assistant's recollection of his conversation with him about why the purchase of a spreader should be described as fertiliser as set out in the letter of 21 November 2013. Mr Hobbs accepted that he had asked the sales assistant to describe the purchase of the spreader as one for fertiliser.

[35] Mr Hobbs accepted in his first affidavit that he probably should have got approval for the purchase from the Board although much less clearly in his written explanations where he suggested that invoicing capital items in this way was common practice. The Board did not accept that. Further Mr Hobbs did not dispute in his affidavit in reply, although did not say he actually remembered, approving an invoice for payment and coding it to fertiliser and completing a purchase order and backdating it for what in fact was the spreader. Mr Hobbs gave reasons as to why the conduct was not as serious as it may at first appear to be and he did not accept it was dishonest.

[36] Mr Anderson submitted fraudulent conduct was not established. The conduct only seemed to be described as fraudulent after dismissal. In the dismissal letter there is reference to an intention to mislead by covering up the purchase of the spreader although it is stated that both of the actions found to be established whether intentional or not resulted in or would have resulted in loss to the Club to Mr Hobbs benefit.

[37] Mr Anderson placed emphasis in his submission on Mr Hobbs' affidavit evidence that the Club needed a new spreader and that Mr Hobbs was not intending to use the spreader in his own business. That could arguably go to the degree of seriousness the Board regarded the conduct although not strongly because Mr Hobbs did get an opportunity to respond to a view of the Club that its existing spreader was adequate. Mr Brocklebank in his affidavit in para 36 stated that the only inference the Board can conduce about the purchase is that it was earmarked to be used for Mr Hobbs business or otherwise. This is somewhat in contrast to the dismissal letter

in which it is stated that the Board could only speculate as to the motive for Mr Hobbs making the purchase in the way he did. It could be arguable that if in the mind of the Board at the time it made its decision, Mr Hobbs had purchased the spreader for his own use, that was not properly put for him to answer and have that taken into account.

[38] Although accepting there was misconduct with respect to the spreader Mr Anderson submits that there is an arguable case that there was no misconduct at all with respect to Mr Smith and no admission of the same. He submits that Mr Hobbs paid Mr Smith for his work when he used him in his business except on one occasion and on that occasion that was on the basis that time would be made up later. He also submits that there was a failure to investigate further with Mr Smith inconsistencies in his time recording and Mr Hobbs' response.

[39] Mr Hobbs did not give a clear explanation about the authority he had for Mr Smith to undertake work for his business during the Club's normal working hours. That work was carried out by Mr Smith for Mr Hobbs during normal working hours is one of the aspects of concern about this allegation from reading the letter of 21 November 2013 and the preliminary decision. It is clear from Mr Brocklebank's affidavit that removal of an employee from the Club to complete work for Mr Hobbs' business was a concern. As he deposes in para 14 amongst other matters, *It is important to note that Thomas had only been working at the Club for three weeks and it is beside the point that he had been taken off the course to complete work for the Applicant's business one, two, three or four times, rather that he had been taken off to complete that work at all.* In para 39 Mr Brocklebank refers to reports provided by Mr Hobbs about a need for a third greenkeeper between October 2013 and March 2014 [Mr Smith]. He deposes that *this was not to assist the Applicant with his own business in the Club's time and at the Club's costs which the Board suspects now may have been the case.*

[40] Mr Hobbs admitted that Mr Smith had carried out work for his business and on at least one occasion in the morning after which he had returned to work at the Club. I do not find it strongly arguable that aspect of the allegation was not clearly put to Mr Hobbs for explanation. There may be an argument although it does not express me as particularly strong about some of the work undertaken for Mr Hobbs business by Mr Smith falling outside of normal working hours or arguable what hours were considered normal.

[41] The second aspect of the allegation was about falsification of the employees timesheets. The times/dates Mr Smith was taken off course was a matter somewhat in dispute. Mr Hobbs did provide some evidence to support his recollection of the days in question and the times that were somewhat at odds with Mr Smith. The main issue which required investigation and careful analysis of the time records is whether as stated by Mr Smith –*Andrew told me to write in my normal hours as if I was working normally for St Clair Golf Club.* Mr Hobbs did not accept that. Mr Hobbs did sign off the time sheets for Mr Smith although he explained that there were errors in Mr Smith's timesheets. Mr Hobbs explained the one occasion the Club paid for Mr Smith's time was on the basis of an agreement Mr Smith would make up an hour or so later with the Club. It is arguable there should have been further investigation and conclusion if the Club concluded that it had paid for Mr Smith to work for Mr Hobbs on more than just the one occasion. It was not altogether clear if simply that one admitted occasion was relied on in that regard.

Procedural issues

[42] Section 103(A)(3) of the Act provides the procedural steps that must be taken and these must be considered together with the statutory obligations of good faith. There did not seem a strong argument that the Club did not consider Mr Hobbs' explanation on the basis that the conduct was not completely denied. Mr Smith's statement was not provided at the outset of the process but Mr Hobbs did get an opportunity to respond to it before dismissal and it was not arguably inconsistent with the first letter containing the allegations set out the matters of concern. I have already indicated that it may be arguable that there should have been further investigation of the timesheets of Mr Smith against the time spent working for Mr Hobbs.

[43] Although there were a large number of referees names put forward by Mr Hobbs it is not strongly arguable with respect to an arguable case of unjustified dismissal that this was the type of case where the main focus would be other than on the allegations themselves and the explanations in forming views as to conduct which at least in part was not denied.

