

**This determination
contains an order
prohibiting publication of
parties' identification
detail**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 809
3413584

BETWEEN LGY
Applicant

AND THE BOARD OF TRUSTEES [REDACTED]
Respondent

Member of Authority: Peter van Keulen

Representatives: Kathryn Dalziel, counsel for the applicant
Jonny Sanders, counsel for the respondent

Investigation Meeting: 1 December 2025

Submissions Received: 1, 8 and 12 December 2025 from the Applicant
1, 5 and 12 December 2025 from the Respondent

Date of Determination: 15 December 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] LGY was employed by the Board of Trustees [REDACTED] (the Board) as a teacher and deputy principal.

[2] On 1 August 2025, the Board decided to dismiss LGY on notice for serious misconduct in relation to her use of school money for the apparent benefit of her family.

[3] LGY claims that her dismissal was unjustified both in terms of the process carried out and the decisions reached by the Board.

[4] LGY lodged a statement of problem in the Authority based on unjustified dismissal. LGY seeks remedies including reinstatement and financial compensation. LGY also seeks interim reinstatement pending the investigation and determination of the substantive problem.

[5] The Board opposes LGY's claims, including the application for interim reinstatement.

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

The Authority's investigation

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

[8] Counsel for each party then lodged written submissions on 21 November 2025 and made oral submissions at the investigation meeting on 1 December 2025.

[9] 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.

Non-publication orders

[10] This employment relationship problem concerns an application for interim reinstatement. This means I have not tested any of the evidence that I reviewed. I am concerned that the untested evidence is critical of both parties and is likely to harm the applicant, impact both parties' reputations and create concerns for the future investigation of this employment relationship problem.

[11] At this interim stage it is appropriate to make orders for non-publication to address my concerns.

[12] So pursuant to Clause 10 of schedule 2 of the Employment Relations Act 2000 (the Act) I make a non-publication order prohibiting the publication of the name and identity of the applicant and respondent in connection with this employment relationship problem – this extends to members of the Board and employees of the school.

[13] For the purposes of this determination the applicant will be referred to as LGY, the respondent will be referred to as the Board, the school will not be identified and simply referenced as the school, the chair of the Board will be referred to as XDR and various employees will be referred to by their job title.

The law relating to interim injunction applications

[14] The issues to be determined at this interim stage are: ¹

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

A serious question to be tried

[15] The threshold for a serious question is that the claim is not frivolous or vexatious. In deciding if LGY's claim is not frivolous or vexatious I must make a judicial assessment of the affidavit evidence and the submissions advanced. ²

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

- (a) LGY was unjustifiably dismissed.
- (b) LGY should be permanently reinstated.

What happened?

[17] In her role at the School, LGY organised an annual year 8 trip to Wellington (the Year 8 Wellington Camp); she did this in 2019, 2020 and 2023. The Year 8 Wellington Camp involved year 8 students travelling to Wellington, staying for several nights in Wellington and

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

² *NZ Tax Refunds v Brooks Homes Limited* [2013] NZCA 90.

undertaking various activities such as visiting Te Papa and attending The World of Wearable Arts (WOW).

[18] In May 2024, the principal of the School, received a parent complaint. Part of this complaint included concerns over the 2023 Year 8 Wellington Camp. On 30 May 2024 the principal informed LGY of the parent complaint and provided information relating to it. Then on 8 June 2024, the principal sent a written response to the parent.

[19] On 20 August 2024 the same parent made a formal complaint to the Board. This included concerns over the use of funds raised for the 2023 Year 8 Wellington Camp. In response to this formal complaint the Board appointed a subcommittee to investigate it; this subcommittee included a parent representative of the Board, a proprietor representative of the Board and XDR, the Presiding Member of the Board. This subcommittee then asked a contractor at the School and the principal to gather information for it to respond to the complaint.

[20] On 2 September 2024, the contractor and the principal worked together gathering information relating to the complaint. As part of this work, they advised LGY of the complaint and gave her a copy of it, then LGY was asked questions throughout the day as they worked on gathering information. This information included that LGY's family had attended part of the 2023 Year 8 Wellington Camp, including attending WOW.

[21] On the following day LGY told the contractor and then the principal that the school had paid for her family's tickets to the WOW show in 2023. However, as she had spent her own money on the fundraising that she had not sought to get reimbursed she thought the money she was owed balanced out the cost of the WOW tickets. She now realised she had done the wrong thing and wanted to put it right.

