

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2025] NZEmpC 258
EMPC 387/2025**

IN THE MATTER OF a challenge to a determination of the
 Employment Relations Authority

AND IN THE MATTER OF an application for interim reinstatement

BETWEEN JEANETTE BERENDINA JOAN DU FALL
 KNOWN AS JANET DU FALL
 Plaintiff

AND THE MOKOIA INTERMEDIATE SCHOOL
 BOARD
 Defendant

Hearing: 7 November 2025
 (Heard at Auckland)

Appearances: D Fleming, counsel for plaintiff
 J Williams and B A Miller, counsel for defendant

Judgment: 2 December 2025

**INTERLOCUTORY JUDGMENT OF JUDGE HELEN DOYLE
(Application for interim reinstatement)**

[1] Mokoia Intermediate School is in Rotorua. A limited statutory manager (LSM) was appointed for the Mokoia Intermediate School Board with the appointment confirmed by way of a Gazette notice dated 17 October 2025. The LSM has the functions, powers and duties of the board as an employer, to manage financial operations, communications and those relating to policy and procedure. This means that many of the functions of the board now are with the LSM.

[2] The school will be referred to interchangeably in this judgment as either the school or the board. Ms Du Fall was employed at the school from 1999 as the school's executive officer. From 2014 she performed her executive officer role as a member of the school's executive management group with oversight of the finance and property functions. Ms Du Fall's role within the group reported to the principal.

[3] On 30 April 2025 Ms Du Fall was dismissed from her employment on the grounds of incompatibility. Payment was made in lieu of notice.

[4] Ms Du Fall raised a personal grievance for unjustified dismissal and filed proceedings in the Employment Relations Authority (the Authority) seeking both permanent and interim reinstatement.

[5] In a determination dated 25 July 2025 the Authority declined the application for interim reinstatement.¹ Ms Du Fall filed a challenge to that determination seeking urgency. Urgency was granted. The substantive unjustified dismissal grievance claim was subsequently removed by the Authority to the Court.²

[6] The issue for the Court is whether Ms Du Fall should be reinstated on an interim basis until the Court can hear her claim for unjustified dismissal.

[7] The Court is required, in deciding this issue, to have regard to the law relating to interim injunctions and the object of the Employment Relations Act 2000 (the Act).³ The object of the Act is to build productive employment relationships through the promotion of good faith in all aspects of the employment environment and employment relationships. Good faith is promoted by recognising that employment relationships are built on a legislative requirement for good faith behaviour. It is also achieved by acknowledging and addressing the inherent inequality of power in employment relationships.

¹ *Du Fall v Mokoia Intermediate School Board* [2025] NZERA 450.

² *Du Fall v The Mokoia Intermediate School Board* [2025] NZERA 578.

³ Employment Relations Act 2000, ss 3 and 127(4) and (7).

Legal Principles

[8] The approach to interim injunctions is well-established.⁴

[9] Ms Du Fall will need to establish that there is an arguable case in relation to her claim that she was unjustifiably dismissed and an arguable case that she would be permanently reinstated.

[10] Reinstatement is the primary remedy under s 125 of the Act. Section 125(2) of the Act applies if the remedies sought by an employee include reinstatement and it is determined that the employee has a personal grievance. In those circumstances the Court must provide for reinstatement wherever practicable and reasonable, irrespective of whether any other remedy is provided.

[11] The separate requirements of practicability and reasonableness have been considered by the Employment Court. For reinstatement to be practicable, it must have the potential for the re-imposition of the employment relationship to be done or carried out successfully. Reasonableness requires consideration of the prospective effects of an order on the individual employee and employer and other affected employees and sometimes third parties who may be affected.⁵

[12] The Court needs to consider where the balance of convenience lies and the impact on the parties of the granting of, and the refusal to grant, an interim order. The impact on third parties will also be relevant. Finally, the overall interests of justice are considered, standing back from the detail required by the earlier steps.

[13] The power to make an order for interim reinstatement is a discretionary one, but the assessment of whether there is a serious issue to be tried is not and requires judicial evaluation.

⁴ *NZ Tax Refunds Ltd v Brooks Homes Ltd* [2013] NZCA 90, (2013) TCLR 531 at [12]-[13]; *Brooks Homes Ltd v NZ Tax Refunds Ltd* [2013] NZSC 60.

