

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 52
3264979

BETWEEN	RYO WATANABE Applicant
AND	GO GREEN AUTOS NEW ZEALAND LIMITED First Respondent
AND	GREEN FIELD LIMITED Second Respondent

Member of Authority:	Nicola Craig
Representatives:	Ruth Katsui, counsel for the applicant Tetsuo (Terry) Nozawa for the first respondent No appearance for the second respondent
Investigation Meeting:	On the papers
Submissions (and further information received):	22 December 2023, 12 and 26 January 2024 from the applicant 22 December 2023, 15 and 16 January 2024 from the first respondent Nothing received from the second respondent
Date of determination:	31 January 2024

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Ryo Watanabe is a Japanese national who worked in New Zealand from early January 2023 as chief mechanic in a workshop operated by Go Green Autos New Zealand Limited (Go Green).

[2] The identity of Mr Watanabe's initial employer in New Zealand has yet to be determined. Go Green accepts it was Mr Watanabe's employer for some of 2023. Green Field Limited (Green Field) is a Japanese registered company which was connected with Mr Watanabe's move to this country and may or may not have been his employer here. Green Field and Mr Watanabe signed an agreement, referred to in translation from Japanese, as a consignment agreement.

[3] Mr Watanabe was told from 1 May 2023 that he should not come into work, seemingly because he did not have a work visa. On 27 June 2023 his work visa was issued. Initially Go Green's representative did not agree to him returning to work and there is a question about whether he was dismissed. Later, agreement was given for his return to work but the parties became embroiled in communications without Mr Watanabe actually working.

[4] On 15 September 2023 Go Green's lawyer wrote that "any decision" to terminate was during a 90-day trial period and previous advice stands with the relationship having been terminated for performance related issues.

[5] Mr Watanabe brings claims including grievances that he was disadvantaged by unjustified actions, unjustifiably dismissed and is owed remuneration. He seeks reinstatement to his role on an interim basis until his grievance claims can be fully considered. Go Green opposes interim reinstatement.

The Authority's process

[6] Mr Watanabe and Go Green participated in a case management conference with the Authority by phone where it was agreed that the interim reinstatement claim could be dealt with on the papers.

[7] Affidavits were received from Mr Watanabe and Go Green's director Tetsuo (Terry) Nozawa. Submissions were received for Mr Watanabe and Go Green. Afterwards, they supplied further documents and information.

[8] Leave has been given for Green Field to be served with the statement of problem in Japan. The Authority has not yet received confirmation of service. Given that the interim application only is currently being considered and that seeks employment with Go Green, that application can be determined before Green Field is served.

[9] In the usual way, I have dealt with this application for interim reinstatement on the basis of untested evidence and submissions. Disputed matters cannot be decided on such evidence.

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

The issues

[11] The issues for determination in this interim reinstatement matter are:

- Is there a serious question to be tried, so does Mr Watanabe have an arguable case for unjustified dismissal and for permanent reinstatement, which in this case includes consideration of a trial period and fixed term provision?
- Where does the balance of convenience lie?
- Where, standing back and considering the case, does the overall justice lie until the substantive matter is determined?¹

[12] There are questions about whether Go Green was Mr Watanabe's employer at the time some of the non-dismissal grievances allegedly arose and, potentially, the status of the consignment agreement and whether the Authority has jurisdiction under it. However, those matters do not need to be considered in determining the interim reinstatement application.

Connections between the companies

[13] Limited information is currently available. Mr Watanabe describes Go Green and Green Field as affiliated companies.

[14] Mr Nozawa is Go Green's sole director. Its shareholders are Mr Nozawa, Hayata Uchida (with an Auckland residential address in the Companies Register) and Oku Hiroyuki (with a Japanese address listed).

[15] Mr Watanabe's evidence is that Mr Uchida is based in Japan.

¹ For example, *Brooks Homes Limited v New Tax Refunds Limited* [2013] NZSC 60, *Western Bay of Plenty District Council v McInnes* [2016] NZEmpC 36 and *Humphrey v Canterbury District Health Board, Te Poari Hauora O Waitaha* [2021] NZEmpC 59.

[16] Mr Oku is described as the representative for Green Field in the consignment agreement and signed documents on its behalf.

Mr Watanabe's initial engagement

[17] Mr Watanabe describes applying for the chief mechanic's role whilst in Japan. He says he was told to come to New Zealand on a visitor's visa, work for the first three months here on that visa and after that Go Green would support a work visa for him.

