

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 372  
3448664

BETWEEN

DIANA ZHAO  
Applicant

AND

DSV AIR & SEA LIMITED  
Respondent

Member of Authority: Simon Greening

Representatives: Martin Lyttleton, advocate for the Applicant  
Simon Martin, counsel for the Respondent

Investigation Meeting: On the papers

Submissions received: 2 June 2026 by AVL

Determination: 12 June 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Diana Zhao commenced employment with DSV Air & Sea Limited (DSV) on 23 March 2020.

[2] Ms Zhao was employed in the position of Customer Services Manager.

[3] Ms Zhao's employment with DSV concluded by reason of redundancy on 30 September 2025.

[4] Ms Zhao raised a personal grievance for unjustified dismissal with DSV on 24 October 2025.

[5] Ms Zhao says her dismissal was unjustified because DSV failed to follow a fair and proper process leading up to making her position redundant, did not comply with relevant procedure for a redundancy situation as set out in her individual employment agreement, and did not establish genuine commercial reasons for making the position redundant.

[6] On 6 March 2026, Ms Zhao made an application to the Authority seeking interim reinstatement.

### **The Authority's investigation**

[7] For the Authority's investigation, affidavits were lodged by Ms Zhao, Ms Ferl Allen (HR Business Partner), Ms Lisa Jensen (North Island General Manager), and Mr Robert Connoley (Director). An investigation meeting, conducted by AVL, was convened to provide an opportunity for the legal representatives to speak to their written submissions.

[8] An application for interim reinstatement proceeds on the basis of untested affidavit evidence, the evaluation of that evidence is therefore made on a provisional basis.<sup>1</sup>

[9] 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.

### **Legal principles – interim reinstatement**

[10] The parties did not make submissions on this point, but I note that Ms Zhao had a right to bring a dismissal claim on 30 September 2025. Therefore, because the application for interim reinstatement relates to an existing right, this application will be considered under the repealed legislation.<sup>2</sup>

[11] In an application for interim reinstatement, Ms Zhao must first establish that there is a serious question to be tried. Then the balance of convenience must be

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<sup>1</sup> *Stellar Elements New Zealand Limited v Amesbury* [2024] NZEmpC 136 at [20].

<sup>2</sup> Legislation Act 2019, s 33(1)(a).

considered. This requires a consideration of the impact of, and the refusal to grant, an interim order until Ms Zhao's claims are resolved following a substantive hearing.

[12] Finally, an assessment of the overall justice of the making of an interim order is required.<sup>3</sup>

**Is there a serious question to be tried?**

[13] In a claim for interim reinstatement, the question of whether there is a serious question to be tried raises two sub-issues:<sup>4</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.

*Serious question to be tried – unjustified dismissal*

[14] The sequence of events leading to Ms Zhao's position being made redundant, follows:

- (a) Ms Zhao was the customer service manager and managed the customer service team.
- (b) Ms Emma Thornton managed the strategic accounts team and church team.
- (c) On Wednesday 27 August 2025, Ms Jensen (North Island General Manager) and Ms Allen (People and Operations Business Partner) approached Ms Zhao and discussed DSV's restructure proposal.
- (d) DSV's proposal involved the merger of three departments: the customer service team, strategic accounts team and the church team.
- (e) Ms Zhao said to Ms Jensen and Ms Allen that she believed a consolidated structure would work because the majority of the staff in the other teams originally worked under her management, in the customer services team.

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<sup>3</sup> *NZ Tax Refunds Ltd v Brooks Homes Ltd* [2013] NZCA 90 at [12].

<sup>4</sup> *Humphrey v Canterbury District Health Board* [2021] NZEmpC 59 at [7].

- (f) On the same day, Ms Zhao was provided with a document entitled: *Workplace Change Proposal*.
- (g) DSV proposed two positions would be disestablished: Ms Thornton's position and Ms Zhao's position. A new position would be created: Customer Experience Manager.
- (h) Ms Zhao interviewed for the new position on 2 September 2025. Ms Thornton also interviewed for the new position.
- (i) On 3 September 2025, Ms Zhao was advised that her position had been disestablished, and she had not been selected for the new customer experience manager position.
- (j) Ms Zhao was also advised there were no suitable redeployment options.
- (k) On 6 September 2025, Ms Zhao sent DSV a medical certificate. Ms Zhao instructed legal counsel who then engaged with DSV.
- (l) DSV subsequently sent an email to Ms Zhao alerting her to two job vacancies at DSV.
- (m) Ms Zhao did not apply for either of these roles.
- (n) Ms Zhao's final day of employment with DSV was 30 September 2025.

[15] Ms Zhao submits her dismissal was unjustified for the following reasons:

- (a) DSV did not establish genuine and commercial reasons for making Ms Zhao's position redundant.
- (b) DSV did not adequately consult with Ms Zhao before the decision was made to disestablish her position.
- (c) DSV should have redeployed Ms Zhao into the position of customer experience manager.
- (d) This is because the customer service manager role and newly created customer experience manager position were substantially the same positions.

