

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 847
3426785

BETWEEN HAZEL ZHU
 Applicant

AND SKOPE INDUSTRIES LIMITED
 Respondent

Member of Authority: Philip Cheyne

Representatives: James Hobcraft, advocate for the Applicant
 Andrew Shaw, counsel for the Respondent

Investigation Meeting: 19 December 2025 in Christchurch

Date of Determination: 23 December 2025

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Hazel Zhu was employed by SKOPE Industries Limited from January 2023 until she was summarily dismissed on 9 October 2025.

[2] Ms Zhu says that she was unjustifiably disadvantaged and unjustifiably dismissed. She raised the personal grievances with SKOPE Industries Limited (SKOPE) on 23 September 2025 and 9 October 2025 respectively, and commenced this action in the Authority on 27 November 2025. She seeks permanent reinstatement and other remedies for her grievances. Ms Zhu also seeks interim reinstatement.

[3] SKOPE denies unjustifiably dismissing or disadvantaging Ms Zhu, saying that it acted as a fair and reasonable employer could in all the circumstances. SKOPE says that Ms Zhu is not entitled to any remedies, including interim reinstatement.

[4] This determination resolves the application for interim reinstatement. Findings based on the untested affidavits in support and in opposition, attached documents and the counsels' submissions are solely for that purpose. Final findings must await a substantive investigation meeting.

[5] I should mention a matter that arose from the way material was provided to the Authority. The respondent produced Teams messages to and from Ms Zhu shortly before the investigation meeting to support submissions in opposition to interim and permanent reinstatement. At least some of the material was translated from Mandarin to English.

[6] Ms Zhu had no opportunity to respond. Her representative challenged the introduction of the material, but also disputed the accuracy of translations.

[7] I agree that it would be unfair to the applicant to give any weight to the material. For the purposes of this determination, I will disregard the Teams messages, the translations and any related submissions.

[8] I acknowledge the parties' comprehensive submissions including case references. I mean no disrespect by limited reference in what follows. I am confident that more detailed discussion of the submissions and cases would not alter the outcome.

[9] It is first helpful to explain more about what happened by way of background.

What Happened

[10] Ms Zhu worked as a project accountant. She was well regarded as an employee and had no disciplinary history before the following matter.

[11] Ms Zhu was on leave from the end of August 2025 and returned to work on 22 September 2025.

[12] Ms Zhu's direct manager was Jacobus Kruger, SKOPE's strategic finance manager at the time. Ms Zhu also provided some support to the team led by Laura Linnane, SKOPE's group finance manager. On 3 September, Ms Linnane was told by SKOPE's HR operations manager that Ms Zhu and another SKOPE employee were directors/shareholders of a company called Easy Accounting Limited. The HR manager had identified this in a separate employment matter.

[13] Ms Zhu says that, after arriving back at work on 22 September, she and another SKOPE employee were asked to attend a meeting in the boardroom. They were each given an investigation letter and were shown a spreadsheet recording their browser history and told to go home on pay as they were suspended.

[14] Ms Zhu also says that she was told to leave her computer and not to do any SKOPE work.

[15] SKOPE says that it met separately with Ms Zhu and with her colleague. SKOPE (Mr van Herpt – chief people officer) says that Ms Zhu was advised she was to go home until they could meet and that SKOPE would continue to pay her.

[16] The 22 September 2025 letter addressed to Ms Zhu sets out SKOPE's concern: that Ms Zhu was a director and employee of a company (Easy Accounting Limited); that she logged into Zero multiple times during the working day despite her role at SKOPE not requiring her to use Zero; that the Zero records indicate multiple entries for clients of Easy Accounting Limited; and that, on days when Ms Zhu was working from home, she appeared to have done significant work unrelated to SKOPE. SKOPE considered this might be a breach of the employment agreement, SKOPE's code of conduct and its policy about use of email and internet. SKOPE also said it was considering whether Ms Zhu's conduct may require notification to the appropriate professional board. A formal disciplinary meeting was set to discuss the concerns.

[17] The letter advised Ms Zhu that, given the seriousness of the concerns and the potential breach of trust, her access to the SKOPE network had been suspended and she was to remain at home on pay until they could meet and the matter was resolved.

[18] Ms Zhu engaged a representative who on 23 September wrote to SKOPE to seek full disclosure of relevant material, a postponement of the meeting meantime and to raise a personal grievance regarding Ms Zhu's suspension.

[19] On 24 September SKOPE sent two Excel spreadsheets as evidence of Ms Zhu's use of SKOPE equipment during work time to undertake private business activities. SKOPE also sent a copy of Ms Zhu's employment agreement and the use of email/internet policy. SKOPE disputed that Ms Zhu had been disadvantaged by being asked to remain at home on pay, pending the proposed meeting.

[20] Later, the disciplinary meeting was set for 6 October. Notes, a recording and a transcript of the meeting have been provided to the Authority. To summarise, Ms Zhu was asked and confirmed that she had been doing work for her own accounting company in SKOPE time and with SKOPE resources. SKOPE confirmed that it was not alleged that Ms Zhu had misused SKOPE's computer system or data. It expected Ms Zhu to put her time and energy into work for SKOPE, not into a company of which she was a shareholder. SKOPE also disputed that Ms Zhu had been suspended.