[18] In December 2022 Mr Watanabe and Mr Oku on behalf of Green Field, signed the consignment agreement. Mr Watanabe says he was given the agreement to sign at the airport when about to fly to New Zealand.

[19] Under this agreement Green Field consigns Mr Watanabe the "whole work" related to the "New Zealand Affiliated Corporation Go Green Autos New Zealand Limited", including but not limited to maintenance work. Mr Watanabe was to be paid in Japanese yen deposited into a Japanese bank account.

[20] The jurisdiction provision in the consignment agreement identifies the place of Green Field's head office as the court of first trial jurisdiction.

Mr Watanabe's start in New Zealand

[21] Mr Watanabe refers to beginning work here on 4 January 2023. The consignment agreement gives the date of commencement of the consignment as 6 January 2023. Mr Watanabe was based at Go Green's workshop and initially had accommodation there too.

The Go Green employment agreement

[22] It appears Mr Watanabe arrived here on a visitor's visa which was to expire around the end of March 2023. The consignment agreement was also for a three-month term, which presumably would have ended in either very late March or early April.

[23] With the help of an immigration adviser preparations were made for Mr Watanabe to apply for a work visa, with Go Green supporting the application.

[24] On the evidence before me, on 25 March 2023, via the immigration advisor, Go Green's job offer letter and employment agreement were provided to Mr Watanabe.

The offer was that Mr Watanabe would start as Go Green's chief mechanic as soon as his visa was approved. The letter states that the offer is to:

... capitalise on your specialist mechanic skills and business skills as RYO Auto Engineering as seconded from its associated company, Greenfield Co. Ltd in Japan.

Since you formally commenced a short-term contract as a senior mechanic/mechanical consultant at the RYO Auto Engineering as the director of RYO Auto Engineering on 6 January 2023, we have been constantly impressed with your high level of expertise, commitment and hard work, highly beneficial to our business. ... in recognition of your outstanding work performance, we welcomed you to our team at Greenlane (*sic*) Co Ltd in Japan as a trusted employee as of 1 March 2023.

[25] The reason 1 March and RYO Auto Engineering are referred to is not evident.

[26] Go Green offers to make every endeavour to demonstrate Mr Watanabe is required for this position with the Immigration office. Remuneration at \$29.66 per hour is to be paid into Mr Watanabe's New Zealand bank account.

[27] The agreement is specified to be for a period of 12 months with the commencement date being when Mr Watanabe's work visa is approved by Immigration New Zealand. The reason identified for having a fixed term is to "help put Go Green ... in orbit by providing short-term operational assistances as a seconded chief mechanic from Greenfield Co Ltd."

[28] The employment agreement was signed by Mr Watanabe and Mr Uchida.

Mr Watanabe's work continues

[29] After the agreement was signed, Mr Watanabe continued working at the workshop despite his work visa not having been obtained. His original visitor's visa seems to have expired around 1 April 2023 with an interim visa on visitor conditions being granted while he waited for his work visa to be approved.

[30] Mr Watanabe says that (at some point) he became concerned and told Mr Uchida that he thought he was working illegally as he had no work visa. He reports Mr Uchida rejecting that and saying there was no problem.

[31] Mr Watanabe recalls Mr Uchida ringing on 17 April 2023 and yelling about whether Mr Watanabe had ADHD.² Mr Uchida apparently said he could not trust someone with an illness working for him. Mr Watanabe asserts that he had disclosed his condition earlier on in the process.

Mr Watanabe sent away

[32] Mr Watanabe's evidence is that on 1 May 2023 he was told by Mr Uchida not to come into work anymore because he was on an interim visa and should not be working. The following day he went back into the workshop to finish a few tasks but did not work after that.

[33] Green Field issued a notice of cancellation of the consignment agreement dated 3 May 2023, with Mr Oku as its representative. The notice stated that Mr Watanabe's company was in default although, on the face of the translated consignment agreement, the agreement is with Mr Watanabe personally. The default is referred to as work being below par, customer complaints, misrepresentation (regarding ADHD and another matter) and the agreement's duty to report. The notice requires Mr Watanabe to return to Japan and if he does not, the document will be notice of termination.

[34] Other than the 17 April call, Mr Watanabe does not accept that any of the "default" issues were raised with him before.