[16] DSV concedes there is a serious question to be tried in relation to Ms Zhao's claim for unjustified dismissal.

[17] I agree with DSV. There is a serious question to be tried in relation to Ms Zhao's claim for unjustified dismissal.

*Serious question to be tried – permanent reinstatement*

[18] However, DSV submits there is no serious question to be tried in relation to Ms Zhao's claim for permanent reinstatement.

[19] DSV submits that reinstatement would not be practicable or reasonable for the following reasons:<sup>5</sup>

- (a) Ms Zhao has been out of the workplace for approximately 8 months.
- (b) The status quo Ms Zhao is seeking to maintain through an interim reinstatement application, no longer exists due to the delay in Ms Zhao lodging her application for interim reinstatement.
- (c) The position Ms Zhao seeks reinstatement to, either no longer exists or is being performed by another employee.
- (d) The financial cost to DSV would be significant and have serious implications for the company,
- (e) The relationship between Ms Jensen and Ms Zhao had broken down.
- (f) Subsequent to Ms Zhao's employment with DSV concluding, DSV has discovered misconduct which raises doubts about DSV's trust and confidence in Ms Zhao.

[20] I now consider each submission in turn.

[21] DSV submits the status quo Ms Zhao is seeking to maintain through her application for interim reinstatement, has changed because of the delay in lodging her interim reinstatement application.

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<sup>5</sup> *Hong v Auckland Transport* [2019] NZEmpC 54 at [66].

[22] DSV's key submission is that Ms Zhao's application for interim reinstatement was lodged with the Authority six months after the dismissal date, and DSV has employed someone into the position that Ms Zhao wishes to be reinstated to.

[23] Delay is a factor to be considered either, because it goes to the issue of whether permanent reinstatement is practicable and reasonable, or because it is a factor to be weighed when considered the balance of convenience. This is because delay can potentially impact on the ultimate likelihood of successful integration into the workplace.<sup>6</sup>

[24] On 9 September 2025 Ms Zhao's legal counsel sought information from DSV. On 25 September 2025, legal counsel for DSV responded to Ms Zhao's request for information.

[25] On 24 October 2025, Ms Zhao raised a personal grievance for unjustified dismissal.

[26] DSV responded to Ms Zhao's personal grievance for unjustified dismissal on 15 December 2025.

[27] On 6 March 2026, Ms Zhao lodged her application for interim reinstatement.

[28] I accept there was a delay in Ms Zhao lodging her application for interim reinstatement, and it could have been lodged earlier to preserve the status quo. However, there was also a delay between the personal grievance being raised in October 2025 and DSV's response in December 2025. This point should also be taken into account when assessing how much weight to give delay as a factor for consideration.

[29] Ms Zhao's application for interim reinstatement was lodged approximately three months after DSV's response to her personal grievance.

[30] Ms Zhao's delayed application for interim reinstatement is a factor which weighs against permanent reinstatement.

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<sup>6</sup> *Hussain v Auckland Transport* [2025] NZEmpC 274 at [57].

[31] DSV submits that due to the delay, Ms Zhao's position either no longer exists or has been performed by another employee for over eight months.

[32] At this interim stage, a key issue is whether DSV complied with its good faith obligations when considering redeployment. Before reaching conclusions about what redeployment options are available, the employer must consult with the affected employee and consider any results of that consultation in its decision-making process.<sup>7</sup>

[33] DSV advised Ms Zhao about vacant roles she may have been interested in. DSV did not go as far as consulting with Mr Zhao about potential redeployment opportunities.

[34] The primary remedy for a personal grievance claim is reinstatement.<sup>8</sup> Therefore, DSV's submission that there is no work available for Ms Zhao must be weighed against the object of the statutory remedy.<sup>9</sup>

[35] It is arguable that if the dismissal grievance is made out, because redeployment had not been properly considered, DSV could not argue that it would be unreasonable or impracticable to reinstate Ms Zhao.<sup>10</sup>

[36] I've also considered the size of DSV's business which employs 155 permanent employees in New Zealand and approximately 11,800 across the Asia Pacific region.

[37] DSV is also concerned about comments made by Ms Zhao about her previous manager, Ms Jensen, and whether their working relationship can be restored. DSV says this is a further barrier to permanent reinstatement.

[38] Ms Jensen is concerned about working with Ms Zhao in the future because of an alleged discrimination claim based on racial grounds made by Ms Zhao as DSV's motivation for making her position redundant.

[39] Reinstatement of a dismissed employee is invariably a challenging process for all concerned and often requires parties to constructively engage in restoring relationships.<sup>11</sup>

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<sup>7</sup> *Idea Services Limited v Wills* [2025] NZEmpC 28 at [48].

