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**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2026] NZERA 4
3422364

BETWEEN LDE
 Applicant

AND NIY
 Respondent

Member of Authority: Peter van Keulen

Representatives: James Hobcraft, advocate for the applicant
 Jane Taylor, counsel for the Respondent

Investigation Meeting: 18 December 2025

Submissions Received: 16 and 18 December 2025 from the Applicant
 16 and 18 December 2025 from the Respondent

Date of Determination: 6 January 2026

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] NIY is a charitable trust that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹ *LDE v NIY* [2026] NZERA 22.

[2] LDE was employed by NIY as Facilities Manager. In this role LDE had responsibility for managing NIY's resources including household property, requisitioning maintenance, managing budgets, and supervising a team of eight employees.

[3] In September 2025 NIY became concerned about LDE's handling of resources (household items from tenanted properties) and it investigated these concerns. In October 2025 NIY was satisfied that its concerns warranted further action, and it undertook a disciplinary process with LDE. At the end of this process NIY concluded that LDE had attempted to take a stove owned by NIY and had taken three items owned by NIY (two hot water cylinders and one curtain rail) two of which she sold. NIY decided these actions amounted to serious misconduct and it summarily dismissed LDE on 24 October 2025.

[4] LDE claims that her dismissal was unjustified. She says:

(a) She was subjected to a "brutal and unfair investigation process".

(b) NIY had predetermined the outcome and its findings were "unfair, unavailable and incorrect".

[5] LDE lodged a statement of problem in the Authority; the employment relationship problem involves personal grievances for unjustified dismissal and unjustified action causing disadvantage to her employment.

[6] LDE seeks interim reinstatement pending the investigation and determination of her substantive problem.

[7] NIY opposes LDE's claims, including her application for interim reinstatement.

[8] It is the application for interim reinstatement that I have investigated, and this determination resolves.

The Authority's investigation

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

[10] The representatives for each party lodged written submissions on 16 December 2025 and made oral submissions at the investigation meeting on 18 December 2025.

[11] 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

[12] The issues to be determined at this interim stage are:²

- (a) Is there a serious question to be tried in respect of this employment relationship problem and the relief sought by LDE?
- (b) Where does the balance of convenience lie pending substantive investigation and determination of this employment relationship problem?
- (c) Where does the overall justice of this case lie from now until determination of this employment relationship problem?

A serious question to be tried

[13] The threshold for a serious question is that this employment relationship problem is not frivolous or vexatious; this requires a judicial assessment of the affidavit evidence and the submissions advanced.³

[14] This assessment must be applied to both the unjustified dismissal grievance and the relief sought. I must assess whether there is a serious question to be tried that LDE was unjustifiably dismissed and that LDE should be permanently reinstated.

Issues for unjustifiable dismissal

[15] LDE has been dismissed, so for unjustified dismissal the onus shifts to NIY to establish that the dismissal was justified.

² *Humphrey v Canterbury District Health Board* [2021] NZEmpC 59; and *Western Bay of Plenty District Council v Jarron McInnes* [2016] NZEmpC 36.

³ *NZ Tax Refunds v Brooks Homes Limited* [2013] NZCA 90.

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

[17] 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 substantively justified.

[18] Putting all this together, for a dismissal to be justified NIY must establish that the actions it took (i.e., the process) and the decisions it made (i.e., the substantive justification) were ones that a fair and reasonable employer could have come to in all the circumstances. So, for there to be a serious question to be tried regarding unjustified dismissal I need to be satisfied that it is possible (i.e., not frivolous or vexatious) that NIY's actions or decisions were not ones that a fair and reasonable employer could have come to in all the circumstances.

What happened?

[19] In September 2025 whilst LDE was on leave NIY became aware that she had arranged for one of NIY's ovens, that was being replaced in a tenant's house, to be delivered to her home. Later in September NIY became aware that LDE had removed two used hot water cylinders and a curtain rail from NIY's storage. NIY was concerned that LDE did not appear to have authority to take the oven or the three items, so it investigated.

[20] After investigating NIY was satisfied that its concerns warranted taking further steps. On Sunday 5 October 2025 NIY contacted LDE and advised her of its concerns and the pending process it planned to undertake with her. NIY then sent a letter dated 5 October to LDE by email, which set out its concerns, attached relevant documents and invited her to a meeting on 10 October.