[35] Around 27 June 2023 Mr Watanabe's work visa application, to allow him to work for Go Green, was approved by Immigration New Zealand. He reports asking Mr Uchida whether he could come into work now, with Mr Uchida responding that the first agreement (presumably the consignment agreement) was a fixed term and had already expired on 31 March 2023.

[36] Mr Watanabe says he asked for written confirmation of dismissal but did not receive it and thus was uncertain whether he had been dismissed. At this stage he approached lawyers, who raised personal grievances for unjustified disadvantage and discrimination on his behalf. Reference is also made to "potential unjustified dismissal" although Mr Watanabe is said to consider that he has not been officially dismissed given

² ADHD - Attention Deficit Hyperactivity Disorder.

that he did not receive written notice of termination. The grievance letter of 14 July 2023 included a request that Mr Watanabe be allowed to return to work.

[37] A string of emails were exchanged between Mr Watanabe's representative and Mr Nozawa for Go Green. Go Green broadly outlined some concerns and indicated it did not want to hire Mr Watanabe at one point but was advised by its immigration advisor that it had to. Go Green was willing to have Mr Watanabe return if issues could be resolved, including by an expression of remorse from him. Mr Watanabe maintained his desire to return to work.

[38] On 3 August 2023 Mr Nozawa confirmed in writing that Mr Watanabe would be able to return to work. Go Green obtained representation and indicated it wished to investigate Mr Watanabe's disadvantage grievances. Mr Watanabe's lawyer communicated he was ready to work and saw him as being on suspension.

[39] The parties agreed to attend mediation, which was set for 28 September.

[40] On 12 September 2023 Go Green's lawyer wrote that Mr Watanabe's work visa was issued on 27 June and that is therefore the commencement date of his employment with Go Green.

[41] Go Green's lawyer wrote on 15 September indicating that any termination of employment could not be used as a basis for a personal grievance due to a trial period in the employment agreement which was effective from the date of commencement of the employment relationship (being 27 June 2023). Further, "GGA's previous advice stands and the employment relationship between GGA and Mr Watanabe has been terminated for performance related issues, pursuant to the provisions contained in the Trial Period".

[42] Mediation occurred but resolution was not reached. Further grievances were then raised on Mr Watanabe's behalf with reinstatement sought. He then applied to the Authority.

Arguable case regarding dismissal

[43] The issues are now examined. I refer first to some complexities of Mr Watanabe's employment situation which are beyond what can be decided in an interim

application. They do however relate to some of the arguments outlined later in the determination.

[44] Go Green and Mr Watanabe agree he was employed by that company at some stage. The start and finish dates are not clear.

[45] The written employment agreement between them is on its face conditional on Mr Watanabe obtaining a work visa. That did not occur until 27 June 2023. Go Green's position is that that is when his employment with it started, despite no actual work occurring from that point onwards.

[46] However, on its face the consignment agreement with Green Field would have expired in late March or early April 2023 but Mr Watanabe continued working at Go Green's workshop throughout April.

[47] It is arguable Mr Watanabe was employed by Go Green from at least 27 March 2023, when the parties signed their employment agreement, given he kept working at Go Green's workshop from then.

[48] It appears to be accepted that Go Green dismissed Mr Watanabe with possible dates of dismissal including early May 2023 (when he was sent from the workshop), shortly after 27 June (when Mr Uchida was reluctant to have him return to work) or 15 September (with the letter from Go Green's lawyer).

[49] Crucially there is no dispute that Mr Watanabe was employed for a period by Go Green and was dismissed before or on 15 September 2023.

[50] Go Green denies that Mr Watanabe's dismissal was unjustified.

Trial period

[51] The first difficulty for Mr Watanabe is whether he is able to bring a dismissal grievance at all. Go Green's position is that it was entitled to terminate his employment due to the trial period in their employment agreement.

