

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 163
3425324

BETWEEN QDP
 Applicant

AND WSG
 Respondent

Member of Authority: Helen van Druten

Representatives: QDP as the Applicant
 Emma Peterson for the Respondent

Investigation Meeting: 5 March 2026 by audio-visual link

Submissions received: 5 March 2026 from the Applicant
 5 March 2026 from the Respondent

Determination: 19 March 2026

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This determination resolves an application for interim reinstatement brought by QDP pending determination of his personal grievance claim.¹

[2] WSG opposes QDP's application for interim reinstatement and the substantive claim.

[3] In his statement of problem, QDP seeks, *inter alia*, interim reinstatement to his position as Chief Science Officer (CSO).

[4] He seeks reinstatement on the basis that the decision to terminate his employment was both substantively and procedurally flawed. He says that interim reinstatement is easily accommodated with the application of specific work conditions

¹ Supported by an undertaking as to damages, and affidavit sworn on 13 January 2026.

to manage the risks perceived by WSG. If granted, it would remove further reputational damage, maintain his shareholding and vesting rights and current research workstreams.

Anonymisation

[5] The names of the applicant and respondent are anonymised in this determination. Neither party has applied for this, though it is not necessary for the parties to do so in order for this to be granted.² Having weighed the potential adverse consequences for both parties against the need for open justice, I am satisfied that the former outweighs the latter. I have considered that this is an interim application and there is a risk of adverse consequences for both parties at this early stage. Parties are anonymised for this preliminary determination only. It is anticipated that anonymisation will not continue for the substantive determination.

[6] The applicant is referred to as QDP in this determination. The respondent is referred to as WSG and other identifying people referenced by a random initial. All letters are randomly generated and do not resemble the actual names of those individuals.

The Authority's investigation

[7] Following an application for urgency lodged by QDP on 24 November 2025, a case management conference was held on 26 November 2025 with Member Fuiava. The parties were directed to mediation though were unsuccessful in resolving the matters between them at mediation. Following lodgement of an application for interim reinstatement on 13 January 2026, a second case management conference was held and the parties agreed that an interim reinstatement application was premature prior to any employment decision.

[8] On 31 January 2026, a second interim reinstatement application was received by the Authority. A third case management conference was held on 9 February 2026. The parties were directed to lodge submissions on 12 and 16 February 2026 with an investigation meeting to hear the application for interim reinstatement held on 5 March 2026 by audio visual link.³ The Authority determined this interim reinstatement application based on the Statement of Problem, Statement in Reply, documents

² *MW v Spiga Ltd* [2023] NZ EmpC 62.

³ Employment Relations Act 2000, schedule 2, clause 17.

submitted by the parties, affidavit evidence, and on written and oral submissions from the parties. Written affidavits were filed on 31 January 2026 by QDP as applicant and on 12 February 2026 by “Mr D” as Chairman of WSG.

[9] 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.

[10] The evidential matters in dispute between the parties will not be resolved by this determination because the evidence is untested and, in applying the relevant tests, the Authority is not required to resolve any disputes. The opportunity for that will occur when the substantive matter is heard. 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.

The issues

[11] The issue for determination in this interim reinstatement matter is whether the Authority should reinstate QDP to his former position, on an interim basis, pending the substantive investigation and determination of all of his claims.

[12] In determining this matter, the Authority will consider:

- a. Is there a serious question to be tried – that is, does QDP have an arguable case for unjustified dismissal and for permanent reinstatement?
- b. Where does the balance of convenience lie?
- c. Where, standing back and considering the case, does the overall justice lie until a substantive matter is determined?⁴

Relevant Law

[13] The approach to interim reinstatement is well-established.⁵ Reinstatement is a primary remedy under s 125 of the Act. Section 125(2) of the Act applies if the remedies sought by an employee include reinstatement and it is determined that the employee has a personal grievance. In those circumstances the Court must provide for reinstatement wherever practicable and reasonable, irrespective of whether any other remedy is provided.

⁴ *XYZ vs LHM* [2017] NZEmpC 40 at [5] and [6].

⁵ *NZ Tax Refunds v Brooks Homes Ltd* [2013] NZCA 90.

