

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2025] NZERA 524  
3380583

BETWEEN ANTHONY JOHN LOCKINGTON  
Applicant

AND HEALTH NEW ZEALAND  
LIMITED  
Respondent

Member of Authority: Peter van Keulen

Representatives: Gerard Dewar, counsel for the applicant  
Hamish Kynaston and Sianatu Lotoaso, counsel for the  
Respondent

Investigation Meeting: 22 August 2025

Submissions Received: 20 and 22 August 2025 from the Applicant  
20 and 22 August 2025 from the Respondent

Date of Determination: 26 August 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Anthony Lockington was employed by Health New Zealand Limited (Health NZ) as a Registered Nurse in Canterbury Specialist Mental Health Services, most recently holding the role of Service Manager.

[2] In May 2024 an Allied Health Consultant who had worked with Mr Lockington since early 2023, made a formal complaint about Mr Lockington's behaviour at work.

[3] Health NZ undertook an investigation of this formal complaint, engaging a specialist

employment lawyer to complete the investigation. As a result of the final report produced by this lawyer Health NZ commenced a disciplinary process with Mr Lockington in March 2025.

[4] At the completion of its disciplinary process Health NZ concluded that Mr Lockington's behaviour in respect of some of the matters complained of and a new matter that came to light during the disciplinary process amounted to serious misconduct. Based on the findings of serious misconduct and because it had lost trust and confidence in Mr Lockington to exercise sound judgment and not repeat the same behaviour, Health NZ summarily dismissed Mr Lockington on 28 July 2025.

[5] Mr Lockington claims that his dismissal was unjustified:

(a) Mr Lockington says the process undertaken by Health NZ in coming to the decision to dismiss him was not justified; he points to the delay in bringing the complaint to his attention, the delay by the independent investigator and then the delay by Health NZ in its disciplinary process and Mr Lockington says Health NZ predetermined the outcome and he had no real opportunity to change the outcome through the process.

(b) Mr Lockington says the decision to dismiss him was not substantively justified; he points to findings that he says are flawed, he says Health NZ relied on historical matters that had been resolved without any disciplinary consequences for him, and he says Health NZ did not give him enough credit for his 37 years of employment and service to Health NZ (and Canterbury District Health Board).

[6] Mr Lockington lodged a statement of problem in the Authority before he had been dismissed. Given his subsequent dismissal, the employment relationship problem now to be investigated involves personal grievances for unjustified dismissal and unjustified action causing disadvantage to his employment.

[7] Mr Lockington seeks interim reinstatement pending the investigation and determination of his substantive problem.

[8] Health NZ opposes Mr Lockington's claims, including his application for interim

reinstatement.

[9] It is Mr Lockington's application for interim reinstatement that I have investigated, and this determination resolves.

### **The Authority's investigation**

[10] Both parties lodged affidavit evidence in support of their stated positions on Mr Lockington's application for interim reinstatement.

[11] Counsel for each party then lodged written submissions on 20 August 2025 and made oral submissions at the investigation meeting on 22 August 2025.

[12] As permitted by s174E of the Employment Relations Act 2000 (the Act) my determination has not recorded all the evidence and submissions received. I have stated relevant findings of fact, insofar as I have been able to establish them based on the untested affidavit evidence. I have also stated the relevant principles of law. Based on this I have reached a conclusion on whether the interim order sought should be granted or declined.

### **The law relating to interim injunction applications**

[13] The issues to be determined at this interim stage are: <sup>1</sup>

- (a) Is there a serious question to be tried in respect of Mr Lockington's claim and the relief sought by him?
- (b) Where does the balance of convenience lie pending investigation and determination of Mr Lockington's substantive claims?
- (c) Where does the overall justice of this case lie from now until determination of the substantive claims?

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<sup>1</sup> *Humphrey v Canterbury District Health Board* [2021] NZEmpC 59; and *Western Bay of Plenty District Council v Jarron McInnes* [2016] NZEmpC 36.