[21] After a brief adjournment, SKOPE said it considered that there was a case to answer in terms of discipline and it would issue its interim decision for Ms Zhu to respond to. The meeting then ended.

[22] SKOPE set out its "Interim Disciplinary Decision" in its letter of 7 October. It referred to mutual trust and confidence in the employment relationship and an employer's expectation that employees would act in good faith and devote their paid working time exclusively to the employer's business. SKOPE considered that Ms Zhu's actions were a significant breach of trust and SKOPE's reasonable expectations. SKOPE referred to its code of conduct, the email/internet policy and Ms Zhu's employment agreement and its view that use of its time and resources for non-SKOPE purposes was a conflict. It said its interim decision was to terminate Ms Zhu's employment. SKOPE sought any response by 8 October.

[23] Ms Zhu's representative replied on 8 October. They challenged SKOPE's interpretation of the cited clauses/policies, said that the behaviour complained of did not warrant Ms Zhu's suspension or dismissal and that SKOPE should reconsider the proposed course of action and promptly reinstate her following mediation.

[24] SKOPE wrote again on 9 October to advise that Ms Zhu's employment was terminated with immediate effect. SKOPE did not accept that its interpretation of the agreement and policies was improper or unavailable. The comment that dismissal was not warranted failed to appreciate the seriousness of Ms Zhu knowingly doing private profit-making work for her own company using SKOPE's systems during SKOPE's time over an extended period. SKOPE considered that its trust had been irretrievably broken.

[25] In addition, because Ms Zhu's use of the SKOPE laptop for her own business meant her client data may be stored on SKOPE's computer system, SKOPE was

considering whether it should notify the Office of the Privacy Commissioner of a potential privacy breach. It was also considering whether to formally advise Ms Zhu's professional body of what appeared to be a breach of the professional code of ethics.

[26] Ms Zhu raised a personal grievance about the dismissal on 9 October. She relied on the following: the unlawful suspension; failure to articulate clear allegations; failure to say that Ms Zhu risked summary dismissal; pre-determination; unwillingness to consider alternatives to dismissal; a failure to consider Ms Zhu's permission granted by various employment documents to use SKOPE systems for work unrelated to SKOPE; improper interpretation of the employment agreement and SKOPE's policies; the lack of an express prohibition of Ms Zhu's actions or an instruction to discontinue them; and a tacit acceptance of Ms Zhu's conduct, SKOPE having had full knowledge of Ms Zhu's conduct for a significant period.

[27] SKOPE responded on 14 October, but it is not necessary to summarise the response.

Applicable principles

[28] The Authority must apply the law relating to interim injunctions, having regard to the object of the Employment Relations Act 2000.¹ I must consider whether there is a serious question to be tried in relation to the claim of unjustifiable dismissal; where the balance of convenience lies; and what is required in the overall interests of justice. I must be satisfied that there is serious question with respect to both the unjustified dismissal claim and the permanent reinstatement claim.

[29] A serious question is one that is not vexatious or frivolous. It is a relatively low threshold.

Serious question – Unjustified dismissal

[30] It is strongly arguable that Ms Zhu may have an unjustified disadvantage personal grievance, if SKOPE's actions on 22 September 2025 amounted to a suspension and Ms Zhu can show it affected her employment to her disadvantage. While there is perhaps a subtle difference between Ms Zhu's account, Mr van Herpt's account and the instruction in the letter, there is no evidence that Ms Zhu had an

¹ Employment Relations Act 2000 s 127(4).

opportunity to comment on 22 September before SKOPE advised her what was happening. However, a grievance about a suspension at the start of a disciplinary process does not necessarily mean that a later decision to dismiss cannot be justified.

[31] It is submitted that SKOPE's investigation process was thoroughly inadequate. The adequacy of the investigation needs to be considered by reference to the agreement, SKOPE's policies and ss 4(1A)(c) and 103A of the Employment Relations Act 2000. SKOPE is a substantial business with resources to enable it to fully investigate concerns. There is documentation to show that it raised concerns and gave Ms Zhu an opportunity to be heard before deciding to dismiss her. It is weakly arguable that Ms Zhu did not have a reasonable opportunity to respond, in the sense that the extent of her use of SKOPE's paid time and its resources was described in generalities rather than quantified. Equally though, Ms Zhu did not challenge SKOPE's general assertions about the extent of her private work during SKOPE's time.

[32] It is submitted that the evidence does not clearly support the allegation of serious misconduct. Points are raised about how the policy and the employment agreement should be interpreted.

[33] The employment agreement said that the employee shall not set themselves up or engage in private business or undertake any other employment in direct conflict with the employer without specific approval in advance. Ms Zhu did not have specific approval for what she was doing, but perhaps her private business or other employment was not in direct conflict with SKOPE. One would need to construe the provision very narrowly to mean that Ms Zhu's conduct was not caught by it. But I accept it is weakly arguable at this point.