⁵ *Hong v Auckland Transport* [2019] NZEmpC 54, (2019) 16 NZELR 555 at [66]-[67].

Background

[14] Affidavits were filed in support of, and in opposition to, the application for interim reinstatement. The affidavit evidence is untested. There is no requirement for the Court at this stage to resolve any disputes or conflicts that are apparent from the affidavit evidence.

[15] The background is set out from the untested affidavit evidence and the documents appended to the affidavit evidence. A necessarily cautious approach is taken to setting out the background given that the substantive claim of unjustified dismissal is before the Court.

[16] The employment relationship between Ms Du Fall and the school appeared to be without any significant issues from 1999 until in or about late 2022 or early 2023.

[17] In September 2022 issues were raised by Ms Du Fall with the principal about her pay and salary progression. Some issues were able to be resolved.

[18] By 2023 the interactions between the parties had become more entrenched.

[19] Two mediations were attended by the parties in 2023, but matters remained unresolved. Ms Du Fall lodged proceedings with the Authority in late 2023. A four-day investigation meeting was held on 10–13 September 2024 with one further day of investigation on 26 November 2024.

[20] There is no dispute that the litigation was contentious and difficult for those involved. This was compounded by the fact that the employment relationship remained on foot whilst it was ongoing. Ms Du Fall continued to raise further grievances and employment relationship problems. The difficulties in the relationship escalated from October 2024 after the first four days of the Authority investigation meeting and before the second and final day of investigation in November 2024.

[21] Further mediation was proposed by the board in early November 2024 about the grievances.

[22] On 21 November 2024 concerns were set out by the board's solicitors, in an email to Ms Du Fall, that the relationship difficulties between Ms Du Fall and the school were continuing to escalate and the relationship may become untenable. Mediation was proposed again by the board about the working relationship.

[23] Further communications took place in December 2024 and January 2025 between the parties. Mediation did not occur. A meeting was proposed with Ms Du Fall.

[24] In an email dated 15 February 2025 Ms Du Fall wrote to the board's solicitors setting out, amongst other matters, grievances previously raised and multiple new personal grievances.

[25] On 18 February 2025 the presiding member of the board (presiding member) wrote to Ms Du Fall in anticipation of a meeting on 25 February 2025. The letter set out difficulties in the relationship between Ms Du Fall and the board that had continued to develop from 16 December 2024. A facilitation meeting with an independent facilitator had been offered by the school, but that was not agreed to by Ms Du Fall at that time.

[26] An outline of the board's concerns was set out in the 18 February letter, including those in relation to the working relationship with the principal and the board. There was a concern about the continuous raising of further claims and threats of litigation. The concern was not the substance of the claims but that Ms Du Fall appeared to become more entrenched in her view that the board and the principal had not acted in good faith and that the only way to resolve matters was by litigation. The letter provided that if a pathway forward could not be found at the meeting then other options would need to be considered, which may be mediation or facilitation. Further, it said that if there was no pathway forward, then the board may be forced to consider ending the relationship due to incompatibility.

[27] On 25 February 2025 a meeting took place between Ms Du Fall, her husband, some members of the board, including the presiding member, and Mr Williams,

counsel for the board. The parties had different views about the success or otherwise of that meeting.

[28] On 3 March 2025, following the meeting, Ms Du Fall sent a letter appended to her original affidavit to the board's solicitors. In the letter she expressed some optimism about working together constructively on the board's concerns. Ms Du Fall refers to some suggestions made at the meeting to address the concerns and reach a resolution.

[29] On 11 March 2025 the presiding member wrote to Ms Du Fall and recorded that no real progress was able to be made during the meeting on 25 February 2025. A moratorium suggested by Ms Du Fall in her 3 March 2025 letter on raising concerns or storing up grievances with consent by the board to late raising of them was not seen as a sustainable solution. It was set out in the letter that Ms Du Fall did not appear to have any level of insight into the impact raising numerous claims had on the relationship between her, the principal and the board.

[30] Ms Du Fall's willingness to attend a mediation rather than a facilitation was confirmed in the 11 March 2025 letter. A private mediation was referred to, and dates proposed were in late March and 1–2 April 2025. There was reference to the urgency of the situation from the board's perspective and the need to attend mediation urgently to preserve the employment relationship.

[31] Ms Du Fall was not agreeable to a private mediation but expressed preference for a statutory mediation as set out in her employment agreement. On or about 16 March 2025 she contacted the Ministry of Business Innovation and Employment (MBIE) about a date for mediation. A date of 7 May 2025 was offered. The board considered that an earlier date was required.