### **A serious question to be tried**

[14] The threshold for a serious question is that the claim is not frivolous or vexatious. In deciding if Mr Lockington's claim is not frivolous or vexatious I must make a judicial assessment of the affidavit evidence and the submissions advanced.<sup>2</sup>

[15] This assessment must be applied to both Mr Lockington's unjustified dismissal grievance and the relief sought; I must assess whether there is a serious question to be tried that:

(a) Mr Lockington was unjustifiably dismissed.

(b) Mr Lockington should be permanently reinstated.

[16] In its submissions Health NZ concedes that there is a serious question to be tried in respect of both aspects. Health NZ's position is that both aspects are only weakly arguable.

[17] In contrast Mr Lockington says he has strong cases on both aspects.

[18] Notwithstanding Health NZ's concession I need to be satisfied there is a serious question to be tried on both aspects and I need to assess the relative strengths of each, based on the untested affidavit evidence, as this is one of the factors that informs my assessment of the balance of convenience.

#### *Issues for unjustifiable dismissal*

[19] Mr Lockington has been dismissed so for the unjustified dismissal claim the onus shifts to Health NZ to establish that Mr Lockington's dismissal was justified.

[20] The test for justification is set out in s 103A of the Act; the test being whether the actions of the employer were what a fair and reasonable employer could have done in all the circumstances.

[21] Justification is assessed in two parts. First, whether the employer carried out a fair process in coming to the decision to dismiss and second, whether the decision to dismiss was

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<sup>2</sup> *NZ Tax Refunds v Brooks Homes Limited* [2013] NZCA 90.

substantively justified.

[22] What this means in terms of assessing if there is a serious question to be tried for Mr Lockington's claim is that I need to be satisfied that there is a chance that Health NZ will be not be able to establish that the actions it took and the decision it made regarding Mr Lockington's dismissal were ones that a fair and reasonable employer could have undertaken.

#### *Issues for reinstatement*

[23] Mr Lockington seeks reinstatement. Pursuant to s 125 of the Act, if I determine that Mr Lockington has a personal grievance then I must order reinstatement if it is practicable and reasonable to do so.

[24] To establish that there is a serious question to be tried in respect of the claim for reinstatement, I need to be satisfied that there is an argument, one that is not frivolous or vexatious, that permanent reinstatement of Mr Lockington is practicable and reasonable.

[25] The test for practicable and reasonable has been discussed and analysed by the Court of Appeal.<sup>3</sup> Practicable means assessing whether reinstatement can be achieved successfully, noting that this it is not as simple as assessing if it can happen. Reasonable is an assessment of what is fair and right in terms of the parties' cases and an assessment of the effects of an order on the parties and others, i.e., whether it should be ordered.

#### *What happened?*

[26] From early 2023 an Allied Health Consultant, TGU<sup>4</sup> began working in the North West Team that was part of the Specialist Mental Health Service located at Hillmorton Hospital in Christchurch. At this time Mr Lockington was a Service Manager. Both Mr Lockington and TGU were members of the North West Service Leadership Team and then at a later time the Adult Service Leadership team.

[27] In the course of working with Mr Lockington TGU had concerns about his behaviour

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<sup>3</sup> *New Zealand Educational Institute v Board of Trustees of Auckland Normal Intermediate School (NZEI)* [1994] 2 ERNZ 414 (CA); and *Lewis v Howick College Board of Trustees* [2010] NZCA 320.

<sup>4</sup> I have decided to anonymise the names of Mr Lockton's colleagues who have made complaints about his conduct at work – any references to complainants will be by a three letter acronym.

at work including specific actions directed at TGU. I understand from the affidavit evidence that early in 2023 TGU had raised concerns directly with Mr Lockington on some occasions but received unsatisfactory responses – on one occasion Mr Lockington is alleged to have simply stated that his behaviour was just who he was.

[28] Then later in time TGU discussed their concerns with their line manager and they took some informal steps to address TGU's concerns with limited results. TGU then spoke to Victoria Dent, the General Manager Specialist Mental Health Service. By this time TGU had decided they would make a formal complaint and asked Ms Dent not to take any steps until they had done so; this meant there was little Ms Dent could do until receiving the formal notification of TGU's concerns.

[29] On 10 May 2024 Ms Dent received TGU's formal complaint. The complaint contained allegations about Mr Lockington's behaviour directed at TGU, Mr Lockington's behaviour directed at other colleagues and more generalised behaviour.