[44] Mr Hobbs did not have a chance to respond to the reference to the message being given to him about an unauthorised purchase of a workshop heater and the reference to the purchasing orders as it was first made in the letter of dismissal. It is weakly argued at best that these matters are separate findings of misconduct. Rather it

is strongly arguable they were put to illustrate earlier discussions about the need to obtain authority for purchasing of capital items. Mr Hobbs had explained that this was the usual way of purchasing capital items. Mr Hobbs in para 14 of his affidavit said that he was authorised to purchase the heater from Ms Wade and that Board member Peter Innes-Jones *had a go at him on the practice putting green about unauthorised purchases and he refused to accept [his] explanation*. Mr Hobbs does appear to accept that there was a discussion. It is arguable that matter and the discussion about purchasing orders should have been put to Mr Hobbs during the disciplinary process for his comment. It is not strongly arguable but rather speculative that Mr Woodford who provided two statements annexed to Mr Brocklebank's affidavit had been spoken to earlier about the matter and that had not been put to Mr Hobbs or that there were other matters not put to Mr Hobbs but relied on.

Decision to dismiss

[45] I am not satisfied that Mr Hobbs putting forward alternatives to dismissal such as offering to cease his own business activity as an alternative to dismissal is a strong argument. The test under s.103A of the Act is whether the decision to dismiss was one that a fair and reasonable employer could have taken in the particular circumstances. There is likely to be a range of employer responses available.

[46] As submitted by Ms Harris it is, I accept, quite strongly arguable that the purchase of the spreader without authority and having the sales assistant describe it as fertiliser was conduct that could be serious misconduct in that it deeply impairs or is destructive of that basic confidence or trust that is an essential part of an employment relationship *Northern Distribution Union v BP Oil NZ Ltd* [1992] 3 ERNZ (CA) at 487.

Conclusion

[47] The threshold for an arguable case for unjustified dismissal is not high. Only by a relatively modest margin for the reasons set out above do I find that Mr Hobbs has an arguable case of unjustified dismissal.

Arguable case for reinstatement if found to have been dismissed unjustifiably

[48] The Authority should have regard to the likelihood of permanent reinstatement - *Madar v P & O Services NZ Ltd* [1999] 2 ERNZ 174.

[49] Reinstatement is no longer a primary remedy and falls to be determined alongside other remedies under the Employment Relations Act 2000. Section 125 (2) of the Act provides that the Authority may provide for reinstatement if it is practicable and reasonable to do so.

[50] Ms Harris submits that it is neither practical nor reasonable that Mr Hobbs be reinstated on an interim or permanent basis given the allegations and admissions by Mr Hobbs. She submits that Mr Woodford has in his statement annexed to the affidavit of Mr Brocklebank stated he would resign if Mr Hobbs is reinstated.

[51] The effect on Mr Hobbs of the dismissal is significant. He is the main income earner for his family and green keeping has been his career. He deposes in his first affidavit to there only being four golf course greenkeeping roles in Dunedin at his level and that this year would have been the 28th year of his greenkeeping career. He states that it is unlikely another role will be available in Dunedin in the near future and the less likely re-employment becomes the longer he is away from work. Mr Hobbs also relies on the ceasing of his business activity if reinstated.

[52] There was reference to relationship difficulties and statements that Mr Woodford and one other person felt bullied by Mr Hobbs. Mr Hobbs has provided other affidavit evidence to show he is of good character.

[53] I have carefully considered all matters. Ultimately the nature of the conduct admitted when assessed on the untested affidavit evidence means that it is strongly arguable Mr Hobbs must have contributed towards the situation that gave rise to the personal grievance if one is found. On that basis and given the nature of the conduct particularly at this early stage with the spreader I find that if Mr Hobbs is found to have been unjustifiably dismissed then his reinstatement would in all likelihood be neither practicable nor reasonable.

Balance of convenience

[54] The Authority is required to look at the relevant detriment or injury that the parties will incur as a result of the interim injunction being granted or not.

[55] I accept that for Mr Hobbs there will be detriment in not returning to work at the Club. The substantive claim will not be able to be dealt with until early May 2014 and there is a possibility Mr Hobbs will not be able to find other work in the interim. There was no suggestion that Mr Hobbs was not competent at his role. He is clearly held in high regard by many Club members and is a long standing employee.

[56] I find that the Club would also suffer detriment if Mr Hobbs returns and then he is found to have been dismissed justifiably or he is not reinstated on a permanent basis. There is some arguable basis for a loss of trust and confidence on the part of the Club because of Mr Hobbs admitted conduct. Whilst this could be addressed short term by making any interim reinstatement conditional I have not found strong arguable cases for either unjustified dismissal or permanent reinstatement.

[57] Mr Hobbs does have his own business to obtain some income from in the short term although I accept that this was not his primary source of income and if his dismissal is found to have been unjustified then compensation would be payable until the matter could finally be determined.

I do not find that the balance of convenience favours interim reinstatement.

Overall Justice

[58] I now stand back and consider the overall justice of the case.

[59] I have found an arguable case for unjustified dismissal although not a strong one. I have not found a strong case for permanent reinstatement. I have found the balance of convenience favours the Club.

[60] I am satisfied that the overall justice in this case requires the application for interim reinstatement be declined.

Further steps

[61] I shall ask a support officer to arrange a telephone conference with the Authority with Mr Anderson and Ms Harris so that a firm date can be agreed to for the substantive investigation and timetabling orders made for further evidence.

Costs

[62] I reserve the issues of costs and these can be dealt with following investigation and final determination of the matter.

Helen Doyle
Member of the Employment Relations Authority