[22] On 6 September 2024 XDR and the principal sent an email to LGY asking to meet to discuss concerns relating to the 2023 Year 8 Wellington Camp. This meeting took place on 10 September 2024 in which XDR and the principal met with LGY and her support person.

[23] On 25 September 2024 the Board responded to the parent complaint. In this letter, in response to the concern about misuse of funds the Board stated that it "totally and strongly rejects any misuse of money".

[24] After the 10 September meeting and through October 2024 LGY provided information to XDR and the Principal about her family's attendance at the Year 8 Wellington Camp, and particularly their attendance at the WOW shows.

[25] In the course of providing information regarding the parent complaint and then information to XDR and the Principal, LGY advised that:

- (a) Over the years her family had regularly attended the Year 8 Wellington Camp in various capacities (family helpers, students, and attending the WOW shows with students). This had become a tradition that started when LGY's two daughters were younger, and she was away on the Year 8 Wellington Camp for several days.
- (b) Her husband and two daughters had attended the WOW show as part of the 2023 Year 8 Wellington Camp. Her family's tickets to WOW had been paid out of the school fundraising for the Year 8 Wellington Camp (as all tickets for the school were purchased together) and she intended to reimburse the cost of the tickets but inadvertently overlooked this. Sometime later when she remembered about the cost she incorrectly decided that the cost of those tickets were off set against expenses she had personally incurred in organising some of the fundraising that she had not claimed reimbursement for.
- (c) One daughter had attended the 2023 Year 8 Wellington Camp as a helper and her husband and other daughter only attended the WOW show. On the night of the WOW show her family had stayed in a spare room at the accommodation used for the Year 8 Wellington Camp – this room having been booked as a spare room for any sickness, which was normal practice for the Year 8 Wellington Camp.
- (d) For the 2019 Year 8 Wellington Camp, her family attended the WOW show with tickets paid out of school fundraising as they were volunteers and part of the fundraising team; in the past the school would pay some of the costs for volunteers for the Year 8 Wellington Camp.

[26] XDR and the principal were concerned about the apparent use of school fundraising money for LGY's family and decided they would refer these matters to the Board; on 23 October 2024 they told LGY this.

[27] Then on 3 November 2024 XDR recommended that the Board commence a disciplinary process with LGY. In a letter of 3 November 2024 to the Board headed up "Allegations of misconduct/serious misconduct", XDR outlined his concerns as follows:

I believe there is a case to answer of a disciplinary nature, namely:

- a) The allegation that LGY, who was lead organizer of the Wellington camp, allowed her family to participate in a number of camps over the years without appropriately meeting the additional costs incurred for their attendance.
- b) That the information provided during our attempts to uncover the facts have been lacking in transparency or any sense of accountability around proper handling of and accounting for money. Conflicting information is also causing further concern.
- c) Due to searching for payments further concerns have arisen around the leavers Dinner arrangements with what appears to be a large sum annually being given directly by the PFA to LGY instead of being processed in and out of the school accounts. Our initial investigation has found limited evidence available, in the school accounts, to show how costs were being met and accounted for. This matter has yet to be raised with LGY and she may hold these records of costs.

[28] Following this, on 6 November 2024 the Board decided to commence a formal process with LGY and elected a second subcommittee to investigate matters and complete the process; this subcommittee was XDR and two others (the Subcommittee).

[29] The Subcommittee wrote to LGY on 10 November 2024 advising her of its formation and its purpose – to review all information gathered to date and to investigate the matters concerned. Then on 13 November 2024 the Subcommittee wrote to LGY giving her formal notification of its process with her – that it was conducting a formal investigation to clarify matters of concern. It outlined the concerns as follows:

1. Annual Trips to Wellington (2019 – 2023): There appear to be inconsistencies in both the documentation and narrative regarding the allocation of funds raised for these trips. Additionally, questions have arisen concerning the attendance of family members on these trips and how these related expenses were accounted for within the fundraising budget. We are currently reviewing the information provided.

2. Leaver's Dinner Event (2019 – 2023): During our review, it has come to our attention that funds for the Leavers' dinner were transferred to your personal account. However, there does not appear to be a comprehensive rendering or accounting for these funds per school policy. Our records indicate that \$1,100 was deposited into your account in 2022, with \$2,000 deposited each year in 2019, 2020, and 2021. We have not been able to locate any associated accounting records. It would assist our investigation if you could please provide any receipts and records for any expenditure incurred.
3. General Financial and Asset Management: In light of the questions surrounding the Wellington trips and leavers' Dinner funds, additional concerns have surfaced regarding broader financial and procedural practices. Specifically, there appear to be inconsistencies in the handling of funds, submission of receipts, management of budgeted expenses, and the documenting of school assets. As part of our review, we will be examining these aspects more closely and will set out any issues in more detail for you.