[30] Ms Dent took some time to work thorough TGU's complaint to determine what Health NZ needed to do in response and Ms Dent worked with TGU to ensure TGU felt safe and was able to participate in any steps taken in connection with the complaint.

[31] Health NZ decided TGU's complaint was a serious matter that needed to be investigated by an independent employment specialist and that Mr Lockington needed to be advised of the complaint and the pending investigation process.

[32] So, Ms Dent informed Mr Lockington personally of TGU's complaint on 19 August 2024, providing him with a copy of TGU's complaint and advising him of a proposal to suspend him on pay pending the independent investigation of the complaint. Health NZ says the issue of suspension was resolved by agreement and Mr Lockington was placed on paid special leave for the duration of the investigation.

[33] Health NZ instructed Sarah Townsend and a specialist employment lawyer to undertake the independent investigation. Ms Townsend's investigation commenced on 16 September 2024 and a final investigation report was produced on 21 February 2025.

[34] After reviewing the investigation report Health NZ decided to commence a

disciplinary process with Mr Lockington. On 5 March 2025 Mr Lockington was advised of this in a letter that outlined Health NZ's concerns and invited him to a meeting to discuss those concerns.

[35] The disciplinary meeting was held on 28 March 2025. A preliminary decision to dismiss Mr Lockington for serious misconduct was provided on 10 April 2025. Ultimately a final decision was put off on two occasions as further matters arose before a final decision was made, that Health NZ considered were significant and required responses from Mr Lockington.

[36] In the end Health NZ concluded that Mr Lockington: (i) had excluded, undermined and humiliated TGU over a period of time causing them psychological harm; (ii) had failed to declare a conflict of interest during a recruitment process; (iii) had been rude and aggressive to another colleague; (iv) had engaged in unprofessional and offensive behaviour through various comments about colleagues and aspects of Health NZ work; and (v) had breached confidentiality in connection with the disciplinary process. Health NZ decided that this behaviour amounted to serious misconduct.

[37] Health NZ then decided that because Mr Lockington had committed acts of serious misconduct and because it had lost trust and confidence in him to exercise sound judgment and not repeat the same behaviour, summary dismissal was the appropriate sanction.

[38] Health NZ summarily dismissed Mr Lockington on 28 July 2025.

#### *Analysis for unjustifiable dismissal*

[39] Having reviewed the evidence and the submissions made, I conclude there is a serious question to be tried in respect of unjustifiable dismissal. It is possible that Health NZ will not be able to establish that the actions it took and the decision it made regarding Mr Lockington's dismissal were ones that a fair and reasonable employer could have undertaken. That possibility is relatively low, but I accept it is, at least, more than frivolous or vexatious.

[40] I accept that there are aspects of the process relating to potential delay and Health NZ's consideration of Mr Lockington's responses that mean Health NZ may not be able to show that its process, in totality, was one that a fair and reasonable employer could have

carried out.

[41] That said my analysis of the evidence, currently lodged and untested, on the two potentially problematic areas is:

- (a) The investigation and then disciplinary process covered a complex factual and legal matrix in terms of the matters under assessment. That it took time to unravel and establish what had occurred is unsurprising. That there was then time taken to establish the conclusion to be drawn is equally unsurprising given the development of matters in the disciplinary process. I am not convinced that arguments over fault in the process relating to time are strong.
- (b) Health NZ took considerable time over the allegations and conclusions it put to Mr Lockington especially in terms of ensuring he had an opportunity to respond – this is particularly so as new matters developed in the process. In some ways the time taken is a product of ensuring sufficient time was given to Mr Lockington to answer allegations and preliminary decisions as well as Health NZ taking its time to consider the responses. Again, I am not convinced that arguments over predetermination and Health NZ not considering Mr Lockington's responses are strong.