[34] SKOPE's code included in the list of examples of serious misconduct, misuse or unauthorised use of SKOPE's property. The Email/Internet policy stated that software, hardware and facilities were provided for business purposes. Limited private use was permissible outside of normal working hours. It is weakly arguable at this point that there was no breach of these provisions. While it is not directly claimed that SKOPE had actual knowledge, perhaps SKOPE should have known about Ms Zhu's use of the laptop, computer system and internet access for her private business. Or perhaps permissible private use covered what Ms Zhu was doing. If so, her use might have been impliedly authorised.

[35] Other points should be mentioned. Ms Zhu says she worked above and beyond the standard hours in her employment agreement to facilitate a project based in a different time zone and met all work obligations. I took her to suggest that something of an offsetting approach should be taken to her attending to non-work activities within standard working hours. In submissions but not directly in evidence it is also suggested that Ms Zhu's non-SKOPE activities were during breaks. She also says that she used her own internet connection when working from home. Again, it is weakly arguable that these factors might lessen the seriousness of Ms Zhu's conduct.

[36] It is submitted that SKOPE predetermined its decision. At this stage, Ms Zhu could point to SKOPE's decision to suspend her internet access, retain her laptop, have her remain home on pay, its reference on 22 September to notification to the professional board, the limited investigation, the brevity of the disciplinary meeting and the speed of announcing its decision. It is not necessary to set out SKOPE's explanations, but they may answer at least some of those points. I also note that SKOPE adjusted its proposed timeline when Ms Zhu's representative sought more information. Overall, predetermination is arguable.

[37] It is also submitted that dismissal was disproportionate and that SKOPE's conduct was not that of a fair and reasonable employer. The submissions add nothing to the foregoing assessment. Overall, Ms Zhu's case for a personal grievance of unjustified dismissal is arguable, but not strongly so.

Serious question – Permanent reinstatement

[38] Reinstatement, when sought, must be ordered wherever practicable and reasonable, if it is determined that the employee has a personal grievance.²

[39] There was no complaint or issue taken with Ms Zhu's work performance during the time she was employed at SKOPE. Working relationships with colleagues were positive. There is no evidence of reputational damage to SKOPE that would count against permanent reinstatement.

[40] SKOPE managers describe in their affidavits their loss of trust and confidence in Ms Zhu, based on the substantive reason for the dismissal. However, those subjective

² Employment Relations Act 2000 s 125.

views are unlikely to count strongly against permanent reinstatement if SKOPE cannot establish substantive justification for the dismissal.

[41] However, if SKOPE makes out the substantive grounds for the dismissal, but Ms Zhu nonetheless has a personal grievance, it seems unlikely that permanent reinstatement would be practicable and reasonable.

[42] Ms Zhu has an arguable case for a personal grievance of unjustifiable dismissal and her claim for permanent reinstatement is no stronger.

Balance of convenience

[43] At this stage, it is likely that final resolution of Ms Zhu's claims could take six months or longer given the Authority's workload.

[44] Ms Zhu refers to the threat to report her and to claim damages against her. However, neither matter turns on whether Ms Zhu is interim reinstated. They are not presently relevant.

[45] Ms Zhu has described the effects on her of SKOPE's process, the dismissal, being unable to find new employment and losing her income from SKOPE, given she is a solo parent with a child to support and a mortgage.

[46] If Ms Zhu is not reinstated in the meantime but is later found to have been unjustifiably dismissed, those losses would have been amplified. However, compensation could remedy Ms Zhu for much of that loss. It is likely that SKOPE could meet orders for reimbursement and compensation.

[47] SKOPE says that it has replaced Ms Zhu so would benefit little by having Ms Zhu available to work in the meantime. There is little direct evidence about Ms Zhu's overall financial position, but I will assume that she would be able to meet any order for damages under her undertaking. Any loss suffered by SKOPE could be met by damages.

[48] I accept that Ms Zhu's managers would be negatively affected, if they were obliged to work with Ms Zhu in the meantime. They would have little confidence in assigning work to Ms Zhu and their team's reputation within SKOPE might be impacted. If Ms Zhu's claim failed in due course, SKOPE would have little effective

remedy for those effects. However, SKOPE's leadership resources should allow it to ameliorate any effects.

[49] Overall, the balance of convenience favours SKOPE, not Ms Zhu.

Overall Justice

[50] In a disciplinary meeting where she was represented, Ms Zhu was asked and admitted undertaking work for her own company in SKOPE time and using SKOPE resources. Relevant documentation indicated that such conduct might not be acceptable to SKOPE. Many employers would have similar terms and policies.

[51] While she has an arguable case for a personal grievance of unjustified dismissal, it is not strong. Here case for permanent reinstatement is also not strong.

[52] Overall justice does not support interim reinstatement.

Summary and orders

[53] Ms Zhu's application for interim reinstatement is dismissed.

[54] Costs are reserved. I would expect to deal with costs at the same time as costs on the substantive application.

[55] The Authority will arrange a case management conference to make appropriate arrangements, likely to include a reference or direction to further mediation. Parties may consider it appropriate to initiate mediation themselves in the meantime.

Philip Cheyne
Member of the Employment Relations Authority