[30] On 21 November 2024 the subcommittee sent LGY a letter containing several questions it had about the concerns identified in their earlier letter.

[31] On 6 December 2024 counsel for LGY emailed the Subcommittee, raising various concerns with the process and approach, and seeking further information. The Subcommittee responded on 10 December 2024 and then counsel for LGY sent a further letter on 13 December 2024, reiterating the concerns and expanding on them, providing information and then answering the specific questions asked of LGY.

[32] In summary, LGY's position regarding the Subcommittee's role and the investigation, which the Subcommittee rejected was that:

- (a) The investigation should not be delegated to a subcommittee of the Board because an issue arising in the investigation involved a failure to properly implement policies and procedures and provide training on them – this being the responsibility of the Board.
- (b) There were conflicts arising for the Board as two members of the Subcommittee were involved in the Year 8 Wellington Camps, including with fundraising and could therefore have relevant information for any investigation.
- (c) Further conflicts arose and these two members' spouses worked in the school and had dealings with school finances including fundraising money

and they were involved in a decision about flights for one of LGY's daughters; they were, therefore relevant people for an investigator to interview.

- (d) A concern that the principal was involved in assisting the Subcommittee, making her "a complainant, witness, prosecutor and judge".
- (e) That the Board had already made a decision on LGY's family attending WOW as part of the 2023 Year 8 Wellington Camp, in its response to the parent complaint, concluding that there was not any misuse of money.³
- (f) An absence of information or a denial of access to information that was relevant to the matters under investigation.
- (g) The Subcommittee appeared to be forming its own view on legal issues, particularly as that related to their involvement, relying on google searches for information rather than taking legal advice on important aspects of their role.
- (h) There were various individuals that LGY believed had information relevant to the investigation that should be interviewed.

[33] On 23 December 2024 the Subcommittee responded to LGY's counsel, stating that it was reviewing matters and would likely be in further contact in January 2025.

[34] In a letter to LGY of 17 February 2025 the Subcommittee apologised for the delay and set out its view of the various concerns – by this time the Subcommittee had made it clear that it rejected any question of conflict and the need to have an independent investigation. The subcommittee identified issues it said would be subject of disciplinary action. These issues were:

- (a) The use of school money by LGY without authorisation to pay for accommodation and WOW tickets for LGY's family on the 2019 Year 8 Wellington Camp.

³ Board letter dated 25 September 2024.

- (b) The use of a student's flight to Wellington for the 2023 Year 8 Wellington Camp (that the student could no longer use) for one of LGY's daughters, without authority and without disclosing this to the school.
- (c) The use of school money without authorisation to pay for accommodation and WOW tickets for LGY's family on the 2023 Year 8 Wellington Camp.
- (d) That LGY's changing explanations on these three issues as they were raised with her indicating that her initial responses (on the issues) were not honest.

[35] Over the course of the next three months the parties exchanged correspondence and met on 26 March 2025 as part of the process. Based on the evidence I have seen and considered I summarise LGY's position, which she expressed to the Subcommittee in various communications, as:

- (a) She had a wide-ranging mandate in connection with organising the Year 8 Wellington Camp. This included setting the budget and making decisions on expenditure.
- (b) The school had previously paid expenses or costs for non-student attendees at the Year 8 Wellington Camp – she herself had done so for parent helpers and volunteers – and this had never been questioned.
- (c) Her family had often attended the Year 8 Wellington Camp and had done so in various capacities over the years. It was widely accepted as appropriate and more recently the students had enjoyed her daughters being involved in the camps.
- (d) She approved expenditure on her family's tickets to the 2019 WOW as part of their attendance at the year 8 Wellington Camp as they had been volunteers, particularly in connection with fundraising. This approval was in line with her mandate and the expense was one that she considered appropriate in terms of what she had approved in the past.