[42] Whether Health NZ's substantive decisions of Mr Lockington's behaviour amounting to serious misconduct and that summary dismissal was the appropriate sanction is arguable. The key points, based on my assessment to date, are:

- (a) The validity of the conclusions drawn about what Mr Lockington did i.e. the parts of TGU's complaints that were found to have occurred, e.g. Mr Lockington continues to assert that the circumstances of the alleged breach of the conflict policy are such that it should not be considered a breach or if it is, it is so minor that no sanction is appropriate.
- (b) Health NZ appearing to rely on historical incidents that were resolved between Health NZ and Mr Lockington without any disciplinary process or sanctions.
- (c) Health NZ using the allegations of breach of confidentiality in the disciplinary

process to bolster its position, particularly where Mr Lockington asserts there was no breach in the circumstances.

[43] I do not find these arguments to be compelling. That Health NZ may not be able to show that its decisions were ones that a fair and reasonable employer could have come to is arguable and slightly stronger than the weakly arguable position on the process.

*Analysis for reinstatement*

[44] Mr Lockington wants to be reinstated to his role.

[45] The questions of whether reinstatement is practicable and reasonable are informed by the nature of Mr Lockington's behaviour, the conclusions drawn by Health NZ about that behaviour and the impact of reinstatement on Health NZ and other employees.

[46] The concern about reinstatement for Health NZ is not just the conclusions it has made about how Mr Lockington behaved but the concern that he cannot be trusted to change his behaviour. I note here that Health NZ's arguments in connection with its concerns over reinstatement are primarily directed at the balance of convenience as it concedes there is a serious question to be tried in respect of reinstatement, albeit a weakly arguable case.

[47] It is important to record that there is no dispute that Mr Lockington is an extremely able and experienced Registered Nurse. And that there is an enormous amount of work he has undertaken over the many years successfully and without issue – he has been recognised as achieving results in the Specialist Mental Health Service and from one perspective is a valued and well liked employed.

[48] However, the contrasting position is that with all this experience Mr Lockington knows what is expected of behaviour in the workplace, but he lacks the objectivity and self-awareness to meet those standards. From Health NZ's perspective on occasion, Mr Lockington acts as he wants to and then denies any wrongdoing or excuses his behaviour, asserting the consequences are either not bad for those involved or that he had no idea his behaviour would have the effect it did.

[49] And Health NZ says that despite various interventions where Mr Lockington has been

told to change his behaviour and where he has been given opportunities for training to assist this change, his poor behaviour continues.

[50] So, for these reasons whether reinstatement is practicable, i.e., whether it can be achieved successfully, is only weakly arguable given Health NZ's concern that Mr Lockington's poor behaviour will continue.

[51] And, in the same vein there are colleagues of Mr Lockington who say, in affidavit evidence that they cannot, and do not want to, work with him. On this basis Health NZ say whether reinstatement is reasonable, i.e., whether I should order it, is also only weakly arguable given Health NZ's concerns about the impact of reinstatement on other employees,

[52] In response to this Mr Lockington's counsel says two main things:

(a) Mr Lockington's role is vacant, and his work is waiting to be done as he has not been replaced so he can slot back into his role – so reinstatement can be achieved.

(b) It is clear Mr Lockington is contrite and this whole process has had an enormous impact on him, he knows on his return to work his behaviour must change and it will – so reinstatement should be ordered.

[53] The first submission is of no real issue for me and not a compelling factor in my assessment of whether I should reinstate Mr Lockington or not.

[54] The second submission is a compelling submission but there is no evidence from Mr Lockington to support this. In the four affidavits Mr Lockington has lodged in support of his application for interim reinstatement he focuses on the complaints indicating quite clearly that he disputes many of the findings of Health NZ. So, for example, Mr Lockington takes issue with TGU and the reasonableness of their complaints – suggesting they took a strong dislike to him from when they first started. And, as another example, Mr Lockington diminishes the interaction where he was said to have been rude and aggressive to another colleague.

[55] Mr Lockington also dismisses or diminishes other employees' concerns, and he says he can return to work without interacting with them, undertaking not to have contact with two

of the complainants, or that he will not let the evidence impact how he would deal with them.

[56] In contrast there is no evidence from Mr Lockington that he understands at least that Health NZ has concluded that his behaviour at work has fallen below an acceptable standard and there is no acknowledgement that he may need to change some of his behaviour, and that he can do this.