[32] On 26 March 2025 Ms Du Fall said that she was not going to perform her role, relying on s 83 of the Health and Safety at Work Act 2015. The board was concerned that no new health and safety issues were raised additionally to those previously raised or investigated by the board and by the Authority at its earlier investigation meeting. Ms Du Fall returned to work within a few days.

[33] On 3 April 2025 the principal sent a letter to the board that their relationship with Ms Du Fall was fundamentally broken. Whilst it was not stated in the letter, the principal had indicated directly to Ms Du Fall that they would resign, and the board subsequently became aware of this.

[34] On 4 April 2025 the board wrote to Ms Du Fall stating that it had formed a preliminary view that “an irreconcilable incompatibility now exists which you are primarily responsible for.” The principal’s letter was attached. The letter provided that the board was not prepared to wait for a mediation date in a month’s time and there was no confidence that the mediation would take place if set down for 7 May 2025.

[35] Feedback was required to be provided by Ms Du Fall by 11 April 2025. Ms Du Fall responded by way of emails on 7 April 2025 and was then certified unfit to work for a period of 14 days from 8 April 2025.

[36] On 16 April 2025 a letter was sent from the board’s solicitors to Ms Du Fall. The letter responded to Ms Du Fall’s emails of 7 April 2025. A new complaint from the deputy principal dated 7 April 2025 was attached and some additional concerns from members of the health and safety committee were set out. Ms Du Fall was asked to provide any further feedback by 25 April 2025.

[37] Ms Du Fall returned to work on 23 April, but she was then certified unfit for work for a period of 28 days from 24 April 2025.

[38] Ms Du Fall provided a response dated 24 April 2025 but stated amongst other matters that she had had insufficient time.

[39] On 30 April 2025 the board wrote to Ms Du Fall notifying her that:

- (a) the board had met on 28 April 2025 and had decided to terminate her employment on the grounds of incompatibility; and
- (b) a payment would be made to her in lieu of working out her notice period.

[40] It was set out in the letter that the additional complaint from the deputy principal had not been fully investigated and no findings were made about it. It was taken into account, however, in the overall assessment of the employment relationship and the effect of Ms Du Fall's behaviour on other staff.

[41] On 13 May 2025 Ms Du Fall raised further grievances, including unjustified dismissal.

[42] On 27 May 2025 Ms Du Fall lodged proceedings in the Authority seeking remedies, including interim and permanent reinstatement.

Serious issue to be tried in respect of unjustified dismissal

[43] When the Court hears the substantive claim about the justification of Ms Du Fall's dismissal, it will need to objectively apply the justification test in s 103A of the Act. The test is whether the actions of the board, and how it acted, were what a fair and reasonable employer could have done in all the circumstances at the time of the dismissal.

[44] At this interim stage the focus is 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 or vexatious.

[45] The board acknowledges that there is likely a serious question to be tried in respect of the claim for unjustifiable dismissal given the threshold for establishing a serious question is a low one. It says that at best the claim is weakly arguable.

[46] Dismissals for incompatibility are relatively unusual. There needs to be the existence of irreconcilable incompatibility between the parties that is wholly or substantially attributed to the employee. The way the employee is dismissed needs to be procedurally fair.⁶

[47] Ms Du Fall acknowledges that there had been a significant level of conflict preceding her dismissal. She says she had worked successfully at the school with

⁶ *Walker v Procare Health Ltd* [2012] NZEmpC 90, [2012] ERNZ 303.

different principals and boards for about 20 years before the problems that led to her dismissal emerged. On that basis she does not consider there is good reason to believe that the parties could not work successfully again if effort was made.

[48] Ms Du Fall says that she asserted her rights about a dispute about pay and then difficulties arose in the employment relationship.

[49] The board refers to Ms Du Fall's affidavit evidence as evidence of what it says was the "corrosive and acrimonious state" of the employment relationship, including a statement by Ms Du Fall that the principal and the presiding member of the Board worked together to get support for her termination. Weight is placed on a solution from Ms Du Fall to await the election of a new school board as an indication that the relationship with the current board had broken down. Weight is also placed on Mr Fleming's submission that it is Ms Du Fall's view that her dismissal was an act of victimisation.