[14] It follows then that QDP must establish there is a serious question to be tried in relation to his claim he was unjustifiably dismissed and that there would be an arguable case for permanent reinstatement at the substantive hearing.

[15] The Authority is also required to consider:

- a. Where does the balance of convenience between the parties lie? This requires a consideration of the relative detriment or injury that the parties, and any third parties, will incur as a result of the interim injunction being granted (or declined); and
- b. Where does the overall justice of the case lie until the substantive matter can be determined?

[16] The Employment Court observed that in determining whether to order reinstatement, regard must be had to the object of the Act. This includes the object of building productive employment relationships through the promotion of good faith.⁶

One of the central features of the Act is its recognition of the importance of the employment relationship, the obligations both parties have to be responsive and communicative, and that issues ought to be dealt with promptly and between the parties if possible – in other words, supporting constructive employment relationships and repairing them where feasible.

[17] It is with this also in mind that this application for reinstatement is considered.

[18] This determination resolves the issue of whether interim reinstatement should be ordered. It does not decide whether QDP was unjustifiably dismissed, whether he should be reinstated on a permanent basis or what other remedies might be available.

Summary of background information

[19] QDP founded WSG in 2020 with another partner, “Mr Y”. Over the following years, QDP and Mr Y became its’ Chief Science Officer and CEO respectively. QDP is also a director of WSG.

[20] In 2025, WSG says that it became aware that QDP was standing for Council after being informed by third parties and seeing his face on billboards in the area. It says that QDP had not informed his employer of his candidacy and had not sought

⁶ Employment Relations Act 2000, s 3 and *Humphrey v Canterbury District Health Board, Te Poari Ora Hauroa o Waitaha*, [2021] NZEmpC 59 at [5].

written approval as required by his employment agreement. His candidacy was successful and he was later appointed to Council.

[21] Around the same time, internal concerns were raised regarding QDP's communication with several other employees, including three directors.

[22] QDP raised a personal grievance on 17 November 2025.

[23] On 20 November 2025, WSG submits that QDP contacted the company's shareholders and shared details of his personal grievance and confidential without prejudice communications.

[24] On 7 January 2026, WSG began a disciplinary process. After various meetings and feedback from QDP, WSG terminated his employment on 30 January 2026 without notice on the grounds of serious misconduct.

Considerations and application

Is there an arguable case for unjustified dismissal?

[25] An arguable case means a case with some serious or arguable (but not necessarily certain) prospects of success.⁷ Generally, the threshold to establish an arguable case is that the claim is not vexatious or frivolous. As the Court of Appeal made clear the threshold is relatively low.⁸

[26] 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".⁹

[27] QDP maintains that there are both substantive and procedural matters in dispute. WSG presented a compelling summary of its disciplinary process. That information is yet to be tested in an investigation, though it suggests that QDP may have substantial hurdles to overcome if the process was undertaken as WSG maintains. Whether the decision to dismiss was that of a fair and reasonable employer requires further investigation of disputed facts and remains a matter for the substantive determination.

⁷ *X and Y Limited v New Zealand Stock Exchange* [1992] 1 ERNZ 863.

⁸ *Brooks Homes Ltd v NZ Tax Refunds Ltd* [2013] NZSC 60 at [6].

⁹ Above n 6 at [5].

[28] After some discussion with the parties during submissions, I am satisfied that QDP's claim is not frivolous or vexatious and it meets the low threshold of an arguable case for his personal grievance.

Is there an arguable case for permanent reinstatement?

[29] QDP 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.

[30] Permanent reinstatement is the primary remedy under the Act. If an employee succeeds in their claim for unjustifiable dismissal and seeks reinstatement, it should be ordered where it is practicable and reasonable to do so.¹⁰

[31] Both practicable and reasonable are thresholds to be met. As noted in *Hong v Auckland Transport*:¹¹

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.

- [32] QDP says that reinstatement is a practicable and reasonable option as:
- a. The company is very small with less than five employees. His colleague Ms M gave evidence that she could continue to work with him;
 - b. The disciplinary process was a retaliatory action to his concerns raised about the governance and conduct of the chair. If reinstated, he submits he can work with Mr D as required;
 - c. He can work on specific projects and much of this is remote;
 - d. He has continued to engage professionally in governance settings; and
 - e. He considers that both the councillor and this role can be held concurrently so there is no health and safety risk;

¹⁰ Employment Relations Act 2000, s 125.