[57] So, contrary to counsel's submission Mr Lockington's evidence is, in general terms: (i) that he has not done anything wrong or at least if he has it is merely misconduct and of no concern suggesting the complainants may be unreasonable in their complaints and their view of him; (ii) he has an otherwise exemplary record with Health NZ during which he has been a leader in his field; and (iii) there is no acknowledgement that he needs to modify any of his behaviour and he is not committed to doing so.

[58] Counsel also referred me to *Humphrey v Canterbury District Health Board*<sup>5</sup> where reinstatement was held to be "clearly arguable" notwithstanding concerns about Dr Humphrey's behaviour and particularly the impact on other staff, including where there was affidavit evidence that staff would resign or at least consider their options if Dr Humphrey was reinstated.<sup>6</sup>

[59] There is a key difference in *Humphrey*, that was persuasive for the Court; the independent report produced after an investigation into Dr Humphrey's behaviour concluded that any breakdown in working relationships was not irremediable and that professional intervention was appropriate. And importantly Dr Humphrey had taken steps to acknowledge and address the issues raised with him and he had expressed a willingness to engage in a process to rebuild workplace relationships.

[60] Weighing all of this up, I accept there is a serious question to be tried in respect of reinstatement of Mr Lockington to his role. At this interim stage it is not particularly compelling given Health NZ's concerns about Mr Lockington's behaviour and the potential impact on others, the loss of trust and confidence and Mr Lockington's stated position in respect of the wrongdoing Health NZ has decided occurred. But as with *Humphrey* these

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<sup>5</sup> *Humphrey v Canterbury District Health Board* [2021] NZEmpC 59.

<sup>6</sup> At [35].

concerns are not sufficient to mean reinstatement is not practical and reasonable. However, the differences in Mr Lockington's circumstances, compared to Dr Humphrey's means from my perspective the case for reinstatement is relatively weak.

*Conclusion on the question of serious question to be tried*

[61] Overall, I conclude there are serious questions to be tried in respect of Mr Lockington's unjustifiable dismissal claim and for permanent reinstatement; at this interim stage I find these to be weak cases.

**The balance of convenience**

[62] The balance of convenience is about weighing relevant competing factors, as they apply in this employment relationship problem, to ascertain if they weigh in favour of exercising my discretion to grant interim reinstatement or not.<sup>7</sup>

[63] In this case my assessment of the balance of convenience has three relevant parts:

- (a) The strengths of each party's case.
- (b) The impact on each party of making the interim order or not i.e., assessing the merits of preserving the status quo against ordering interim reinstatement.
- (c) The adequacy of damages if the interim position is reversed in the determination on the substantive claims.

*Strength of the claims*

[64] Mr Lockington has weak claims on both unjustifiable dismissal and reinstatement; this weighs against granting interim reinstatement.

*Impact of granting the interim order or not*

[65] If I reinstate Mr Lockington on an interim basis, the consequences for Health NZ must be weighed from the perspective that it has concluded Mr Lockington committed acts of

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<sup>7</sup> *Team Group Realty Limited Trading as Harcourts Paremata v Martin Cardno & Ors* [2024] NZHC 553 at [66].

serious misconduct that was exclusionary, undermining, humiliating, offensive and unprofessional as well as an act that breached a workplace policy (conflicts) and an act that breached a specific instruction (to keep the disciplinary process confidential).

[66] In these circumstances if I reinstate Mr Lockington on an interim basis, Health NZ:

- (a) Will need to take steps to manage Mr Lockington's behaviour in circumstances where he denies wrongdoing and has made no commitment to change.
- (b) Will need to manage some of Mr Lockington's working relationships, which will be difficult.
- (c) Faces the prospect of employees choosing to leave their employment or harm being caused to employees by Mr Lockington's behaviour, as experienced by TGU, notwithstanding any steps taken to manage Mr Lockington.

[67] If I do not reinstate Mr Lockington on an interim basis, Mr Lockington:

- (a) Will likely be without work – I accept Mr Lockington's evidence that given his specialist experience as a registered nurse finding alternative employment will be difficult.
- (b) Will face financial hardship – I accept Mr Lockington's evidence that he and his wife have limited income if he is not working, and they continue to face the regular and ongoing costs of daily life.
- (c) Will lose the opportunity to reintegrate himself into the Health NZ workplace and reestablish his reputation, which is likely to have been damaged by his absence from work during the process and his dismissal.