[50] The board refers to the extraordinary number of personal grievances raised, the indication from Ms Du Fall that there would likely be further litigation against her employer, the refusal to attend work on an unfounded basis, purportedly for health and safety breaches, and other difficulties between the parties.

[51] There is an arguable case on the untested affidavit evidence whether all steps that may have been able to resolve the conflict and relationship issues were taken before dismissal. Some uncertainty for the board likely arose from Ms Du Fall's initial agreement in feedback to attend mediation on 7 May, and subsequent feedback that referred to mediation after the Authority determination. Arguably, a fair and reasonable employer could have been expected to have clarified that matter even if it was considered Ms Du Fall had unreasonably refused earlier dates. There was a mediation date available one week after dismissal.

[52] The situation between the parties appeared to become more pressured between the claims being heard over the initial four days of investigation by the Authority in September and the final date of investigation in November 2024.

[53] The Authority issued a determination in respect of Ms Du Fall's pay and disadvantage claims on 1 July 2025. Ms Du Fall was partially successful. The determination, and a subsequent determination resolving the related issue of quantum of the amounts owing to Ms Du Fall, together with costs, are the subject of challenges before the Employment Court.⁷

[54] Arguably a fair and reasonable employer could have waited for a determination from the Authority in those circumstances. Whilst the determination has been challenged, justification as to what a fair and reasonable employer could have done in all the circumstances is assessed at the time of the dismissal. There was a view on the part of Ms Du Fall that the determination may have assisted in clarifying matters.

[55] There is an arguable case whether any difficulties that arose in the relationship over the period from early 2023 and escalated in late 2024, are attributed wholly or substantially to Ms Du Fall.

[56] There is an arguable case whether there was an irreconcilable breakdown in the relationship after all reasonable steps were attempted, whether the process adopted was fair, whether there was an adequate opportunity for responses because Ms Du Fall was unwell, whether the decision making was fair and free of bias and whether there was pre-determination.

[57] There is a serious question to be tried in relation to the unjustified dismissal. At this interim stage it impresses as more than a weakly arguable case.

Arguable case for permanent reinstatement

[58] The board says that it is possible that there is an arguable case for permanent reinstatement but that it is, at best, weakly arguable.

[59] It says that there is no potential at all for the employment relationship to be re-imposed successfully without further claims arising. The board says that relationships

⁷ *Du Fall v The Mokoia Intermediate School Board* [2025] NZERA 381; and *Du Fall v The Mokoia Intermediate School Board* [2025] NZERA 572.

with several former colleagues as well as the board, notably the presiding member, have been destroyed.

[60] Ms Du Fall is of the view that despite the problems over the last few years it is viable for her to return to her role. She contends that there are staff who would be happy to see her back at school.

Does the executive officer role still exist?

[61] The board says that no role for Ms Du Fall exists at the school because her tasks have either been reallocated to other staff members or outsourced.

[62] Ms Du Fall in her affidavit in reply to this evidence says that in all the years she was the executive officer at the school no issues were raised about whether the role was needed. There was some reference made in the affidavit evidence of the LSM to the effect that the size of the school did not usually require such a role. An affidavit was provided in support of Ms Du Fall's application for interim reinstatement from a person who performed an equivalent role to Ms Du Fall at another school in Rotorua. That school had a smaller role.

[63] One of the deputy principals, who is now an acting principal, says in their affidavit that several changes have been made to the school's financial administration since Ms Du Fall's dismissal.

[64] The board was aware from an early stage that Ms Du Fall was seeking reinstatement. The reallocation of the tasks and responsibilities to other staff internally and any outsourcing was done with this knowledge. An argument that there is no role for Ms Du Fall to be reinstated to is not strong.

Willingness to restore relationships?

[65] The school says that there is nothing in the affidavit evidence of Ms Du Fall to indicate any willingness to restore relationships with the presiding member, principal and deputy principals or others with whom she has a broken relationship. It says

further that most of the senior leadership team would resign. The senior leadership team consists of the principal and two deputy principals.

[66] The principal, in their affidavit, stated that the situation with dealing with complaints and allegations made against them by Ms Du Fall had been a “massive stress.” The principal’s affidavit evidence did not go so far as to attribute any unwellness that has resulted in long term sick leave to Ms Du Fall’s interaction with him. The board is, from the affidavit evidence, supportive of the principal and looks forward to their return from sick leave. The principal has indicated in their affidavit evidence that they would resign if Ms Du Fall was reinstated to her position.

