

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 154  
3441864

BETWEEN

CHRIS YU  
Applicant

AND

HOME SYNERGY LIMITED  
Respondent

Member of Authority: Eleanor Robinson

Representatives: Greg Bennett, advocate for the Applicant  
Ramendra Narayan, representing the Respondent

Submissions; 26 February 2026 from the Applicant  
3 March 2026 from the Respondent

Investigation Meeting: 6 March 2026 by AVL

Determination: 12 March 2026

---

**PRELIMINARY DETERMINATION OF THE AUTHORITY**

---

**Employment Relationship Problem**

[1] Before the Authority is an application for interim reinstatement brought by the Applicant, Chris Yu, under s 127 of the Employment Relations Act 2000 (the Act).

[2] Mr Yu was dismissed on 3 February 2026 for serious misconduct by the Respondent, Home Synergy Limited (Home Synergy). Mr Yu claims that he was unjustifiably dismissed from his position as General Manager and is seeking reinstatement on both an interim and a permanent basis.

[3] Home Synergy claims that Mr Yu's dismissal was warranted, and this decision was open to it as a fair and reasonable employer in all the circumstances at the relevant time. Home Synergy opposes the claim for interim reinstatement and the substantive claim.

[4] This determination addresses the issue of interim reinstatement.

### **The Authority's Investigation**

[5] Following the initial application by Mr Yu, the parties attended mediation, but this did not resolve the issue.

[6] The application for an interim reinstatement was accompanied by an undertaking as to damages and an affidavit by Mr Yu. An affidavit was also lodged by in opposition by Home Synergy.

[7] A case management conference was held on 10 February 2026. The Applicant was directed to lodge submissions on 24 February 2026, the Respondent by 3 March 2026, and any reply submissions from the Applicant were to be lodged by 5 March 2026. The parties agreed to the Authority determining this preliminary issue of the interim reinstatement application based on the Statement of Problem and the Statement in Reply, documents submitted by the parties, on affidavit evidence, and on submissions from the parties.

[8] The evidence before the Authority for the purpose of determining this interim reinstatement application has been presented as is usual in such applications in affidavit form. by the Applicant, Mr Yu. Affidavits have been presented for the Respondent by Michael Chong, director and Ede Prasad, an employee electrician.

[9] As the affidavit evidence presented must necessarily remain untested until the substantive investigation of the unjustified dismissal personal grievance, any findings of fact by the Authority in this determination are provisional only and may change later once the claims have been fully investigated and all witnesses have been examined on their evidence.

[10] As permitted by s.174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

### **Principles**

[11] Mr Yu's application for this matter to be dealt with on an urgent basis was granted by the Authority because this is the usual procedure for dealing with an application for an interim reinstatement. In determining this matter, I must apply the law relating to interim reinstatement as set out in s 12(1) and s 12(4) of the Act which include recognising that employment

relationships are built on the legislative requirement for good faith behaviour and addressing the inherent inequality of power in employment relationships.<sup>1</sup>

[12] At the Investigation Meeting held by AVL on 6 March 2026, I heard submissions from the parties' representatives in relation to the interim reinstatement application and tested these by questioning how the available untested affidavit evidence related to the relevant principles for determining an interim injunction application.<sup>2</sup> Those principles fall to be addressed by the answers to the following questions:

- (a) whether or not Mr Yu has established that there is a serious case to be tried in relation to the claim for unjustifiable dismissal; and if so:
- (b) Is there a serious case in relation to the claim for permanent reinstatement?

[13] Also noted as needing consideration are the balance of convenience and the impact on the parties, including any third parties, of granting, or not granting, an order for interim reinstatement, and the overall justice of the matter.

### **Brief Background Facts**

[14] Home Synergy operates in the home ventilation products sector (HRV). It is a small family-owned business, engaged in selling, installing and servicing HRV ventilation systems, heat pumps, and water purification products in East and South Auckland. It employs 14 employees who sell, install and service the products. Mr Chong is a shareholder and the sole Director.