- (e) Her family attended the 2023 Year 8 Wellington Camp – one daughter as a volunteer, her husband and other daughter merely attended for the WOW performance. Her family paid for their own expenses in attending the 2023 Year 8 Wellington Camp except for two things – they stayed in the accommodation the school had paid for and one daughter was able to change her flight (which had been paid by the family) for an earlier flight that a student was no longer using.
- (f) In terms of her family’s attendance at WOW the tickets were bought as part of the school’s purchase of tickets. The payment for one ticket was authorised to be paid by the school as one daughter was a camp volunteer. The cost for the WOW tickets for her husband and other daughter were to be paid by the family.
- (g) She had forgotten to repay the cost of her husband and daughter’s WOW tickets to the school. She had also failed to seek reimbursement for various expenses she had incurred in fundraising for the Year 8 Wellington Camp. In the circumstances she set the cost of WOW tickets off against the expenses incurred by her – she now realised this was wrong and wanted to make payment for the WOW tickets.
- (h) More generally her handling of school funds was accepted by the school, specifically the former principal and office staff who handled school money. She was not aware of or trained on any financial policy or procedure that showed something other than what she did was required.

[36] On 6 June 2025 the Subcommittee sent LGY a letter setting out its preliminary conclusions and proposed outcome for the disciplinary process. On 26 June 2025 LGY provided a written response to the preliminary conclusions and proposed outcome. And then on 22 July 2025 LGY provided more information to the Subcommittee.

[37] Then on 1 August 2025 the Subcommittee provided LGY with a letter setting out its decision to terminate her employment with four weeks’ notice. In the end the Subcommittee made only two adverse findings of fact regarding LGY’s use of School funds. These were:

(a) That LGY had used school money, without authorisation, to pay for tickets to WOW for her husband and both daughters in 2019.

(b) That LGY had used school money, without authorisation, to pay for tickets to WOW for her husband and one daughter in 2023.

[38] Then the Subcommittee went on to explain their fundamental concern:

.. our fundamental concern (is) that you appear to hold a view that community fundraising money for the Wellington trip was yours to spend as you saw fit, and that is somehow different to “school money”. We do not accept that community fundraising money is anything other than school money, and so you had a professional obligation to handle it with integrity. It was improper to make a decision to spend this money to benefit your family (as opposed students).

[39] The Subcommittee then set out a conclusion:

We have concluded that you did use school funds for personal benefit on two occasions (2019 and 2023), without disclosure, approval or delegated authority. The amount of money is not the issue, but the assumption of decision-making power outside of your role, and without transparency.

[40] The Subcommittee then went on to conclude that the two actions amounted to serious misconduct and then based on the two acts of serious misconduct it considered whether the damage to the trust and confidence in LGY could be repaired:

We have considered whether the harm to trust and confidence could be repaired. The barrier to that is that you have maintained your position that it was reasonable to reward your family for fundraising efforts with tickets to WOW. Because you do not appear to accept that it would be reasonable for us to consider this improper, we can not see a pathway to reach a shared understanding about what your limits should be when it comes to school funds. We say this acknowledging your significant service to the school, and your passionate leadership of special events, but cannot shake the concern that you appear to genuinely believe that this gives you the right to spend funds intended for students in a way that benefits you or your family.

[41] The Subcommittee also went on to conclude:

... We are concerned that your sense that this entire process has been unfair from the outset, your clear distrust of the Principal and XDR – as expressed in your feedback throughout this process, and your persistent view that it was not unreasonable for you to make decisions for the benefit of your family means

that it would not be possible for trust and confidence to be re-established in the working relationship.

[42] And then based on this the Subcommittee decided that dismissal on notice was the appropriate outcome.

Issues for unjustifiable dismissal

[43] LGY has been dismissed so for the unjustified dismissal claim the onus shifts to the Board to establish that LGY's dismissal was justified.

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

[45] 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.

[46] What this means in terms of assessing if there is a serious question to be tried for LGY's claim is that I need to be satisfied that there is a chance that the Board will be not be able to establish that the actions it took (process) and the decision it made (substantive justification) regarding LGY's dismissal were ones that a fair and reasonable employer could have come to.

Analysis for unjustifiable dismissal

[47] 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 the Board will not be able to establish that the actions it took and the decision it made regarding LGY's dismissal were ones that a fair and reasonable employer could have undertaken.

The process adopted

[48] On the untested evidence, I think it is likely that the Board will be unable to show that the process adopted was one that a fair a reasonable employer could have come to in the circumstances.