[67] Before termination, Ms Du Fall referred to some possible steps to improve the relationship with the principal, including that they have weekly or daily meetings in person to discuss work issues to facilitate better and more appropriate communication.⁸ In a letter from the presiding member to Ms Du Fall dated 4 April 2025 it set out that Ms Du Fall had stated she believed the relationship with the principal was on a better footing and gave examples that she considered reflected a healing of the relationship.⁹ The presiding member wrote that this had not been reflected in the difficulties that had continued. They referred to the ceasing work incident for purported health and safety concerns.

[68] The deputy principal, who wrote the complaint letter dated 7 April 2025, stated in their affidavit that they had been at the school for over 16 years teaching and had known Ms Du Fall for all that time. They had a good relationship with Ms Du Fall. After appointment to the role of deputy principal, the relationship was initially satisfactory but then took a downward turn in June/July 2024. The concerns expressed by the deputy principal included that Ms Du Fall would take what was said and use it against the deputy principal. They did not believe that the complaints and allegations would ever end and would not feel safe if Ms Du Fall returns to work.

⁸ Letter to the board’s solicitors from Ms Du Fall dated 3 March 2025 annexed to Ms Du Fall’s original affidavit.

⁹ Letter from the presiding member to Ms Du Fall dated 4 April 2025 annexed to Ms Du Fall’s original affidavit.

[69] Ms Du Fall, in her affidavit evidence, states that she was unaware of any issues experienced by the deputy principal before February 2025 and that the deputy principal's complaint was not fully investigated before Ms Du Fall's employment was terminated.

[70] The other deputy principal did not make a complaint before Ms Du Fall was dismissed. They had been at the school since early 2025 and had only worked with Ms Du Fall for a short period. They say that they would resign if Ms Du Fall was reinstated. They refer to early interactions being positive but rely on wider views about the impact of the working relationship on the principal and the other deputy principal to form a view that Ms Du Fall was the source of the tension.

[71] No specific attempts to restore relationships with the members of the senior leadership team have been undertaken. Ms Du Fall acknowledged in her first affidavit in reply that some professional intervention or assistance may be required to manage the issues identified in the affidavit. Arguably the relationships may be able to be successfully restored.

The previous board members

[72] There were also concerns from other previous board members, including one who is currently a teacher. Arguably no significant engagement with these individuals going forward would be required.

Looking back to look forward

[73] Whether reinstatement is practicable involves balancing the interests of the parties and the justice of their cases with regard not only to the past but more particularly to the future.¹⁰

[74] Ms Du Fall has had a successful relationship with the school, previous boards and previous principals for more than 20 years before difficulties and challenging

¹⁰ *Lewis v Howick College Board of Trustees* [2010] NZCA 320, (2010) 7 NZELR 539 at [2], citing *New Zealand Educational Institute v Board of Trustees of Auckland Normal Intermediate School* [1994] 2 ERNZ 414 (CA) at 416.

behaviour occurred. A previous principal of the school, amongst others, provided an affidavit in support of Ms Du Fall with reference to positive interactions.

[75] In cases where dismissals for incompatibility have been justified, challenging behaviour has often been present from an earlier time in the relationship. In *Walker v ProCare Health Ltd*, the relationship had been challenging from a very early stage.¹¹ Likewise in *Mabry v West Auckland Living Skills Homes Trust Board (Inc)* the employment relationship difficulties that led to termination based on incompatibility were present from a very early stage of the relationship.¹² In *New Zealand Fire Service Commission v Reid* the employee had for several years before his dismissal been at the centre of a substantial and sustained level of conflict.¹³ This involved litigation in various courts and tribunals against the New Zealand Fire Service Commission that was largely unmeritorious.

[76] The lengthy period of Ms Du Fall's employment without difficulties arguably supports that in the future a successful employment relationship could be achieved.

Behaviour after dismissal

[77] Some weight is placed by the board on behaviours after dismissal. The police became involved in retrieving a laptop and other property belonging to the school from Ms Du Fall after the school's requests for it to be returned were unsuccessful. Ms Du Fall in her first affidavit in reply stated that discussions were taking place about how to preserve the confidentiality of her personal and legally privileged information that was on the laptop during the notice period. She did relinquish the property. The police did not consider a prosecution appropriate.