¹¹ *Hong v Auckland Transport* [2019] NZEmpC 54 at [66] and [67] and as referenced in the recent decision of *Yu v Home Synergy Ltd* [2026] NZERA 154 at [40].

[33] Looking at both submissions, working remotely seems viable and potentially, it may be sustainable for the CSO position. Direct management could be removed as a responsibility and there is no indication that external research co-ordination would be problematic. Practically, it would be an option for the CSO role to temporarily operate in that manner with significant workplace restrictions limiting internal and external communication and framing work into specific project-based outputs.

[34] WSG strongly opposes reinstatement and says that:

- a. The nature of the allegations was serious and QDP's ongoing lack of appreciation of that seriousness is of concern if he was to return to the role;
- b. QDP has demonstrated that he cannot work with other directors and employees and remaining staff would likely suffer if he were reinstated;
- c. QDP has no remorse or understanding of the effect of his behaviour on others so it would be unlikely to change;
- d. The employment relationship and the relationship between QDP and other employees and directors has broken down to such an extent that reinstatement is not practicable or reasonable; and
- e. QDP has demonstrated that he believes he is above reproach or direction as a founder of the company and he has significant distrust of the Board and management.

[35] QDP denies that he is above reproach and says that he could work with Mr D moving forward. However, when asked during the investigation meeting about his sharing of the without prejudice communications material to shareholders, QDP said that was an attempt to seek support for a de-escalation process to address the Chair's governance and conduct. He confirmed he would do the same again in those circumstances. In his written evidence, QDP applied a similar justification for his actions in relation to the councillor position, though disputes Mr D was unaware of his candidacy.

[36] I place significant weight on those responses as they support WSG's concern that QDP does not accept any remorse for the impact of his actions on others and that the trust and confidence in the employment relationship is broken to the extent that reinstatement is not reasonable. While practical to reinstate QDP on an interim basis, I

do not consider it would be practicable or reasonable to do so on an interim or permanent basis. The reasons for that decision include:

- a. While steps could be taken to reintegrate him back into working with other employees, the considerable friction and lack of trust between the Board and QDP is evident. While untested, Mr D's evidence opposes reinstatement of QDP into a senior position given the reasons for his dismissal. The CSO is a senior position requiring the incumbent to follow the instructions of the Board. QDP has already demonstrated that he conflicts with the Board chair and is prepared to breach confidentiality to justify his actions to shareholders. That is not a reasonable risk to place on WSG in the circumstances.
- b. QDP conflicted with Board members and at least one employee. Reinstatement would require him to work with those individuals regularly and directly, unlike a larger company where work distance could be maintained. As in *Hong*, the prospective effects of reinstatement on affected employees must also be considered in any reinstatement decision.¹²
- c. QDP was dismissed for serious misconduct. While the Authority is yet to determine whether that was unjustified, the reasons for that dismissal decision are relevant and go to the core trust and confidence of the employment relationship.
- d. Any interim reinstatement would have such rigorous conditions and hence unsustainable for any extended period.

[37] Based on the untested evidence presented, an order for reinstatement would be neither feasible nor reasonable given the seniority of his role, the size of the company, ability to impact internal and external stakeholders, current conflict with members of the Board, QDP's lack of remorse for his professional conduct and the subsequent "irremediable" breakdown of the employment relationship. Accordingly, I do not conclude that he has a strong arguable case that he would be reinstated permanently.

What is the balance of convenience?

[38] I also considered submissions from each party on this matter.

¹² Above at n 11.

[39] QDP says that:

- a. The Chief Science Officer role remains open;
- b. His work is substantially technical and can be structured into remote, independent workstreams;
- c. His work can be managed by conditions including scoped project briefs, communication protocols, no staff supervision and/or paid suspension staging;
- d. It would be beneficial to WSG if product development was continuing during its sensitive financial period;
- e. He has continued to engage professionally in governance settings; and
- f. The health and safety risk asserted by WSG is not established and is inconsistent with WSG's own post-termination conduct.