[15] Mr Yu was employed by HRV in January 2025 and worked as the Sales Manager. On 1 September 2025 he was promoted to the position of General Manager reporting to Mr Chong.

[16] During December 2025 there was a disagreement between Mr Yu and Mr Chong about how Mr Yu's incentive payments were calculated. Mr Yu lodged a Statement of Problem in the Authority in relation to that matter. That matter has not yet been investigated.

[17] Mr Yu had been provided with a new employment agreement when he was appointed General Manager (the 2025 Employment Agreement) which he signed on 1 September 2025 below a declaration that included that he:

---

<sup>1</sup> Employment Relations Act 2000 s 3.

<sup>2</sup> *McInnes v Western Bay of Plenty District Council* [2016] NZEmpC 36 at [8] ERA Auckland 92 in which Judge Inglis (as she then was) referred to the court of Appeal decision in *NZ Tax Refunds v Brooks Homes Ltd* [2013] NZCA 90.

Agrees to be bound by these terms and conditions of employment and the Employer's policies and procedures as implemented by the Employee from time to time.

[18] The Employment Agreement contained the following clauses:

**8. Company Policy and Procedures**

- 8.1 The Employer has, or may have in the future, company policies and procedures relating to the Employee's employment.
- 8.2 All company policies and procedures will be provided to the Employee, and it is the Employee's responsibility to ensure they understand and strictly observe all such policies. ...

**10 Obligations of the Employee**

*The Employee shall:*

- 10.1 ...
- 10.3 Conduct their duties in the best interests of the Employer and the employment relationship;
- 10.4 Deal with the employer in good faith in all aspects of the employment relationship;
- 10.5. Comply with all policies and procedures implemented by the Employer from time to time;
- ...
- 10.15 Not breach trust and confidence in the employment relationship.

**28 Conflicts of Interest**

- 28.1 ...
- 28.2 If, during the term of this agreement, the employee becomes aware of any potential or actual conflict between their interests and those of the Employer including, but not limited to any relationships professional, personal or otherwise that the Employer including, but not limited to any relationships professional , personal or otherwise that the Employee may be involved in or contemplate being involved in then, at the earliest possible opportunity, the conflict or potential for conflict should be disclosed to the employer in writing.
- 28.3 ...
- 28.4 ...
- 28.5 The Employee shall not for the duration of this agreement be employed or be engaged or concerned in the conduct of any business that competes directly or indirectly with the business of the Employer.

[19] The Code of Conduct contained the following statements:

*B Honest and Ethical Conduct – Conflicts of Interest*

Our company is committed to honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships.

**C Conflicts of Interest**

... A "conflict of interest" arises when an employee's personal, social, financial or political activities have the potential of interfering with their loyalty and objectivity to the Company. ...

You should review all outside affiliations with competitors, customers, business partners, or suppliers with your Manager. You can obtain further information from the director. ...

... Before accepting a position as a board member, always review with the General Manager.

[20] In late December 2025 Mr Chong discovered on a search of the Companies Register that Mr Yu had incorporated a company, Yunico Limited, on 23 October 2025. Yunico Limited was a manufacturing company, involved in the manufacture of aromatic products for the cosmetic sector. Mr Yu was the sole director and owned 84 percent of the shares, the remaining 16 percent of the shares were owned by a business partner.

[21] Mr Chong found on a further search that the business partner was a director and the main shareholder of a company which employed electricians in the Auckland areas and offered electrical services. Mr Chong stated in his untested affidavit evidence that he was concerned that there was a risk of innocent or inadvertent use by Mr Yu's business partner of Home Synergy's proprietary information to which Mr Yu had full access.

[22] On 20 January 2026 Mr Yu received an emailed letter inviting him to attend a disciplinary meeting. The letter stated that the purpose of the meeting was to provide him with an opportunity to answer a number of allegations which were set out in the letter and concerned Mr Yu's failure to disclose his shareholding interests in Yunico Limited and the relationship and business interests of his business partner. Attached to the letter were documents including the Employment Agreement, the Code of Conduct and the Companies Office searches.