[78] There is a dispute in the evidence about whether any of the school's information has been wiped from the laptop. Ms Du Fall's evidence is that all information is cloud based and no information is missing. The school refers to Ms Du Fall's reference to the complaint made to the police being fraudulent and an abuse of resources and that she would make her own complaint.

¹¹ *Walker*, above n 6.

¹² *Mabry v West Auckland Living Skills Homes Trust Board (Inc)* (2002) 6 NZELC 96,573 (EmpC).

¹³ *Reid v New Zealand Fire Service Commission* [1998] 2 ERNZ 250 (EmpC).

[79] It was unfortunate that the police had to become involved to retrieve the school's property. The situation is not highly analogous to *Kavallaris v Inframax Construction Ltd* as submitted by Mr Williams.¹⁴ It was not at the same level of seriousness, when combined with other matters that were considered, which made reintegration difficult in *Kavallaris*.

[80] Another issue referred to following termination was that Ms Du Fall, her husband and a third person ran for nomination for election to the school board.

[81] The board says the true intentions of Ms Du Fall in standing for election was to advance legal claims against the school. Ms Du Fall does not accept that in her first affidavit in reply and says that she stood for election to the board because she cared deeply for the school and the financial management of the school. She states that her husband and the third party made the decision to stand for election themselves. The intention cannot be known with any degree of certainty. Ms Du Fall, her husband and the third party were not elected to the board.

[82] Another matter relied on by the school is private disclosed messages that the school says shows Ms Du Fall's true feelings towards people that she now wishes to restore a working relationship with. One of the messages is from Ms Du Fall to her daughter. The basis for them is explained in Ms Du Fall's affidavit evidence.

[83] These private exchanges need to be considered in circumstances where there had been a dismissal for irreconcilable incompatibility after a period of significant difficulty, conflict and hurt. They were sent at a time when Ms Du Fall was standing for election to the board.

[84] A communication was sent out to the school community by the board advising they had written to the Ministry of Education requesting the appointment of an LSM. The concern stated in the communication that gave rise to the request was that Ms Du Fall, her husband and a third party were standing for board positions as parent representatives. The communication went on to explain that Ms Du Fall's employment had been terminated in April 2025 following what the school considered was an

¹⁴ *Kavallaris v Inframax Construction Ltd* [2024] NZEmpC 212, [2024] ERNZ 1009 at [93].

irrevocable breakdown in the employment relationship between her and the board. There was reference to ongoing legal proceedings between Ms Du Fall and the board over a period of years since September 2023 and reference to Ms Du Fall currently pursuing Employment Court and Authority claims against the school.

[85] I do not conclude the private communications, or the more public communication from the board, strongly point away from the practicability or reasonableness of reinstatement given the realities of the situation and the process of reinstatement itself. Most reinstatements will involve a managed process designed to assist the re-establishment of the working relationship.

[86] As Chief Judge Inglis stated in *Vegepod NZ Ltd v Lowe* after observing that reinstatement of a dismissed employee is invariably a challenging process for all concerned:¹⁵

...Nonetheless, Parliament has expressly stated that reinstatement is the primary remedy and can be taken to have understood the difficulties generally associated with such a step.

Risk of reversion to the behaviour of continuing to make claims and raise concerns

[87] The school says that there is a risk of reversion to previous behaviours of raising claims and concerns in voluminous communications that have caused difficulties and impacted on relationships in the workplace.

[88] Mr Williams refers to the Employment Court judgment in *Edwards v Bay of Islands College*.¹⁶ Mr Edwards was not reinstated in part because there would be a real risk of reversion to at least some of the dysfunctionality.¹⁷

[89] Over a period of about two years, Ms Du Fall raised a considerable number of grievances, concerns and complaints. Whilst entitled to do so, the number of concerns and the manner in raising them whilst still in an employment relationship has impacted

¹⁵ *Vegepod NZ Ltd v Lowe* [2025] NZEmpC 76, (2025) 21 NZELR 561 at [72].

¹⁶ *Edwards v Bay of Islands College* [2015] NZEmpC 6, [2015] ERNZ 437.

¹⁷ At [288].

on those at the school. There is concern that normal interaction with Ms Du Fall will result in complaints and grievances being raised.

[90] The board says that there is no accountability or insight by Ms Du Fall about the difficulties caused. Arguably, Ms Du Fall has some insight into the difficulties at the school caused by the continued raising of complaints and concerns. That is demonstrated by her communications before dismissal about attempts to improve her relationship with the principal and requests for details of any concerns from the two deputy principals in the working relationship. There was also her suggestion about a moratorium on raising concerns and grievances.