[21] Later on 5 October LDE's advocate wrote to NIY stating, amongst other things, that NIY's actions in advancing matters with LDE were "somewhat overzealous" and not in line with its obligations of good faith. There appeared to be three main concerns informing this view: contact being made on a Sunday afternoon when LDE had recently returned from an

overseas trip and was not due back at work until the following day, LDE's access to NIY's network having been blocked and, being threatened with suspension.

[22] On 6 October 2025 NIY responded to LDE's advocate acknowledging that its advice to LDE would have been stressful for her, but it was managed in the way it was to ensure LDE had a full opportunity to consider what was happening outside of the work environment. NIY then went on to address the issue of suspension having considered advocate's points – it advised the advocate that LDE was suspended on pay.

[23] LDE's advocate then responded to NIY on 6 October 2025 stating that LDE did not accept NIY's explanation for acting as it did on 5 October and that the conduct was completely inexcusable, unjustified and unnecessary. The advocate then noted that NIY had "irreparably damaged" LDE's reputation. Then the advocate stated:

The allegations that have been made against [LDE] are utterly outrageous and the significant investigation that has covertly taken place during [LDE's] holiday appears to be little more than a nasty witch-hunt resulting in an appalling ambush on a Sunday afternoon. It appears to be a thoughtless waste of financial resources for a charitable organisation that should be focussed on utilizing its resources for community good.

[24] LDE and her advocate then attended the meeting with NIY on 10 October 2025. In her affidavit LDE described the meeting as a brutal interrogation in which she was "grilled and cross examined" by NIY's lawyer. Further she said it was clear to her that the purpose of the meeting was to corner her into providing answers that that would justify NIY's decision to dismiss her.

[25] NIY categorically denied the allegation of the meeting being an interrogation and stated that LDE only provided brief answers to questions which required further questioning by it. The meeting had been cut short by LDE as her advocate had another meeting to attend; NIY still had further questions for LDE and asked her to attend a further meeting.

[26] In the end LDE refused to meet further with NIY and offered to answer any further questions in writing. An exchange of further information, questions and answers took place.

[27] On 12 October 2025 NIY issued its preliminary decision, in writing, to LDE. This decision set out the findings of NIY including concerns NIY had about LDE's participation in

the disciplinary process, the basis for those findings, and its proposed decision regarding the sanction to be imposed. Key preliminary conclusions made by NIY included:

- (a) LDE had attempted to take a stove belonging to NIY without authorisation and intended to sell it for her own benefit.
- (b) LDE had taken two hot water cylinders and a curtain rail without authorisation and had sold the hot water cylinders for her own benefit.
- (c) These actions amounted to serious misconduct.
- (d) That it could no longer trust LDE and property was not safe in her hands, she had not been honest and had not acted in the best interests of NIY and she may do so again, and she had minimised her actions because of the low value of the items involved.
- (e) That summary dismissal was the appropriate outcome.

[28] On 13 October 2025 LDE's advocate responded to NIY's preliminary decision. This response included that LDE believed NIY had predetermined the outcome, that NIY's actions were a pattern that LDE recognised as being regularly used by NIY when it wished to "clear someone out", that notwithstanding concerns about the process LDE had cooperated and had been forthcoming honest and truthful and that the proposed outcome was not substantively justified and disproportionate to the issues involved. The advocate stated:

The humiliation and loss of dignity to [LDE] is substantial when she is accused of stealing \$101.88 from [NIY], it is especially harmful when elevated into a serious financial harm allegation given the utterly hypocritical conduct of [NIY] in expending financial resources of dozens if not hundreds of times more in this botched process. The conduct of [NIY] is both highly concerning and highly questionable. The actions of [NIY] appear to be a personal crusade rather than actions focused on the best interests of [NIY].

[29] On 24 October 2025 NIY provided its final decision in writing. Essentially it upheld its preliminary findings and concluded that summary dismissal remained the appropriate sanction. LDE was dismissed on 24 October 2025.

A serious question to be tried for unjustified dismissal

[30] So, the question is, based on the events outlined, am I satisfied that it is possible (i.e., not frivolous or vexatious) that NIY's actions or decisions were not ones that a fair and reasonable employer could have come to in all the circumstances?

[31] Turning first to NIY's actions (its process) to act justifiably (as a fair and reasonable employer could) in relation to a disciplinary matter an employer needs to:

- (a) Properly investigate the concerns about the employee's conduct.
- (b) Set out any concerns, provide relevant information and explain the possible implications of an adverse finding, for the employee so that they can respond to them.
- (c) Provide the employee a reasonable opportunity to respond to the concerns.
- (d) Consider any responses given by the employee before making its final decision on what occurred and what sanction should be imposed, if any.