[23] Mr Yu attended the disciplinary meeting with Mr Chong and Mr Narayan on 29 January 2026, accompanied by Mr Bennett. During the meeting Mr Yu responded to the allegations made by Home Synergy and there was an adjournment, while Mr Chong considered Mr Yu's responses, following which the meeting resumed.

[24] A second disciplinary meeting took place on 3 February 2026. Mr Yu was again accompanied by Mr Bennett. The notes from the first disciplinary meeting were provided to Mr Yu. Mr Chong states in his affidavit evidence that Mr Yu was again asked twice to provide information about his involvement with Yunico Limited, but refused to respond or, when invited to do so, provide any further information, response or explanations.

[25] Following an adjournment Home Synergy provided Mr Yu with its preliminary decision that the allegations contained in the letter dated 20 January 2026 had been established, and that dismissal was the appropriate outcome.

[26] The preliminary decision of dismissal without notice on the grounds of serious misconduct was confirmed by letter dated 10 February 2026.

[27] The letter stated that Mr Chong had lost trust and confidence in Mr Yu as the General Manager, that he had an obligation to deal with Home Synergy: "... in good faith in all employment relationships, should have made the disclosures, but failed to do so."

## **Is there a serious question to be tried in relation to the claim of unjustifiable dismissal?**

### *A Serious Question?*

[28] As a matter of principle, Mr Yu must establish that there is a serious question to be tried in respect of his claim of unjustifiable dismissal and for permanent reinstatement. A serious question was described in *Brooks Homes Ltd v NZ Tax Refunds Ltd* as an arguable case.<sup>3</sup>

[29] The threshold for a serious question or arguable case as stated in *Brooks Homes* and *Western Bay of Plenty District Council v Jarron McInnes* is that the claim is not frivolous or vexatious:<sup>4</sup>

... However, as *Brooks Homes Ltd* makes clear, an applicant must establish that there is a serious question to be tried, in that the claim is not vexatious or frivolous. The merits of the case (insofar as they can be ascertained at an interim stage) may be relevant in assessing the balance of convenience and overall interests of justice ...

[30] In *Humphrey v Canterbury District Health Board, Te Poari Hauora O Waitaha* the Chief Judge confirmed that whether there is a serious question to be tried raises two sub-issues, these being:<sup>5</sup>

- a) Whether there is a serious question to be tried in relation to the claim of unjustified dismissal; and, if so,
- b) Whether there is a serious question to be tried in relation to the claim of permanent reinstatement.

[31] In *Humphrey* the Employment Court noted that once the relatively low threshold as identified in *Brooks Homes Ltd* had been met:

... the merits of the case (insofar as they can be ascertained at an interim stage) may be relevant in assessing the balance of convenience and the overall interests of justice.<sup>6</sup>

[32] My findings expressed in this preliminary determination are solely for the purpose of resolving Mr Yu's application for interim reinstatement. At the substantive hearing there will be opportunity to fully test the relevant evidence and disputed questions of fact and law.

### *An arguable case?*

[33] Mr Yu submits he has an arguable case that he was unjustifiably dismissed because Home Synergy did not act as a fair and reasonable employer in terminating his employment

---

<sup>3</sup> *Brooks Homes Ltd v NZ Tax Refunds Ltd* [2013] NZSC 60 at [6].

<sup>4</sup> *Western Bay of Plenty District Council v McInnes* [2016] NZEmpC36 at[9].

<sup>5</sup> *Humphrey v Canterbury District Health Board, Te Poari Hauora O Waitaha* [2021] NZEmpC 59 at [7].

<sup>6</sup> Above n 5 at [8].

because the Code of Conduct was not included with the 2025 Employment Agreement, and did not bind him and there were flaws in the process, including that:

- Home Synergy failed to provide him with sufficient information about the allegations.
- Mr Chong had predetermined the outcome; and/or
- Mr Chong had a closed mind during the process

[34] It is submitted for Home Synergy that at no stage in the process did Mr Yu contend that he was not bound by the Code of Conduct, on the contrary he agreed he was bound by the terms of it during the disciplinary meeting held on 3 February 2026. Moreover, as General Manager and a long serving employee, Mr Yu was well aware of the employers policies.