[52] However, there are several bases on which it is arguable that Mr Watanabe is not prevented from bringing a dismissal claim by the trial period, some no doubt stronger than others:

- Not a new employee, with employment agreement formed with Go Green in December 2022 – Mr Watanabe argues employment with Go Green could have been offered and accepted in late December 2022 before he left Japan. This argument sees Mr Uchida, representing both Go Green and Green Field, offering an arrangement under the consignment agreement for the first period then movement to working for Go Green. If the employment agreement with Go Green was reached that early, and without discussion of a trial period, a trial period could not later be imposed.³
- Not a new employee, with employment from January with Go Green - as at 25 March 2023 when he was offered the written employment agreement by Go Green, Mr Watanabe had already been working in the Go Green workshop for almost 3 months.⁴ The companies appear to be affiliated and the same work continued. There is also mention in Go Green's 27 March 2023 offer letter that of 1 March. That letter indicates Go Green are aware of Mr Watanabe's expertise, commitment and hard work.
- Insufficient opportunity to seek advice - the trial period may not be valid if Mr Watanabe was not given sufficient opportunity to read and seek advice. The job offer letter and agreement were sent by the immigration adviser on Saturday 25 March, with advice (as translated by Mr Watanabe) that the visa application had to be made by 31 March at the latest. The offer letter asked for signature within 5 working days. But the close of the fifth working day was the very end of the period specified by the immigration adviser for lodging the visa application. Mr Watanabe's evidence is that given the time pressure, he did not have an opportunity to speak to a lawyer, signing on Monday 27 March. Mr Watanabe faces the difficulty that he signed an acknowledgement that he had been advised and had the opportunity to take legal advice.
- Still only a person intending to work – an alternative argument for Mr Watanabe is, if the written agreement did not come into effect until 27

³ *Kumara Hotel Ltd v McSherry* [2018] NZEmpC 19 at [46].

⁴ See *Smith v Stokes Valley Pharmacy (2009) Ltd* [2010] NZEmpC 111.

June when the visa was obtained, the trial period may not have started at all as he never actually worked after that date.

- 90-day period may have expired – if dismissal was implemented by the 15 September letter, it was more than 90 days after the employment began if that was on or around 1 or 27 March.
- Trial period may not have been validly utilised – the trial period specifies that the employee may be dismissed on notice or payment in lieu. No notice period is identified in that clause but the termination clause requires one month’s notice in writing.⁵ Mr Watanabe did not work out a notice period and it is not clear he has been paid out one month’s pay.

Dismissal

[53] In order to justify the dismissal Go Green was required to act as a fair and reasonable employer could have done under s 103A of the Act. This includes considering whether it had sufficiently investigated, put its concerns to Mr Watanabe, given him a reasonable chance to respond and genuinely considered his responses.⁶

[54] There is little evidence of a process along the s 103A lines occurring before either of the more likely dismissal points namely:

- Mr Uchida’s discussion/s with Mr Watanabe shortly after the work visa was obtained.
- The 15 September 2023 letter from Go Green’s lawyers.

[55] The reason for the dismissal is referred to in the 15 September letter as “performance related”. The earlier correspondence does not focus on Mr Watanabe being unable to do his job properly. Rather it relates to incidents which largely occurred whilst Mr Watanabe was actually working, that is before 2 May 2023. For example, a client is said to have complained about him parking a car on its premises and taking a bike without permission. In response Mr Watanabe’s lawyer provided a message said to support the arrangement between Mr Watanabe and the client.

⁵ Employment agreement, cl 11.

⁶ The Act, s 103A(3).

[56] I note that these events would have been in the period before Go Green says Mr Watanabe started being employed by it, namely before his work visa was approved.

[57] Go Green would need to satisfactorily explain how it moved from a 27 March 2023 stance of being “constantly impressed” with Mr Watanabe’s “high level of expertise, commitment and hard work” to, after only a further month’s actual work, considering he should be dismissed.

[58] On the material before me it seems Mr Watanabe did not have the opportunity to participate in a performance improvement or management process or in a formal disciplinary process.

Conclusion

[59] I conclude that there is an arguable case that Mr Watanabe is not prevented from bringing a grievance by the trial period and also was unjustifiably dismissed.

Arguable case for permanent reinstatement

[60] I now look at whether it is reasonable and practicable to reinstate Mr Watanabe. Reinstatement has been returned to its previous status as a primary remedy.⁷ That has an impact on how reinstatement is assessed.

Reasonableness

[61] Mr Watanabe refers to being ready, willing and able to return to work with Go Green. The concerns raised by Go Green do not focus on him being unable to do his job properly.

YouTube video

[62] Go Green says it no longer trusts Mr Watanabe. It relies on a video posted on YouTube by Mr Watanabe wearing a white balaclava. He shows documents about his dispute with Go Green.

[63] Mr Nozawa refers to Mr Watanabe’s “aggressive actions”, seemingly related to the video. Mr Watanabe denies that the You Tube clips were aggressive or threatening. He refers to this main purpose being to try to get help to fund his legal fees.