[49] This is because neither the Board nor the Subcommittee considered it appropriate to have an independent investigation of LGY's handling of school finances (as outlined) in circumstances where:

(a) A key aspect of LGY's explanation for her handling of school funds was based on there not being an applicable policy (at least that had been brought to her attention, let alone on which she had been given training) nor was there an expected process that had been explained to her – and this failing ultimately fell to the Board.

(b) XDR as the chair of the Board was most likely in a position of conflict:

- i. He had been closely involved in gathering information from LGY before any investigation had been sanctioned by the Board.
- ii. He had formed a view of LGY's conduct based on his investigation which included that he had concerns about serious misconduct.
- iii. He had made a formal complaint to the Board about LGY's conduct.
- iv. He had recommended action be taken against LGY considering three broad sets of issues, stating there was a case to answer of a disciplinary nature.
- v. He was then part of the Subcommittee which was tasked with investigating and forming a view on what had occurred and whether this might be conduct warranting disciplinary action; the very decisions he had already made. It is notable that the Subcommittee accepted in XDR's views in their entirety.

vi. An aspect of the Subcommittee's decision to dismiss LGY was that the Subcommittee decided that LGY no longer trusted XDR.

(c) The spouses of XDR and another member of the Subcommittee were people who could (and probably should) have been interviewed as part of any investigation because of their knowledge of and actions in handling school funds and specifically because they were involved in one incident where LGY was considered, at least initially, to have used an airline ticket inappropriately for her daughter.

(d) That XDR and another member of the Subcommittee had been involved in fundraising for a Year 8 Wellington Camp and had attended a Year 8 Wellington Camp as volunteer helpers. This potentially put them in a position of conflict as they had information about fundraising and payment of volunteers' expenses when attending the Year 8 Wellington Camp.

[50] Further, the Subcommittee did not formally interview relevant people such as XDR's wife, the previous school principal and various people suggested by LGY.

[51] Also, the Subcommittee failed to record its meetings in line with the Public Records Act 2005.

[52] And finally on process, one of the key failings by the Subcommittee arose because there were significant and vital differences between conclusions drawn in the Subcommittee's preliminary findings of 6 June 2025 and the final decisions made on 1 August 2025. As a positive note this clearly shows that the Subcommittee considered the submissions LGY made on the preliminary findings but what it meant was there was a fundamental change in the concerns of the Subcommittee and changes in the reasons for dismissal that were not put to LGY to comment on.⁴ So, for example:

(a) In the preliminary findings the Subcommittee decided, in connection with the WOW tickets purchased for LGY's husband and one of her daughters

⁴ The obligation to give an employee an opportunity to hear concerns and provide feedback on them is a key aspect of procedural fairness going to the test of justification.

in 2023, that LGY had intended to reimburse the school but had not (it did not appear to decide how this arose but LGY's evidence was that this was unintentional and an oversight) and then when she remembered to do it LGY decided to offset the cost of the WOW tickets against expenses she had personally incurred in fundraising that she had not claimed.

Then in the decision letter of 1 August 2025 the finding of fact simply became LGY used school money without authorisation to pay for to members of her family to attend WOW in 2023, without any reference to the fact that LGY had intended to pay for the tickets and thought she had by applying the offset against costs incurred by her. LGY had the opportunity to comment on the former finding but not the more simplistic and potentially inaccurate finding that then informed the Subcommittee's decision.

- (b) In the preliminary findings letter the Subcommittee's concerns over the finding that LGY used school money to pay for WOW tickets for her family in 2019 was expressed as being that LGY should have known that paying for her family expenses would not have been authorised as it was neither fair nor transparent use of school funds. In respect of the failure to reimburse the school for the 2023 expense of WOW tickets for two family members the concern was expressed as the decision was well beyond the expectations of transparency and integrity that we hold for a senior leader within the school.

Then in the decision letter of 1 August 2025 the Subcommittee stated its fundamental concern arising from both findings was that LGY had used school money without authorisation to pay for her family's tickets to WOW and was that LGY appeared to hold the view that school money was hers to spend as she saw fit or that she had the right to spend school money in a way that benefited her family.

So, there is a significant difference in the Subcommittee's concerns:

- i. the preliminary concerns being a failure to get authorisation, which LGY should have known she would not get and a failure to act transparently and with integrity; and
- ii. the fundamental concern in the decision letter that LGY held the view that school money was hers to spend as she saw fit including on her family.

LGY had no opportunity to comment on the changed concern in the decision letter.