[35] Home Synergy submits that it followed a fair procedure, specifically:

- The allegations were set out in writing nine days prior to the first disciplinary meeting;
- Mr Yu provided responses to the allegations;
- There were adjournments during the meetings to consider his responses;
- Summary notes of the meetings were provided to Mr Yu; and
- a decision was reached only after Mr Yu confirmed he had nothing further to say.

[36] At a substantive investigation Mr Yu's position that because the 2025 Employment Agreement did not expressly reference the Code of Conduct, it was no longer incorporated, and he was therefore not bound by it will be investigated against the fact that Mr Yu signed the 2025 Employment Agreement below the declaration in which he agreed to be bound by the Employer's policies, and the expectations set out in clause 10 of the Employment Agreement about good faith dealing with his Employer.

[37] At a substantive investigation the Employer's process will also be fully examined.

[38] It is a low threshold, and I find that Mr Yu has an arguable case that he was unjustifiably dismissed.

#### *Reinstatement?*

[39] Mr Yu must not only establish an arguable case for unjustifiable dismissal but must also establish that he would be reinstated if successful in such a claim.

[40] Reinstatement is the primary remedy and s125 (2) of the Act states the Authority must provide for reinstatement if it is practicable and reasonable. This was commented upon by

Judge Holden in *Hong v Auckland Transport* in which she set out that practicality and reasonableness are two separate requirements:<sup>7</sup>

Practicability ... means more than simply being possible. For reinstatement to be practicable, it must be capable of being carried out in action, be feasible, and have the potential for the re-imposition of the employment relationship to be done or carried out successfully. ...

Looking at reasonableness, the Court needs to consider the prospective effects of an order, not only upon the individual employer and employee in the case, but on other affected employees of the same employer, and in some cases, perhaps third parties who would be affected by the reinstatement.

[41] It is submitted by Mr Yu that reinstatement is both practicable and reasonable. He submits he had no background of disciplinary or performance issues in his employment with Home Synergy prior to late 2025.

[42] Mr Yu submits that his dismissal was in retaliation for his bringing an earlier claim in regard to his incentive payment before the Authority.

[43] In regard to his relationship with Mr Chong, it is submitted for Mr Yu that there had been no disciplinary issues raised in the previous six years of employment. Despite an altercation with Mr Chong at the conclusion of his employment and a trespass order being made by Home Synergy, Mr Yu submits that the employment relationship is capable of being successfully restored.

[44] It is submitted that Mr Yu only met with Mr Chong once a week and mainly worked assisting the other employees to perform their work duties. He submits that his reinstatement would be welcomed by most of the employees, although this submission is unsupported by affidavit evidence on the part of these employees.

[45] Home Synergy submits that permanent reinstatement is neither practical nor reasonable on the basis that Mr Chong has lost all trust and confidence in Mr Yu as his most senior employee as a result of his failure to disclose. His involvement with Yunico and his business partner.

[46] Home Synergy submits that its investigation into Mr Yu's failure to disclose he had incorporated a company with a business partner who was the major shareholder and the director of an electrical company was not motivated by retaliation in respect of the incentive payments issue.

---

<sup>7</sup> *Hong v Auckland Transport* [2019] NZEmpC 54 at [66] and [67].

[47] It is also submitted that the reinstatement of Mr Yu is neither practicable nor reasonable. Home Synergy operates in a smaller workspace. There is one office for Mr Chong, and the rest of the employees sit in an open plan work area with Mr Yu seated outside Mr Chong's office. There is therefore daily contact between Mr Chong and Mr Yu. Given the loss of trust and confidence and the altercation between Mr Yu and Mr Chong on the last day of Mr Yu's employment, it would be extremely difficult for them to work together given the proximity of daily contact.

[48] It is submitted that, as set out in Mr Prasad's untested affidavit, it is Mr Prasad's view that Mr Yu's reinstatement and return to the workforce would cause a lot of unhappiness and dissatisfaction amongst the employees.