[32] The complaints made by LDE regarding NIY's process are mainly broad, subjective and emotive complaints. The problem is that many of these complaints do not directly inform justification. So, for example, complaining that NIY's actions during the process were hurtful only goes so far; what I am looking to understand is, why were the actions hurtful and why is that unjustified, considering the steps above? Continuing with the hurtful example, allegations made in a disciplinary process are likely to be hurtful as they are allegations about an employee's behaviour, but they need to be made so that the employee can respond, so making allegations that are hurtful cannot be unjustified – there needs to be more to it. And, for LDE I am not sure what that is.

[33] To the extent I have been able to ascertain why LDE says and based on my assessment of the untested evidence I assess justification as follows:

- (a) *Properly investigate the concerns about the employee's conduct* – NIY's investigation was described by LDE's advocate as a covert and a nasty witch-hunt. An employer's investigation into concerns about an employee's conduct is likely to be covert to a point, that is an employee will not be made aware of

complaints until an employer has at least some basis on which to present concerns so any investigation will necessarily exclude the employee at the outset. Labelling the investigation a nasty witch-hunt does not make it unjustified – I cannot ascertain the issue or concern about NIY that prompts this statement. Currently, I see no issue with NIY’s investigation.

- (b) *Set out any concerns, etc for the employee to respond to* – I do not understand there to be any complaint about the provision of information and/or explanation of concerns for LDE, except the criticism of being contacted about the concerns on a Sunday afternoon. Currently, I see no issue with NIY’s provision of information to LDE.
- (c) *Provide the employee a reasonable opportunity to respond to the concerns* – LDE complains about the 10 October 2025 meeting being an interrogation but does not complain that she did not have an opportunity to properly explain her position both in the meeting and through correspondence. Currently, I see no issue with LDE being given an opportunity to respond to NIY’s concerns and then to its findings and proposed sanction.
- (d) *Consider any responses given by the employee before making its final decision on what occurred and what sanction should be imposed* – this appears to be the real crux of LDE’s complaint, she says NIY had predetermined what had occurred and what the outcome would be; it was looking for answers to inform its decision and going through a process merely to meet its obligations. Of all the steps required for a justified process I accept that this presents an arguable proposition – but on the face of the untested evidence I think this is relatively weak.

[34] Turning to NIY’s substantive justification for its decisions – the question is, were the conclusions reached, as to what occurred and what the sanction should be, conclusions that a fair and reasonable employer could come to in the circumstances?

[35] LDE says the decision made by NIY are not objectively justifiable based on the evidence – as an example she says it was not available for NIY to conclude that she stole

items as alleged, as she proved she did not. Then on the decision to dismiss she says dismissal was disproportionate, and alternatives were not considered.

[36] I accept that LDE's argument is at least more than frivolous or vexatious. That said it appears more likely that based on the evidence to date it is probable that the decisions NIY came to about LDE misappropriating NIY's property for personal gain are decisions a fair and reasonable employer could come to in the circumstances. The decision to dismiss is arguably a stronger challenge – on the evidence to date it is possible that a fair and reasonable employer could not conclude that dismissal was appropriate because it was disproportionate and/or because it failed to consider alternatives to dismissal.

[37] 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 NIY's actions or the decisions it made regarding LDE's dismissal were not 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.

Issues for reinstatement

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

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

[40] The test for practicable and reasonable has been discussed and analysed by the Court of Appeal.⁴ 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.

⁴ *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.

Analysis for reinstatement

[41] There are a number of factors that impact whether reinstatement of LDE can be achieved successfully and should be ordered.

[42] LDE says she has a strong claim for reinstatement as prior to the disciplinary process there had been no issue with her work performance, she had positive working relationships with her colleagues, she followed NIY's instructions regarding the disciplinary process, her conduct that was subject of the disciplinary process was less harmful and problematic than others who have been reinstated and she has not taken any steps to harm NIY since her suspension and then dismissal. That is, LDE says reinstatement can be achieved successfully and there would be no adverse consequences, so reinstatement should be ordered.

[43] In contrast NIY says reinstatement cannot be achieved successfully and should not be ordered. NIY says the relationship is irreparably broken, that LDE has demonstrated that she will continue to harm NIY if she is reinstated and there is risk to other employees if LDE is reinstated.