- (c) In the preliminary letter the Subcommittee's decision to dismiss was informed by the repeated nature of the serious misconduct whilst in the decision letter the decision to dismiss was informed by LGY's "sense" that the disciplinary process was unfair, LGY's clear distrust of the principal and XDR and her persistent view that it was reasonable for her to make decisions to benefit her family. So, a significantly different approach adopted to the decision to dismiss in the 1 August 2025 letter; an approach that LGY had no opportunity to comment on.

Substantive justification

[53] Whether the Board's substantive decisions that LGY's conduct amounted to serious misconduct and that dismissal was appropriate, were decisions that a fair and reasonable employer could come to is arguable.

[54] The first point to note here is that the Subcommittee had considered if LGY's explanations for what occurred with the 2019 and 2023 Year 8 Wellington Camp expenses were misleading or dishonest; the Subcommittee had concluded that LGY had not been dishonest. It follows that the Subcommittee accepted LGY's explanations regarding the purchase of WOW tickets for her family in 2019 and 2023 as being honest.

[55] So, if a fair and reasonable employer had accepted LGY's explanations for purchasing the WOW tickets it is difficult to see how that fair and reasonable employer could then simply conclude that LGY had used school money, without authorisation, to pay for tickets to WOW for her husband and both daughters in 2019 and her husband and one daughter in 2023. It seems

appropriate that the conclusions should have included the honest explanations that LGY had given, so that they were findings that:

- (a) LGY had used her authority to organise the Year 8 Wellington Camp, which included setting the budget and paying expenses including expenses for non-student participants in the camps, to use money for the Year 8 Wellington Camp to pay for her family to attend WOW in 2019 as she considered them to be volunteer help for the Year 8 Wellington Camp.
- (b) LGY had failed to correctly account for the cost of WOW tickets in 2023 for her husband and one daughter; the tickets having been purchased out of Year 8 Wellington Camp money as part of a group purchase of WOW tickets.

[56] It follows then that it is unlikely that a fair and reasonable employer could have concluded that its fundamental concern was that LGY used Year 8 Wellington Camp money as hers to spend as she saw fit including spending money intended for students to benefit her family. It seems appropriate that the concerns for a fair and reasonable employer should have been:

- (a) In 2019, when deciding that her family were volunteers and therefore entitled to have WOW tickets paid out of camp money LGY had a conflict, which she failed to recognise, and she should have got authorisation for this decision.⁵
- (b) In 2023 LGY failed to follow correct policy and procedure, which she was aware of at the time, to reimburse her own expenses for the Year 8 Wellington Camp and to pay for the WOW tickets for her husband and one daughter, i.e. offsetting one against the other as she did was wrong and not in line with policy or procedure.

[57] In terms of the decision to dismiss LGY it also seems unlikely that a fair and reasonable employer could have concluded that dismissal was appropriate because LGY had complained

⁵ Noting here that this was a key point made by LGY's counsel, along with acknowledgement that given the circumstances LGY would not make that mistake again.

about the disciplinary process, because LGY distrusted the principal and XDR, and because LGY thought it was reasonable to make decisions to benefit her family. This is because these are not findings that follow from what the findings of fact should most likely have been or from the concerns that were likely to have arisen and because LGY had no opportunity to comment on this. But irrespective of this the decisions were not ones that a fair and reasonable employer could make because:

- (a) LGY had legitimate concerns about a process that she was told might lead to her dismissal so it was appropriate to raise them – had she not done so and then raised them subsequently in the context of her unjustified dismissal grievance she may well have been criticised for not raising them earlier – this was not a reason to dismiss her.
- (b) LGY’s concerns about the disciplinary process included the principal’s potential involvement in it – this does not evidence distrust for the principal. Similarly, LGY had concerns about the Subcommittee’s handling of the disciplinary process that does not evidence distrust for XDR.
- (c) In 2019 LGY had failed to recognise a conflict when she made a decision about paying for Year 8 Wellington Camp volunteers’ expenses. In 2023 LGY failed to follow correct procedure for claiming her own expenses and accounting for the cost of WOW tickets for her husband and one daughter. It is possible to conclude that the first action meant LGY had a view that she could make a decision that benefitted her family, but this does not follow for the second. A single incident where LGY made a decision to benefit her family in circumstances where that benefit seemed appropriate to grant to them given their involvement in the Year 8 Wellington Camp – and a decision that the principal at the time would probably have condoned – does not appear to be a basis on which a fair and reasonable employer could conclude that dismissal was appropriate.