[49] Reinstatement on an interim or permanent basis must be practicable and reasonable. Taking all the submissions into consideration, and on the basis of the untested affidavit evidence as presented to the Authority, whilst I find that Mr Yu has an arguable case that he was unjustifiably dismissed, there are issues about his good faith duties towards his employer including as regards to his position regarding the non-application of the Code of Conduct to him as the General Manager of Home Synergy.

[50] Accordingly I am unable at this stage to conclude that he has a strongly arguable case that he would be reinstated permanently.

[51] Accordingly, I do not find that Mr Yu has a more than weakly arguable case for interim reinstatement.

### **Balance of convenience**

[52] As set out in the Employment Court case *X v Y Limited* this principle requires that the Authority balance the relative inconvenience, in terms of detriment or injury, to Home Synergy which will have to bear the burden of an order reinstating Mr Yu until the substantive case is heard, against the inconvenience to Mr Yu who may have a just case, of having to bear the detriment of unjustifiable action until the case is heard.<sup>8</sup>

[53] No date has yet been set for the substantive hearing in the Authority.

[54] It is submitted that Mr Yu has a mortgage, a wife and two young children, he is the sole provider for his family.

---

<sup>8</sup> *X v Y Limited* [1992] 1 ERNZ 863, at pg 10.

[55] It is further submitted that reinstatement is necessary to prevent Mr Yu as a person of Taiwanese descent suffering a significant loss of face, reputational harm, and dignity.

[56] Mr Yu further submits that he has enabled Home Synergy's business to flourish and had secured new business opportunities for it.

[57] It is submitted for Home Synergy that it is a small employer trading in a highly competitive market where its competitors sell and install much cheaper ventilation and heating products.

[58] Mr Yu in his previous position as Sales Manager and then as General Manager had a myriad of information about the operation and plans of Home Synergy, including revenue results, costing, daily and weekly performance data, customer lists and wage rates of employees. As such the level of trust it needed to have in him was high.

[59] It is submitted that the actions of Mr Yu have seriously and irretrievably broken the relationship between him and Mr Chong, and the trust in Mr Yu as General Manager no longer exists, such that working together would not be possible.

[60] Home Synergy submits that it is misleading to imply, as Mr Yu asserts in his affidavit, that he was primarily responsible for any success of Home Synergy because that lay with the contribution of the whole team.

[61] Having taken into consideration the submissions put forward by the parties, balancing the potential prejudice to Mr Yu of not reinstating him against the potential prejudice to Home Synergy of so doing, I find that the balance of convenience favours not reinstating Mr Yu on an interim basis.

### **Overall Justice**

[62] The Authority must assess the overall justice of the case from a global perspective. This has been described by the Court of Appeal as:<sup>9</sup>

The overall justice assessment is essentially a check on the position that has been reached following the analysis of the earlier issues of serious question to be tried and balance of convenience'

[63] It is submitted on behalf of Mr Yu that the lack of process by Home Synergy and the justification for dismissal rests upon a flawed assumption of the reading of the conflict-of-interest clause and the Code of Conduct.

---

<sup>9</sup> *NZ Tax Refunds Ltd v Brooks Homes Limited* [2013] NZCA 90 at [47].

[64] It is submitted that post termination Mr Yu has acted in the same professional manner as when he was employed. Mr Yu believes he is able to work for Home Synergy without issue and can rebuild his relationship with Mr Chong.

[65] Home Synergy does not accept that the relationship with Mr Chong can be successfully rebuilt. It submits that Mr Yu's actions immediately post-termination further eroded the possibility that the relationship could be successfully rebuilt.

[66] I find that the overall justice of the case subsists in declining the application for interim reinstatement.

### **Next Steps**

[67] A case management conference will be held with the parties to progress the matter to a substantive investigation.

### **Costs**

[68] Costs are reserved for determination following the substantive investigation meeting and its outcome or until this matter otherwise ceases to be before the Authority.

Eleanor Robinson

Member of the Employment Relations Authority