[91] The fact that there is some insight and Ms Du Fall is now legally represented reduces the risk of reversion to the previous behaviour.

Performance

[92] The only concerns raised about Ms Du Fall's performance were that she was diverted from her tasks and work was left undone because of the Authority process and lengthy communications. Ms Du Fall does not accept that to be the case and says she was unwell and absent for a period before termination and that would have resulted in some work not being completed. Her performance otherwise has been well regarded.

[93] Considering all matters there is an arguable case that permanent reinstatement would be practicable and reasonable.

Balance of convenience

[94] The balance of convenience involves balancing the relevant detriment or injury to each party if an interim order was granted or refused.

[95] The school says that reinstatement on an interim basis until the substantive hearing would cause substantially greater prejudice to it than to Ms Du Fall. The school says that the dysfunction in the relationships will very likely return and present additional difficulties and claims, even at an interim stage. Further, the impacts for

Ms Du Fall are overstated and minor and can be compensated for by compensation and reimbursement of lost wages if Ms Du Fall was ultimately successful. It says that it is difficult to reconcile Ms Du Fall's position that the workplace is toxic with her desire to be reinstated.

[96] Ms Du Fall says that if she is not reinstated, she is likely to suffer losses that could not later be rectified by an award of compensation and states in her affidavit evidence that her role at the school is integral to her identity. She also says that her dismissal has been made public to the school community, and a return to the workplace would restore her standing.

[97] Ms Du Fall has not been in employment since her dismissal. Having worked at the school for a long time and at her age, she says that she is likely to struggle to continue her career at least at the same level. Her focus has been on reinstatement to her previous role rather than looking for other work.

[98] Most affidavits filed in the Employment Court in opposition to the application for interim reinstatement were sworn in July 2025 for the purposes of the Authority hearing. Some circumstances have changed since that time.

[99] The principal is on sick leave until 11 December 2025. Ms Du Fall says in her affidavit evidence that 11 December 2025 will be the last day of the school year.

[100] The LSM in their affidavit stated that they had not had time to meet with the board but in reviewing the relevant background had concluded it was evident that the relationship between the parties is broken down and beyond any prospect of repair. The LSM, although clearly very experienced, has only had an impression of the relationship from the perspective of the school. The LSM had not provided their affidavit evidence from the position of an independent expert.

[101] The relationship with the presiding member and the board has been impacted. Ms Du Fall indicated in her affidavit evidence that she would be professional in her duties with the board in taking minutes for about eight meetings a year. In her first

affidavit in reply, Ms Du Fall stated that she did not have day to day engagements with the board or the presiding member. She referred to the interactions being limited.

[102] The appointment of a LSM would reduce that immediate need for Ms Du Fall to work with the board and the presiding member.

[103] The school says that the impacts on Ms Du Fall are minor and can be compensated for by monetary remedies. Ms Du Fall seeks reinstatement for broader reasons than simply financial reasons. She refers in affidavit evidence to living in the Rotorua community since 1981 and her work has formed a substantial part of her life. There has been a public communication about her dismissal and monetary compensation is not likely to compensate adequately for the impact on her about that.

[104] The arguable case for unjustified dismissal is reasonably strong. There is an arguable case for permanent reinstatement and the potential for the re-imposition of the employment relationship to be carried out successfully. There is strong opposition to reinstatement but the previous lengthy period of employment, without significant difficulties, does support that permanent reinstatement is arguably reasonable.

[105] The chances of permanent reinstatement being successful would be enhanced if Ms Du Fall was reinstated on an interim basis rather than left out of the workplace for a lengthy period.

[106] The likelihood of successful reintegration fades with time and with it the strength of the case for permanent reinstatement. As Chief Judge Inglis states in *Humphrey v Canterbury District Health Board*:¹⁸

I accept that the longer Dr Humphrey is out of the workplace the more difficult it will be for him to integrate back into it. Six months has now elapsed. By the time the parties are ready for a substantive hearing (which the Court has indicated it will accommodate without delay) and a judgment has issued, several more months will likely have passed. Experience suggests that as the passage of time grows the likelihood of successful reintegration fades and with it, the strength of the case for permanent reinstatement.