[58] Given my conclusions on both the process adopted by the Board and substantive decisions it made I believe there is a strong case for unjustified dismissal.

Issues for reinstatement

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

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

[61] The test for practicable and reasonable has been discussed and analysed by the Court of Appeal.⁶ 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.

Analysis for reinstatement

[62] LGY wants to be reinstated to her role. Whether reinstating LGY is practicable and reasonable is informed by the nature of LGY's conduct for which she was dismissed, other conduct by LGY and the impact of reinstatement on the school.

LGY's conduct

[63] On LGY's conduct the Board says:

- (a) LGY still justifies expenditure in 2019 on family tickets to WOW as being justifiable – this shows that LGY lacks insight into her conduct and the implications.
- (b) LGY's failure to adhere to process when handling school funds: getting authorisation when spending money on her family; and following correct process when reimbursing money owed to herself and repaying money owed by family, shows that LGY cannot be trusted in a management role.

[64] And the Board says this means it no longer has trust in confidence in LGY – in summary, this conduct shows LGY cannot be trusted to act appropriately when it comes to dealing with

⁶ *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.

school funds and more generally LGY cannot be trusted to do the right thing, adhering to policy and procedure, which in a management role is extremely problematic.

[65] I think the proposition that LGY lacks insight into her behaviour and the implications is overstated. LGY says that in 2019, given the mandate she had to organise the Year 8 Wellington Camp, the accepted manner in which she had made decisions on expenditure and without direct knowledge of a contrary policy and/or procedure, her decision for the school to pay for her family to attend WOW as volunteers was justified and in line with other decisions she made. She is not saying, nor can it be inferred, that the decision she made then would be justified if made again in the future nor is she saying she would make the same decision in the future. LGY acknowledges now that even with a wide discretionary mandate she could not make a decision on expenditure in which she has a personal interest or benefit in the outcome, without authorisation. LGY recognises that in some instances of expenditure there may be a conflict which requires another person to be involved to approve – interestingly this is what she did in 2023 with the use of the airline ticket for one daughter; a point the Subcommittee did not properly investigate or give weight to.

[66] I think the Board’s concern about LGY not doing the right thing when it comes to expenditure is also overstated. There are two points to be made about the context of LGY’s failure to follow correct process with the 2023 WOW tickets:

- (a) LGY says that there was no known policy or procedure that she was aware of and that she dealt with school money in ways that other staff did or condoned and enabled – so for example money for leavers’ dinners was paid directly to her own bank account by staff.
- (b) The Subcommittee investigated all Year 8 Wellington Camps and all leavers dinners that LGY organised (at least three camps and five dinners on the evidence I received) and more generally all financial transactions (that included “the handling of funds, submission of receipts, management of budgeted expenses, and the documenting of school assets”).⁷ And in all of this the Subcommittee found only two instances where handling of school finances by LGY was questionable because she failed to identify a

⁷ The Subcommittee letter to LGY dated 13 November 2024.

conflict and act on it and failed to follow at least some form of process for reimbursement and payment.

[67] Whilst LGY's conduct in connection with WOW tickets for her family in 2019 and 2023 might leave some residual concerns for the Board, for the reasons I have set out above, I do not believe these concerns are sufficient to count against reinstatement.

LGY's other conduct

[68] I do not intend to set out the detail of the alleged behaviour the Board says LGY is guilty of. This behaviour relates to:

- (a) Decisions and representations third parties have made to the school about LGY and the principal's decisions in connection with this.
- (b) LGY allegedly removing school property when leaving the school.

[69] My view is this: the Board is drawing inference from third party correspondence and making assumptions based on witness evidence of LGY when packing up – neither has been subject of an investigation, neither has been properly put to LGY to respond to (although in her evidence she does deny them) and the conclusions drawn appear to be weak.

[70] I do not accept that LGY's alleged behaviour can have any impact on reinstatement.

Impact of reinstatement

[71] I readily acknowledge that the impact of reinstating LGY is significant. This is the most difficult aspect in this matter. The allegations made against LGY, LGY's complaints about the process including the conduct of the principal and XDR, the findings regarding LGY's conduct, the decision to dismiss and the adversarial conduct in relation to LGY's claim have all damaged the relationships between LGY and the principal, LGY and XDR, LGY and the Board and LGY and the school community. And as such the damage counts against reinstatement. Reinstating LGY in the face of those damaged relationships is problematic.