[68] Whilst these are quite starkly different implications for each party if my interim order does not give them what they seek, this assessment is finely balanced. I am essentially weighing the right of an individual to work, where reinstatement is the primary remedy and where he has limited opportunities to work elsewhere, against the obligation of an employer to provide a safe workplace and its need to protect its integrity and operations.

[69] Overall, there are two important aspects from my perspective that weigh the balance in favour of Health NZ: time and the impact on other employees.

[70] From the Health NZ perspective I believe the potential impact of Mr Lockington causing harm to another employee if he is reinstated cannot be mitigated. An independent specialist employment lawyer investigated and found that Mr Lockington had behaved in a way that cause psychological harm to TGU. Mr Lockington does not acknowledge the extent of this behaviour and therefore could continue to behave this way with other employees. Health NZ has limited means to protect employees from this behaviour if Mr Lockington will not change and Mr Lockington must work with others, including employees who have expressed concern about his behaviour.

[71] From Mr Lockington's perspective the time between not granting interim reinstatement until a determination on his claims and permanent reinstatement is, at most, six months – an investigation meeting for the substantive employment relationship problem is set for December 2025. And this is in the context of Mr Lockington having been absent from work for a period of twelve months. A quick and speedy integration back to the workforce has already been lost and preserving the status quo for another six months is unlikely to make matters worse for Mr Lockington if he is subsequently reinstated permanently.

[72] As for the financial hardship I note that Mr Lockington was paid during his absence from work, and any loss of income is from dismissal. This could be a total of eight months if he is subsequently reinstated permanently. And I find that damages are an adequate remedy for any financial hardship and loss (see below).

[73] The impact of granting interim reinstatement on Health NZ is worse than the impact of not granting interim reinstatement on Mr Lockington; this weighs against granting interim reinstatement.

#### *Adequacy of damages*

[74] Whilst I accept that Mr Lockington faces financial hardship from being without work there is no evidence to show that he will face any immediate financial struggles that cannot be compensated by damages from Health NZ if I subsequently determine that he has been

unjustifiably dismissed. For example, if there was evidence to show Mr Lockington could not meet the cost of housing (mortgage or rent payments) such that there was a risk he would lose his home in the six-month period until a substantive decision on this employment relationship problem, then damages would likely be inadequate.

[75] I am satisfied that damages would be an adequate remedy for Mr Lockington for any loss he suffers if he is not reinstated on an interim basis but I subsequently determine that he should be permanently reinstated.

[76] Conversely if I reinstated Mr Lockington and there was some harm done to Health NZ's operations, employees or others, then damages would be less adequate. I am not convinced that damages would be inadequate, just that damages would be harder to quantify and might be less effective in compensating Health NZ.

[77] I am satisfied that damages could be an adequate remedy for Health NZ for any loss it suffers if I reinstate Mr Lockington on an interim basis and subsequently determine that he should not be permanently reinstated.

[78] Overall, this factor is balanced and not decisive either way in terms of the balance of convenience – noting here though that it has been relevant to assessing financial hardship as an element in my previous assessment.

### *Conclusion*

[79] Mr Lockington's weak claims for unjustified dismissal and permanent reinstatement and the possible effect of an order for interim reinstatement on Health NZ means the balance of convenience weighs against granting interim reinstatement.

### **The overall justice**

[80] The overall justice assessment is essentially a check on the position that has been reached after my analysis of the serious question to be tried and the balance of convenience.<sup>8</sup>

[81] Standing back and assessing the circumstances giving rise to the application for

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<sup>8</sup> *NZ Tax Refunds v Brooks Homes Limited* [2013] NZCA 90.

interim reinstatement and parties' respective positions on the application I am satisfied that the overall justice lies with not granting interim reinstatement.

### **Conclusion**

[82] I decline Mr Lockington's application for interim reinstatement.

### **Costs**

[83] Costs in relation to this application are reserved.

Peter van Keulen  
Member of the Employment Relations Authority