

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 801  
3415364

BETWEEN                      SOUNGSIL RO  
   Applicant

AND                              RITCHIES TRANSPORT  
   HOLDINGS LIMITED  
   Respondent

Member of Authority:      Helen van Druten

Representatives:            Seungmin Kang, counsel for the Applicant  
   Gavin McLeod as the Respondent

Oral Submissions            5 December 2025 from the Applicant  
received:                      5 December 2025 from Respondent

Determination:              10 December 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]      This determination resolves an application for interim reinstatement brought by Ms Soungsil (Olivia) Ro.<sup>1</sup>

[2]      Ritchies Transport Holdings Ltd (Ritchies) opposes Ms Ro's application for interim reinstatement.

[3]      Ms Ro was employed by Ritchies as a part-time bus driver from 15 March 2021. She claims that she was offered full time duties from 11 May 2022 and thereafter became a full-time employee. Ritchies disputes that Ms Ro was employed on a full-time basis.

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<sup>1</sup> Supported by an undertaking as to damages, and affidavit in support sworn on 15 October 2025.

[4] In her statement of problem, Ms Ro sought, *inter alia*, interim reinstatement as a full-time driver or reinstatement to a position no less advantageous. During the submissions hearing, counsel advised that Ms Ro reviewed her approach and was now seeking interim reinstatement on a part time basis for the 16 hours per week specified in her employment agreement.

[5] Ms Ro seeks reinstatement on the basis that the decision to terminate her employment was made without full and proper consultation and no alternatives to termination were considered. She further says that if interim reinstatement was granted there would be no disadvantage to any third party, she could maintain her knowledge of bus routes and the pressures of paying her financial expenses would be eased.

[6] From 25 August 2025 Ms Ro raised various medical and other health concerns including driving school buses, specific routes, driving at night and other duties. She also indicated personal limitations on days and times of work.

[7] After the pattern of limited availability and declining duties raised issues for Ritchies, it says that it took steps to understand her medical limitations and whether she could safely and reliably undertake the duties of her role.

[8] Ms Ro declined meetings in person with her employer to discuss her concerns, preferring to communicate only in writing due to a language barrier.

[9] Ritchies submits that it followed a fair and reasonable process and has acted as a fair and reasonable employer. However, when Ms Ro failed to engage in any meaningful way and did not provide the medical information required to ensure the safety of passengers, other road users and her own driving safety, the company terminated her employment. Consequently, Ritchies says its decision to dismiss Ms Ro is justifiable.

[10] It strongly opposes her interim reinstatement application, primarily on the basis that there are unresolved questions about her medical fitness and she maintains an unwillingness to practically engage with her employer.

## **The Authority's investigation**

[11] An investigation meeting to hear submissions was held on 5 December 2025. Following a case management conference on 17 October 2025, lodgement and service dates for affidavits, statement in reply and submissions were set down. Both parties provided oral submissions at the meeting.

[12] Written affidavits were filed on 18 October and 17 November 2025 by Ms Ro as applicant and on 28 November 2025 by Mr Gavin McLeod as Depot Manager for Ritchies. New evidence was provided by Ms Ro in her affidavit of 17 November 2025. Mr McLeod was late in filing his affidavit therefore I am satisfied he had an opportunity to view that new evidence.

[13] As permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination has not recorded everything received from the parties but has stated findings of fact and law, expressed conclusions and specified orders made as a result.

[14] The evidential matters in dispute between the parties will not be resolved by this determination because the evidence is untested and, in applying the relevant tests, the Authority is not required to resolve any disputes.

## **Issues**

[15] The issue for determination in this interim reinstatement matter are whether the Authority should reinstate Ms Ro to her former position, on an interim basis, pending the substantive investigation and determination of all of her claims.

[16] In determining this matter, the Authority will consider:

- a. Is there a serious question to be tried – that is, does Ms Ro have an arguable case for unjustified dismissal and for permanent reinstatement?
- b. Where does the balance of convenience lie?
- c. Where, standing back and considering the case, does the overall justice lie until a substantive matter is determined?<sup>2</sup>

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<sup>2</sup> *XYZ vs LHM* [2017] NZEmpC 40 at [5] and [6].

## **Background Information**

[17] Ms Ro was employed in March 2021 as a part time bus driver for 16 hours per week. The terms and conditions of her employment agreement specified that she was employed on a 24-hour roster basis.

### *Roster changes*

[18] In May 2022, Ms Ro raised concerns about her hours of work. In response to this on 11 May 2022 she was offered an 8029 route, which is an 8-hour roster period. In Ms Ro's opinion, this changed her employment agreement from part time to full time. Ritchies disputes this and says no change was agreed by the parties.