⁷ Section 125 of the Act.

[64] On the limited evidence before me the material on YouTube is focused showing written correspondence between Mr Watanabe and Go Green or their representatives. Whilst Go Green would no doubt prefer not to have its employment disagreement raised in public I am unable to identify material which is defamatory as suggested by Mr Nozawa.

[65] Privacy issues are also mentioned but the names appear to be those of Go Green's director and shareholder/s which are a matter of public record through the Companies Register.

[66] Other than possibly by implication through wearing a balaclava, I cannot identify material to support Mr Nozawa's suggestion that there are resulting safety issues.

[67] Overall from the material available at this point, the video does not make it unreasonable for Mr Watanabe to be reinstated.

Fixed term agreement

[68] I have considered whether it is reasonable to impose reinstatement when the employment agreement between Go Green and Mr Watanabe is ostensibly for a fixed term period of 12 months. As noted above there is a question about its start date, with Go Green's position being that it ran from 27 June 2023.

[69] The validity of the fixed term will need to be examined in the substantive determination. The genuine reason identified for having a fixed term was "to help put Go Green ... in orbit by providing short-term operational assistance as a seconded chief mechanic from Greenfield". Without more evidence it is arguable that giving Go Green a boost or a fast start for 12 months is not a sufficient basis on which to offer a fixed term.⁸

[70] Mr Watanabe also argues if the reason for the term was his expected work visa length that may not be a genuine reason for a fixed term.⁹

[71] Mr Watanabe should be aware that if he is interim reinstated but unsuccessful in his substantive dismissal claim or entitled to less lost wages than the interim

⁸ The Act, s 66.

⁹ *Restaurant Brands Ltd v Gill* [2021] NZEmpC 186.

reinstatement period, there is a risk that he may have to pay back some or all of the wages under his undertaking as to damages.

Practicality

[72] Mr Watanabe makes allegations of bullying, harassment and discrimination against staff who appear to work for or on behalf of Go Green. Mr Uchida is identified by name but other staff are also referred to more broadly. In his affidavit in reply Mr Watanabe identifies that there was one other person involved but he did not name that person to Go Green during its investigation as he did not want to bring them into it, being more concerned about Mr Uchida's actions. The implication being the matter with the other person is seen as minor.

[73] On examination the grievance allegations are focused on comments about Mr Watanabe's health condition and the possible impact on his work at Go Green or elsewhere. There is also reference to Mr Uchida having yelled at Mr Watanabe.

[74] Mr Uchida was Mr Watanabe's contact person and the person he reported to. This casts some doubt over the practicality of reinstatement. However, Mr Watanabe also refers to Mr Uchida being based in Japan and to having no problem reporting to Mr Nozawa or someone else. No difficulties about this possibility were raised by Go Green. No affidavit from Mr Uchida was lodged.

[75] Mr Watanabe also expressed a willingness to be on garden leave.

[76] At the case management Mr Nozawa commented that the workshop business had closed. That would not make reinstatement to work there practicable. However, the comment was not supported by any sworn evidence. Mr Nozawa provided an affidavit the week after the conference with no reference to the workshop being closed. I am reluctant to place too much weight on the oral comment in such circumstances.

Conclusion

[77] Although the bullying complaint and YouTube videos present challenges, my overall assessment at this interim stage is that reinstatement is reasonable and practicable and Mr Watanabe thus has an arguable case for permanent reinstatement.

Balance of convenience favours Mr Watanabe

[78] I now move on to weigh the interests of Mr Watanabe against those of Go Green, including a consideration of the adequacy of damages.

Mr Watanabe

[79] Mr Watanabe has moved his life to New Zealand with the intention of working in the workshop. He refers to spending thousands of dollars on immigration advisor and immigration filing fees. He only had four months' work.

[80] Mr Watanabe describes his visa and financial situation as precarious. His work visa is tied to Go Green. There were prospects of a temporary replacement visa with his representative working with Immigration New Zealand. He would need another employer to sponsor or else gain a migrant exploitation visa. In addition Mr Watanabe identifies a factor in his background which he understandably considers may make getting a new visa and/or gain new employment difficult.

[81] The most recent advice from Mr Watanabe's representative is that he has not been able to secure another visa and has been informed by Immigration New Zealand that he will be liable for deportation from the end of this week.