[40] Conversely, WSG says that:

- a. The workplace is small and could not accommodate separation in the workplace between QDP and other individuals who raised concerns about QDP's communication;
- b. QDP has taken a litigious rather than a conciliatory and restorative approach to his dismissal. This included High Court filings, a Dispute Notice and extensive without prejudice material sent to the Authority that has further delayed matters and increased legal costs for WSG; and
- c. His reinstatement would cause disruption to the business during a sensitive financial period; and
- d. It would be difficult to 'ringfence' the CSO work without QDP engaging with Mr D.

[41] Having balanced the viable practical considerations of QDP's reinstatement and the potential prejudice of not working against the potential prejudice to WSG if reinstatement was ordered, I find the balance of convenience weighs in favour of WSG and not reinstating QDP on an interim basis.

Overall justice

[42] Lastly, I must step back and look at where overall justice lies.¹³

¹³ *NZ Tax Refunds Limited v Brooks Homes Limited* [2013] NZCA 90.

[43] QDP founded WSG and during a submissions-only hearing, he demonstrated passion and commitment to the company that he has grown. He remains a shareholder though the company has now grown beyond he and Mr Y, control sits with the Board and his autonomy is significantly reduced. That has presented significant challenges.

[44] WSG submits that this matter is in many ways analogous to *Kavallaris v Inframax Construction Ltd*.¹⁴ In that case, Mr Kavallaris's deep distrust of his employer made it difficult to comprehend how he could be reintegrated into the workplace. I see significant parallels with this matter though do not accept that reintegration with other employees would be unworkable. For QDP, I see that distrust with Board members rather than employees would provide challenges to any reintegration as in that role, QDP's work would liaise with the Board as much as employees.

[45] I have considered whether QDP would be irreparably disadvantaged professionally if this application was declined. I was not provided with any specific evidence to indicate that he would. On the contrary, WSG advises that no professional certifications will lapse prior to any substantive hearing.

[46] QDP is receiving a salary from his role as councillor. While he submits that he is currently prejudiced by the loss of WSG income, that alone cannot be a reason for interim reinstatement. Such reasoning could apply to anyone who considers they are unjustifiably dismissed from employment.

[47] QDP submits that he is well known locally as a WSG founder and councillor. He submits that a serious misconduct dismissal in that context would cause actual reputational harm to his standing as a director and founder. I do not accept that reasoning as it relates to him as a founder. Regardless of the outcome of this determination, QDP will always be a founder of WSG whether working there or not.

[48] There was no information presented to the Authority to demonstrate that actual reputational harm has occurred to date. Assertions of actual (rather than abstract) reputational harm were made in general terms only. There was insufficient basis to conclude that a risk of reputational harm warranted interim reinstatement. On the contrary, Mr D says that QDP has not attended work since November 2025 and his departure would not be unexpected following his public appointment.

¹⁴ *Kavallaris v Inframax Construction Ltd* [2024] NZEmpC 212 at [93].

[49] QDP says that his shareholding and vesting are tied to ongoing employment and that termination may trigger time-limited steps affecting those rights. He further says that once taken, those steps may be difficult to unwind. As the Authority understands, QDP's application regarding director status, shareholding and vesting rights is currently before the Court and awaiting an outcome. I accept that this is a significant concern for QDP. WSG submits that there is no need for the Applicant to be reinstated in order to preserve his shareholding, as the shareholding dispute can be resolved independently, without QDP being reinstated. The shareholding dispute is being dealt with separately outside this jurisdiction.

Outcome

[50] Based on the information before the Authority, the overall justice of this matter does not weigh in favour of interim reinstatement. QDP's application for interim reinstatement is declined.

[51] The parties should bear in mind that this determination relates to the interim reinstatement matter only. Should the substantive determination result in a different outcome, there may be claims for damages arising from the sale, removal or disposal of QDP's shareholding and vesting rights (if any) to the extent that they are tied to his employment.

Next Steps

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

Costs

[53] Costs are reserved until hearing of the substantive matter or until the matter is no longer before the Authority.

Helen van Druten
Member of the Employment Relations Authority