### *Medical and safety concerns raised*

[19] According to Ms Ro's application, on 25 August 2025, she raised medical concerns about driving at night and formally complained about unfair rosters including working at night.

### *Meetings and notice of termination*

[20] On 26 August 2025, Ms Ro was invited to a meeting to discuss her hours and medical concerns. Ms Ro declined and said that she preferred to communicate in writing, clarifying that she wanted a guarantee of 40 hours work per week ending at 4pm "due to her conditions".

[21] Between 26 August 2025 and 19 September 2025, email exchanges between the parties continued. Ritchies sought a medical assessment and attempted to obtain medical information to "assess your fitness for work, identify any necessary restrictions or determine your capacity to safely and reliably perform your rostered shifts and duties". It invited Ms Ro to a meeting on 18 September 2025.

[22] Ms Ro did not see the need to attend the meeting or to complete a medical assessment as a medical certificate from her doctor was already provided. She also says that she did not realise that the 18 September 2025 meeting could result in termination of her employment.

[23] Her employment was terminated on 19 September 2025.

## Relevant Law

[24] In *Humphrey v Canterbury District Health Board, Te Poari Ora Hauroa o Waitaha* the Employment Court observed that in determining whether to order reinstatement, regard must be had to the object of the Act. This includes the object of building productive employment relationships through the promotion of good faith.<sup>3</sup>

One of the central features of the Act is its recognition of the importance of the employment relationship, the obligations both parties have to be responsive and communicative, and that issues ought to be dealt with promptly and between the parties if possible – in other words, supporting constructive employment relationships and repairing them where feasible.

[25] It is with this in mind that this application for reinstatement is considered.

[26] Section 127 of the Act confers jurisdiction on the Authority to grant interim reinstatement. In considering this application for interim reinstatement the Authority is required to consider the following:

- a. does Ms Ro have an arguable case for unjustified dismissal and an arguable case for permanent reinstatement?
- b. Where does the balance of convenience lie? This requires a consideration of the relative detriment or injury that the parties will incur as a result of the interim injunction being granted (or declined).
- c. Where does the overall justice of the case lie until the substantive matter can be determined?

## Considerations and application

*Is there an arguable case for unjustified dismissal?*

[27] An arguable case means a case with some serious or arguable (but not necessarily certain) prospects of success.<sup>4</sup> Generally, the threshold to establish an arguable case is that the claim is not vexatious or frivolous. As the Court of Appeal made clear the threshold is relatively low.<sup>5</sup>

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<sup>3</sup> *Humphrey v Canterbury District Health Board, Te Poari Ora Hauroa o Waitaha*, [2021] NZEmpC 59 at [5].

<sup>4</sup> *X and Y Limited v New Zealand Stock Exchange* [1992] 1 ERNZ 863.

<sup>5</sup> *Brooks Homes Ltd v NZ Tax Refunds Ltd* [2013] NZSC 60 at [6].

[28] In an interim application, reliance is placed on untested affidavit evidence. This makes it difficult for the Authority to appraise the genuineness of assessments of reasonableness.

[29] After some discussion with the parties, I am satisfied that Ms Ro's claim is not frivolous or vexatious and therefore it meets the low threshold of an arguable case for her personal grievance for unjustified dismissal. There are questions to be answered including whether Ritchies followed a fair process and to what extent did Ms Ro's decision to i) only communicate in writing with her employer; and ii) not to provide medical information she said was relevant to her ability to fully undertake her duties, impact on Ritchies decision to terminate her employment?

[30] Additionally, Ms Ro's counsel submitted that there was no reason for Ritchies to dismiss her as they had no medical information on which to base their decision and no evidence to prove she was incapable of performing her duties. That is a matter for the substantive determination.

*Is there an arguable case for permanent reinstatement?*

[31] In determining whether there is an arguable case for permanent reinstatement the Authority must provide for reinstatement (when sought) as the primary remedy wherever practical and reasonable to do so.<sup>6</sup>

[32] Even though this is a low threshold, there is still a threshold to cross. Any decision on permanent reinstatement in Ms Ro's circumstances does not only affect Ms Ro if there is a safety issue.

[33] However, Ms Ro's evidence changed between her application to the Authority and submissions. Ms Ro first raised concerns with her employer that her current roster was causing her anxiety and she had medical reasons for being unable to drive past 4pm. In submissions, counsel advised that she did not have any medical impediment to driving and was able to safely work her part-time hours as rostered, including at night and school runs if required. It was further submitted that Ms Ro was willing to provide the medical information required by Ritchies to assure them she was safe to drive.

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<sup>6</sup> Employment Relations Act 2000, s 125(2).