[44] On the damaged relationship between LDE and NIY, whilst LDE says this is not the case, pointing to her previous good work record, positive relationships with colleagues and behaviour during and after the disciplinary process, her statements made in the course of the disciplinary process evidence underlying issues with NIY that go to the heart of the relationship. LDE's complaints about NIY during the disciplinary process include:

- (a) Generally, NIY's actions were described as brutal, nasty and callous, utterly disrespectful and hurtful, an appalling ambush, a thoughtless waste of financial resources, and hypocritical.
- (b) Specifically, NIY's investigation was described as covert, and a nasty witch-hunt, and its 10 October 2025 meeting was described as a brutal interrogation, with a torrent of insulting questions, which was intimidating.
- (c) Overall, NIY's process was described as absurd, egregious, hurtful and utterly humiliating; it was said that the process was being used to spread poisonous implications about LDE amongst staff and NIY's actions were a pattern regularly used by NIY when it wished to "clear someone out".

[45] These statements reflect more than complaints about a process or decisions, which would be normal in adversarial context – the allegations go beyond challenging process or decisions, they are emotive, highly critical and show a deep distrust of NIY and in particular the Board and the CEO. Also, these complaints question NIY’s motives and importantly question NIY’s integrity and honesty. These are concerns from LDE that go to the heart of the relationship she has with NIY and show from her perspective significant damage to that relationship. I have very real concerns about how she could work effectively within NIY given her views of its motivations, its integrity and its honesty.

[46] LDE also states that NIY has damaged her reputation amongst employees, describing this as irreparable damage. This creates a concern about her ability to work within NIY. LDE focuses on reinstatement being able to restore her damaged reputation, but this is inconsistent with the belief that the damage is irreparable. Also, I am not convinced that reinstatement would mean a damaged reputation will be restored – an order of interim reinstatement does not mean NIY’s findings are wrong nor does it mean that NIY must retract what has been said or in some way try to change what employees think about LDE. I accept that LDE would have the opportunity to restore her reputation through her work, but this may have limited effect. Overall, I am concerned that damage to LDE’s reputation will impact her ability to successfully work within NIY.

[47] So, by her own evidence LDE shows her relationship with NIY is damaged and she says her reputation has been damaged and these count against reinstatement. NIY recognises this and says additionally the conduct which was subject of the disciplinary process has impacted the relationship. NIY describes LDE’s behaviour as improper use of NIY assets for personal gain, which included using employees under her management to facilitate this. In short, NIY says she cannot be trusted. It also advises that there are possibly some financial irregularities associated with LDE’s work that it is investigating.

[48] In addition to this, NIY highlights a major concern; a failure on LDE’s part to recognise her behaviour as being problematic, rather she has minimised it in terms of value whilst criticising NIY for spending money on the disciplinary process. NIY says this shows a lack of understanding of the importance of trust and integrity. Put simply, it is not about the monetary value or cost of the actions but rather the motivation and effect of the actions that are important. LDE took NIY’s property for her own benefit and it does not matter that the

amount was minimal and poor behaviour needs to be addressed regardless of cost (within reason). Ultimately it is about doing the right thing, which NIY says it has and is doing whilst LDE fails to recognise this.

[49] All of this leads to genuine concerns for NIY that LDE cannot be trusted to act appropriately if reinstated either in terms of NIY assets or property as well as with other employees.

[50] I accept NIY's concerns as articulated. Given the breakdown in the relationship between LDE and NIY and between LDE and her colleagues as well as the lack of trust on both sides I question whether reinstatement can be achieved successfully.

[51] One other factor impacting whether reinstatement can be achieved successfully is the financial position of NIY. LDE says reinstatement is practicable because her role is still available – there only being someone acting in that role on a temporary basis – and NIY has sufficient funds to pay for her return to work even if it has the additional cost. I do not place much weight on this factor given the limited evidence on NIY's resources and, in any event, the cost of reinstatement if it is ordered is a factor NIY risks – it cannot avoid reinstatement on an interim basis by filling LDE's role.

[52] The final factor on reinstatement is one that impacts whether reinstatement should be ordered – this arises because NIY says there will be a significant impact on another NIY employee if LDE is reinstated. I need not set out the detail of this concern to protect the other employee. I have received affidavit evidence on this issue and am satisfied that on the untested evidence there is a real concern for NIY that LDE being reinstated will impact this other employee. I accept that this suggests that reinstatement is not reasonable; it should not be ordered.

[53] Weighing all of this up, I find that the case for reinstatement for LDE is weak – it does not appear likely that reinstatement can be achieved successfully and it is possible that given the impact on other employees reinstatement should not be ordered.