¹⁸ *Humphrey v Canterbury District Health Board, Te Poari Hauora O Waitaha* [2021] NZEmpC 59, [2021] ERNZ 153 at [37].

This factor favours interim reinstatement.

[107] There are some colleagues who will not welcome Ms Du Fall's return. Some have said they will resign. There will need to be a change in the relationship from where it was before dismissal. Some professional assistance in restoring relationships will likely be required. Ms Du Fall is now represented. That can provide the school with some confidence going forward. The principal is away from the school at present until at least the new year.

[108] The evidence is that Ms Du Fall's position is largely autonomous, and she can work remotely if provided with the equipment to do so. Re-integration can be managed in a way that reduces an undue burden on the school, particularly in the busy period to Christmas.

[109] There is no evidence of previous performance concerns having been raised with Ms Du Fall. Some of the work that was found not to have been done is arguably explained by Ms Du Fall being on sick leave.

[110] Hearing dates in the Court are unlikely to be until after February 2026. That delay favours interim reinstatement.

[111] Whilst reinstatement to the payroll has been put forward as an option, the school has limited financial resources and it should not incur costs without a corresponding benefit of work being undertaken.

[112] Weighing all the factors set out above and the relative detriment or injury to each party in the granting of or refusing to grant an order for interim reinstatement the balance of convenience favours Ms Du Fall.

Overall justice

[113] The Court has stood back and assessed the position reached after consideration of the serious issues to be tried for unjustified dismissal and permanent reinstatement and the balance of convenience.

[114] There is a seriously arguable case that Ms Du Fall's dismissal was unjustified and a seriously arguable case for permanent reinstatement. The balance of convenience favours Ms Du Fall.

[115] Mr Williams submits that because permanent reinstatement would be neither practicable nor reasonable it would be inappropriate to grant interim reinstatement. He refers to the Court of Appeal in *Madar v P & O Services (NZ) Limited*.¹⁹ The Court of Appeal upheld the Employment Court's judgment in declining interim reinstatement when the balance of convenience favoured the employee. *Madar* was decided at a time when reinstatement orders were rarely made and reinstatement was not a primary remedy. The very low number of reinstatement orders made at that time by the Employment Tribunal was considered with other factors in assessing the likelihood of permanent reinstatement. *Madar* is distinguishable.

[116] Ms Du Fall will need to make some changes and consider carefully the impact of her actions on her working relationships to foster the more positive employment relationships she had enjoyed previously.

[117] The overall interests of justice favour making an interim order for reinstatement.

[118] The plaintiff's challenge to the Authority's determination is successful.

Orders made

[119] I order that Ms Du Fall is reinstated to her former position with the Mokoia Intermediate School Board in accordance with her undertaking and until further order of the Court.

[120] Ms Du Fall is to be reinstated to the payroll from Wednesday 3 December 2025. Arrangements are to be made for her to meet with the LSM, or the LSM's delegate, to enable work to be assigned to her as soon as possible after that date. Ms Du Fall will need to be provided with equipment so that she can undertake her work.

¹⁹ *Madar v P & O Services (NZ) Ltd* [1999] 2 ERNZ 174 (CA) at [16] and [24].

[121] Ms Du Fall is to work her normal hours of work in her employment agreement, which are 24 hours a week unless the school agrees to her working additional hours. She is to work remotely as much as possible up to Christmas. Ms Du Fall will need, no doubt, to attend at the school every now and again to perform her functions. The period Ms Du Fall spends at the school is to gradually increase in discussions with the LSM as and when it is appropriate to do so from the new year.

[122] Consideration is to be given by the LSM to some professional assistance in the new year to assist to restore relationships between Ms Du Fall and other affected employees, particularly those in the senior leadership team. This will provide a period for the senior leadership team to observe any changed focus for Ms Du Fall and allow time for the distrust and concern on their part to abate somewhat. Work to restore relationships will likely then be more successful. Ms Du Fall is to cooperate fully with any suggestions of professional assistance.

[123] Mr Fleming can discuss with Ms Du Fall whether the employee assistance programme may be of benefit to her in the meantime. If it is considered that would be useful, then that can be raised with the LSM.

Costs

[124] Costs are reserved. If agreement cannot be reached then memoranda can be filed and served by the plaintiff within 20 working days of the date of this judgment. Given the holiday period, the defendant has until 23 January 2026 to file and serve any response.

Helen Doyle
Judge

Judgment signed at 4.45 pm on 2 December 2025