[72] But the converse is that LGY has a right to challenge the disciplinary process and her dismissal – and given my decision, was correct to do so – the adversarial nature of the claim is unavoidable. The parties need to look past these things and focus on working together. And

reinstatement is the primary remedy; so, it is recognised as being possible after an employer has unjustifiably dismissed an employee and a claim had progressed through the Authority.

[73] Also, the parties can get assistance in the form of mediation or facilitation focusing on restorative practices. In this regard there has been additional evidence provided about the availability of such services, but I put little weight on that – the fact is in the case of reinstatement an employer can engage outside assistance to restore the relationship with its employee – whether privately or through mediation services.

[74] The other aspect of the impact of reinstatement is that two staff members at the school have provided evidence stating they have concerns about LGY returning to work at the school as they have experienced challenges with LGY and her behaviour toward staff.

[75] Whilst I accept there are concerns expressed regarding LGY’s behaviour toward other staff, the concerns are new concerns, not aligned with the underlying behaviour that informs this employment relationship problem – so at this stage no independent assessment of the type of behaviour alleged that would indicate that the alleged behaviour would be problematic.⁸ There is also good character evidence for LGY.

[76] In short, I cannot give too much weight to these concerns in their untested state. I am concerned that to rule out reinstatement for alleged conduct by LGY toward other employees would be effectively the same as dismissing LGY without following any process to assess and evaluate the allegations.

[77] I believe the implications of reinstating LGY are problematic but given that the parties can take steps to restore the damaged relationships and address concerns about behaviour toward other staff I conclude that this does not weigh against reinstatement.

Practicable and reasonable

[78] Weighing all of the above, it seems likely to me that reinstatement might create some difficulties given the circumstances, but I believe that it can be achieved successfully and given my findings in this matter I equally believe that reinstatement should be ordered. Reinstatement is both practicable and reasonable.

⁸ Which is contrary to the position seen other case such *Lockington v Health NZ* [2025] NZERA 524, where the behaviour giving rise to concerns aligned with behaviour for which the applicant had been dismissed.

[79] I accept there is a serious question to be tried in respect of reinstatement of LGY and at this interim stage it is a strong case for reinstatement.

Conclusion on the question of serious question to be tried

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

The balance of convenience

[81] 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.⁹

[82] 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

[83] LGY has strong claims on both unjustifiable dismissal and reinstatement; this weighs in favour of granting interim reinstatement.

Impact of granting the interim order or not

[84] I have assessed the impact of reinstating LGY above and have discounted it.

[85] If LGY is not reinstated on an interim basis then a quick and speedy integration back to the workforce has been lost. Also, the Board will employ a new deputy principal to commence

⁹ *Team Group Realty Limited Trading as Harcourts Paremata v Martin Cardno & Ors* [2024] NZHC 553 at [66].

work at the start of the 2026 school year and this will create issues if I then subsequently reinstate LGY.

[86] The impact of granting interim reinstatement is less adverse for both parties than the impact of not granting interim reinstatement; this weighs in favour of granting interim reinstatement.

Adequacy of damages

[87] Whilst I accept that LGY faces financial hardship from being without work there is no evidence to show that she will face any immediate financial struggles. The short point is that on the evidence I have it seems that damages would be an adequate remedy for LGY for any loss she suffers if she is not reinstated on an interim basis, but I subsequently determine that she should be permanently reinstated.

[88] Conversely if I reinstated LGY and there was some harm done to the school damages would be harder to quantify and might be less effective in compensating the Board. However, I believe damages can be quantified and this means I am satisfied that damages could be an adequate remedy for the Board for any loss it suffers if I reinstate LGY on an interim basis and subsequently determine that she should not be permanently reinstated.

[89] Overall, this factor is balanced and not decisive either way in terms of the balance of convenience.

Conclusion

[90] LGY's strong claims for unjustified dismissal and permanent reinstatement, and the possible adverse effect of not granting interim reinstatement means the balance of convenience weighs in favour of granting interim reinstatement.

The overall justice

[91] 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.¹⁰

¹⁰ *NZ Tax Refunds v Brooks Homes Limited* [2013] NZCA 90.

[92] 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 granting interim reinstatement.

Conclusion

[93] LGY has established that she should be reinstated to her role at the school on an interim basis.

[94] In reliance on the undertaking as to damages provided by LGY, the Board must reinstate LGY to her role at the school pending the investigation and determination of her personal grievances.

Costs

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

Peter van Keulen
Member of the Employment Relations Authority