[54] However, when I weigh up how weak the case for reinstatement is I cannot rule it out. There is a serious question to be tried in respect of reinstatement because the threshold for establishing this is low – I cannot rule out reinstatement being both practical and reasonable

as this proposition is not frivolous or vexatious on the untested evidence available. At this interim stage however the case for reinstatement it is very weak.

Conclusion on the question of serious question to be tried

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

The balance of convenience

[56] 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.⁵

[57] 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

[58] LDE has weak claims on both unjustifiable dismissal and reinstatement; this counts against granting interim reinstatement.

Impact of granting the interim order or not

[59] If I reinstate LDE on an interim basis, the consequences for NIY are that it:

- (a) Will need to take steps to manage LDE's work particularly as that relates to NIY assets and financial matters. Given the findings by NIY about LDE's

⁵ *Team Group Realty Limited Trading as Harcourts Paremata v Martin Cardno & Ors* [2024] NZHC 553 at [66].

actions and its concerns about her repeating the behaviour, NIY will need to closely manage LDE's work, creating a significant additional burden on it.

- (b) Will need to manage most of LDE's working relationships, which will be difficult, particularly her working relationship with the CEO. This will not be easy, and I am not persuaded that there is an effective means of managing the relationship between LDE and the CEO, even with outside assistance such as mediation. I consider this to be a significant and disproportionate impact on NIY.
- (c) Will need to deal with any issues arising with the other employee in LDE's team, which realistically would involve moving them to another role – an outcome that would be unfair on that employee.

[60] If I do not reinstate LDE on an interim basis, the consequences for LDE are that she:

- (a) Will likely be without work which has two impacts – financial (discussed below) and experience. I am not satisfied that being unable to work will cause any detriment to LDE in terms of her experience – there is no evidence to suggest that being out of NIY for any period of time means things will move on to such an extent that she will have a lack of experience and be unable to step back into her role.
- (b) Will face financial hardship – I accept on the evidence submitted that LDE has limited income if she is not working, however the extent of any financial hardship is difficult to ascertain. There are several aspects of LDE's financial position that remain unexplained such that the picture of her overall financial situation whilst being without work is incomplete.⁶
- (c) Will lose the opportunity to reintegrate back into NIY in a relatively short time frame.

⁶ These unaddressed financial factors were discussed in submissions, and I need not set them out here, rather I will protect LDE's privacy around her financial affairs. Suffice to say the issues that inform my conclusion here have been addressed.

[61] Assessing my conclusions above I find that the impact of granting interim reinstatement on NIY outweighs the impact of not granting interim reinstatement for LDE. This counts against granting interim reinstatement.

Adequacy of damages

[62] As set out above, LDE faces some financial hardship from being without work although the extent of this is unclear. And it is not clear on the evidence that any financial hardship would have a non-monetary effect other than the emotional impact on LDE. Given this, I am satisfied that damages would be an adequate remedy for LDE for any financial loss she suffers if she is not reinstated on an interim basis, but I subsequently determine that she should be permanently reinstated. Effectively any lost remuneration can be awarded to her, and compensation can be awarded for the impact of her dismissal on her, including the impact of financial difficulties if that flows from the dismissal.

[63] Turning to NIY, I am not convinced that damages would be an adequate remedy for it if I reinstated LDE on an interim basis and then subsequently decided not to reinstate her on a permanent basis. This arises because some of the potential damage that might arise is non-monetary and is about NIY's reputation and the working relationships. Given LDE's feelings of distrust for NIY, its board and the CEO and her concerns about damage to her reputation I am concerned that she will undermine them, or be critical of them, either inadvertently or deliberately. And, then by doing this I think there is a real possibility that LDE will damage either her work relationships or other work relationship.

[64] I find that this factor counts against granting interim reinstatement.

Conclusion

[65] LDE's weak claims for unjustified dismissal and permanent reinstatement, the adverse effect of an order for interim reinstatement on NIY and the inadequacy of damages for NIY if an order for interim reinstatement is reversed, means the balance of convenience weighs against granting interim reinstatement.

The overall justice

[66] 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.⁷

[67] Standing back and assessing the circumstances giving rise to the application for interim reinstatement and parties' respective positions on the application I am satisfied that the overall justice lies with not granting interim reinstatement.

Conclusion

[68] I decline LDE's application for interim reinstatement.

Costs

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

Peter van Keulen
Member of the Employment Relations Authority

⁷ *NZ Tax Refunds v Brooks Homes Limited* [2013] NZCA 90.