[34] I share Ritchies concern that the employment relationship problem arose because Ms Ro had medical concerns about her ability to drive safely on certain routes and on certain rosters and sought restrictions on those grounds. If there were no medical concerns and no restrictions to hours or routes driven as Ms Ro asserted in submissions and her email communication to Ritchies, then the employment relationship problem could have been avoided.

[35] Ritchies submits that Ms Ro's refusal to communicate with her employer other than in writing limits its ability to assess her driving and engage with her in employment. It further submits that her refusal to communicate openly and work with her employer has broken the trust and confidence between the parties. Lastly, it has a statutory obligation to ensure the safety of passengers, employees including Ms Ro, and other road users and therefore is unable to reinstate Ms Ro unless it has medical clearance that satisfies Ritchies' safety obligations.

[36] Unless Ritchies can ensure it has met its statutory obligations regarding safety, permanent reinstatement into Ms Ro's existing role as a bus driver is not an operationally viable option. That safety requirement is acknowledged and there would likely be essential prerequisites placed on any permanent reinstatement if that was ordered. On that basis, an arguable case for permanent reinstatement is established.

*What is the balance of convenience?*

[37] I also considered submissions from each party on this matter.

[38] Ms Ro says that:

- a. She has no work at present and is fully available to resume immediately
- b. She is fully able to drive and has no medical conditions
- c. Her husband is working but their current mortgage repayments and living costs require two incomes. Bank statements were provided however no financial evidence was provided to suggest that attempts were made to mitigate the impact of Ms Ro's situation.

- d. The issue for Ritchies is its difficulty to accommodate her roster requirements rather than concerns about safety. It became aware of her concerns on 25 August 2025 yet she remained driving after that date.

[39] Ritchies says that:

- a. There would be an impact on other employees if Ms Ro was able to adjust the roster to her preferences (now she says there are no medical conditions that may impact her ability to undertake her full duties).
- b. Ritchies never agreed to any variation of her terms and conditions of employment, including the change from part time to full time, or any change to her rostered days and hours or removal of school runs. Ms Ro wants to put her own limitations on what was agreed in her employment agreement;
- c. Ritchies have unresolved concerns about her medical fitness to undertake her full duties;
- d. Ms Ro has expressed an ongoing unwillingness to engage face to face with her employer limiting Ritchies' ability to effectively engage, supervise and assess her work;
- e. There is a breakdown in trust and confidence as she has made serious allegations about the company and its staff; and
- f. Ritchies submits that the detriment suffered by Ms Ro if she is not reinstated (on an interim basis) can be rectified through an award of damages if required.

[40] Ritchies confirmed that there is no impact on Ms Ro's licence status (such as minimum driving hours each year) if she is not driving in the next 12 to 18 months.

[41] There was insufficient financial impact information before the Authority to support the order that Ms Ro seeks. Despite limited financial information being provided detailing mortgage repayments and expenses, it was unclear what steps Ms Ro took to mitigate the financial impact following her termination of employment.

[42] Aside from counsel's reference to alternative work sought, there was no evidence placed before the Authority on specific steps Ms Ro took to seek alternative work following her termination of employment.

[43] As required by s 125(2) of the Act, reinstatement must be practicable and reasonable. Ms Ro raised medical concerns that limited her duties then made the decision, as is her right, not to provide medical information to Ritchies to enable them to determine her ability to safely perform her duties and what restrictions (if any) were appropriate.

[44] At time of this application, Ms Ro's decision not to provide that medical information to support this application and lack of overall information to enable Ritchies to assure the safety of Ms Ro as a bus driver weighs significantly against interim reinstatement. It means that interim reinstatement is neither practicable nor reasonable at this time.

### **Overall justice**

[45] Lastly, I must step back and look at where overall justice lies.<sup>7</sup>

[46] Based on the information before the Authority, the overall justice of this matter does not weigh in favour of interim reinstatement.

[47] Good faith applies to both parties in the employment relationship. Ms Ro raised several medical concerns to her employer. These were presented as reasons why she could not work specific hours, routes and could not work after 4pm. Having heard submissions and read the medical certificate information, it is not clear why Ms Ro presented medical concerns to her employer requiring certain hours, days and routes yet in oral submissions now says that she has no medical limitations. In this interim reinstatement decision, it would be remiss not to consider what motivated these actions.

[48] The untested evidence before the Authority indicates that if Ms Ro had engaged productively with Ritchies then the outcome may have changed. Ms Ro made that decision, as is her right, however it also had unwanted consequences. There was no

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<sup>7</sup> *NZ Tax Refunds Limited v Brooks Homes Limited* [2013] NZCA 90.

indication in submissions or evidence that Ms Ro was looking to engage directly moving forward.

**Outcome**

[49] Ms Ro's application for interim reinstatement is declined.

**Costs**

[50] Costs are reserved.

Helen van Druten  
Member of the Employment Relations Authority