[82] Mr Watanabe has been unable to lawfully work since May 2023 and thus been unpaid. He describes this as putting him in severe financial difficulty, necessitating loans from friends and family members to try to make ends meet and cover his legal costs.

[83] I take into account the likely time of mid-2024 when this matter could be substantively heard. Here the possibility of additional time being required due to Green Field's involvement as a foreign company, should be factored in. Mr Watanabe is favoured by the likely resolution time.

[84] Are damages a suitable alternative to interim reinstatement for Mr Watanabe? There is a strong likelihood that in the absence of a job, Mr Watanabe will be unable to remain in New Zealand. Damages would not be able to compensate him for having to leave the country.

Go Green

[85] I now look at any detriment which Go Green could or would suffer if Mr Watanabe is reinstated on an interim basis.

[86] There is minimal information available regarding Go Green's size or financial position.

[87] Go Green is concerned about the prospect of Mr Watanabe's future behaviour in light of the YouTube video. Earlier communication from the company also stressed that Mr Watanabe had not expressed any remorse regarding his conduct.

[88] If reinstatement is ordered it would usually be on the basis of a return to actual work, rather than just to the payroll.¹⁰ If reinstatement proceeds to the payroll Go Green could face having to pay Mr Watanabe on an on-going basis but without the benefit of his work. It could potentially attempt compensation under the undertaking.

Conclusion on the balance

[89] Mr Watanabe's visa situation appears dire, with only days left until he will be required to leave the country in the absence of having work. On his evidence he is in severe financial difficulty. I do not have evidence of detriment to Go Green sufficient to outweigh that.

[90] The balance favours Mr Watanabe.

Overall justice favours Mr Watanabe

[91] In summary, Mr Watanabe has an arguable case for unjustified dismissal and for permanent reinstatement. The balance favours him. I now step back and check where the overall justice lies.

[92] Mr Watanabe's move to New Zealand was supported by Green Field, which is connected with Go Green. He worked in Go Green's workshop even if he was not initially its employee. The plan was for him to get a work visa and have a stable job, with Go Green supporting that application.

¹⁰ *Pacific Blue Employment & Crewing Limited v B* [2010] NZEmpC 112 at [22]-[23].

[93] Concerns about him do not relate to his ability to undertake a mechanic's job. The YouTube videos are of much significance to Go Green. There may be a cultural element to these concerns. Mr Watanabe's approach was certainly unusual and disconcerting for Go Green. However, it must be seen in the context of a migrant, seemingly in New Zealand on his own, without pay since May 2023, uncertain about whether his employment was intact and unable to obtain other work under his visa.

[94] In terms of third party interests, the other staff member who Mr Watanabe mentioned making a statement about Mr Watanabe's ability to find work, taken to relate to ADHD, are not sufficient to sway the matter away from Mr Watanabe. The allegations against Mr Uchida are more significant but there is no sworn evidence provided of Mr Uchida's inability to work with Mr Watanabe or the unsuitability of alternative reporting arrangements.

[95] In addition, the imposition of good faith obligations through reinstatement would require the parties to work co-operatively together to maintain their relationship.

[96] In terms of timing, more than a couple of months elapsed between what appears to have been the latest possible date of dismissal and the date the interim reinstatement application was lodged. However, Go Green makes no point about this. There is also evidence that Mr Watanabe was struggling to obtain funding for legal fees to pursue this matter.

[97] It is difficult to fully assess the strength of the parties' cases on the limited material before me. However, there are a number of arguments against the trial period being enforceable and Mr Watanabe's dismissal claim on its face looks strong.

[98] There is nothing under this head which dissuades me from granting Mr Watanabe's application. Given the lack of certainty about possible reporting arrangements and the status of the workshop, reinstatement to the payroll only at this stage is appropriate.

Orders

[99] I grant the application for interim reinstatement to the extent that Go Green Autos New Zealand Limited is ordered to reinstate Ryo Watanabe to employment on the payroll by **5pm on 2 February 2024**, as an interim measure until the Authority is able to determine his substantive claim. The parties are encouraged to attend mediation

promptly to discuss arrangements about the prospect of Mr Watanabe undertaking work for Go Green in that period. If voluntary attendance at mediation does not occur, the parties may return to the Authority to seek further orders.

Costs and next steps

[100] Costs are reserved. An Authority Officer will be in touch with the parties regarding the next steps in this proceeding.

Nicola Craig

Member of the Employment Relations Authority