<sup>8</sup> *Genesys Telecommunications Laboratories Limited* [2019] NZEmpC 113 at [119].

<sup>9</sup> Above n 8 at [119].

<sup>10</sup> Above at 8 at [119].

<sup>11</sup> *Vegepod NZ Limited v Lowe* [2025] NZEmpC 76 at [72].

[40] Ms Zhao believed that she would be redeployed or appointed to the position of customer experience manager. She was very upset to learn that another person, had been appointed to the role.

[41] When Ms Jensen advised Ms Zhao that she was not successful in being appointed to the new position, and her position had been made redundant, Ms Zhao made it clear to Ms Jensen how upset she was. Ms Jensen felt Ms Zhao's comments were personal in nature.

[42] Ms Zhao's comments cannot be excused but also need to be considered in context when considering whether reinstatement at this interim stage is both practicable and reasonable.

[43] I also take into account that following these comments being made, Ms Jensen was aware that Ms Allen had sent Ms Zhao potential job vacancies for her consideration.

[44] Ms Zhao's comments towards Ms Jensen and concern about DSV's motivation in making her position redundant do not reach the threshold of becoming a barrier to possible permanent reinstatement.<sup>12</sup>

[45] In conclusion I note the following points at this interim stage:

- (a) The only factor weighing against a serious question to be tried in relation to permanent reinstatement, is the delay in Ms Zhao applying for interim reinstatement. However, there was also a delay between the personal grievance being raised in October 2025 and DSV's response in December 2025, which should be taken into account in assessing how much weight to give delay as a factor for consideration.
- (b) Other factors which weigh in support of permanent reinstatement being both practicable and reasonable include whether DSV complied with its good faith obligations when considering redeployment, the size of DSV's business, and there are no significantly damaged work relationships which might cause a barrier to reinstatement being successful.

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<sup>12</sup> *Humphrey v Canterbury District Health Board* [2021] NZEmpC 59 at [45].

[46] Therefore, there is a serious question to be tried in regard to both Ms Zhao's claim for unjustified dismissal and permanent reinstatement.

**Does the balance of convenience favour reinstatement?**

[47] The balance of convenience is a question which is concerned with the relative positions of the parties during the interim period. The issues for consideration include the adequacy of damages, preservation of the status quo, and the relative strength of the parties' cases.<sup>13</sup>

[48] I start with the adequacy of damages. Ms Zhao provided the Authority with evidence of her attempts to secure new employment between September 2025 and May 2026.

[49] Subsequent to the conclusion of Ms Zhao's employment with DSV, the company say it become aware of additional concerns relating to alleged conduct on the part of Ms Zhao while she was employed. These concerns have not been put to Ms Zhao or investigated.

[50] The alleged misconduct which DSV relies, and which is refuted by Ms Zhao, may lead to an investigation in the event Ms Zhao is reinstated on an interim basis. This is a factor that weighs in favour of DSV when considering the balance of convenience.

[51] Ms Zhao has also provided evidence in support of her ability to satisfy the undertaking under s 127(2) of the Act.

[52] Ms Zhao also has a strong arguable case for unjustified dismissal given, the speed in which the consultation process occurred, and whether Ms Zhao was provided with information about the matrix ahead of the interview, and whether the position she interviewed for was substantially the same as the position she occupied, and whether DSV discharged its obligation to consider redeployment.<sup>14</sup>

[53] Overall, save the subsequently discovered alleged misconduct, the balance of convenience favours Ms Zhao. Ms Zhao has a strong case arguable case for unjustified dismissal; she is able to satisfy her undertaking and has sought alternative employment.

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<sup>13</sup> *Stellar Elements New Zealand Limited v Amesbury* [2024] NZEmpC 36 at [104].

<sup>14</sup> *Gafiatullina v Propellerhead Limited* [2021] NZEmpC 146 at [111]

It also remains unclear whether any of the alleged misconduct allegations could be substantiated.

### **Where does the overall justice lie?**

[54] Through no fault of her own, Ms Zhao's position was disestablished.

[55] The redundancy consultation period was short in length. Ms Zhao attended an interview for the new position. Ms Zhao says the new position was substantially similar to the position she held at the time of the interview.<sup>15</sup> When Ms Zhao learnt that another colleague, who she believed to be less experienced, was offered the new role, Ms Zhao questioned whether the motive behind the restructure was genuine.

[56] Ms Zhao was then provided job vacancies for consideration after being advised in a letter, the day after her interview, that there were no suitable opportunities for redeployment.

[57] A key submission for DSV is the delay in Ms Zhao lodging her application for interim reinstatement. As I have previously noted, Ms Zhao says part of this delay related to DSV's response to her personal grievance, which was provided to Ms Zhao in the middle of December, approximately 6 weeks after she raised her personal grievance for unjustified dismissal.

[58] DSV says the status quo has changed, her position no longer exists, and there is no job available for Ms Zhao to come back to.

[59] However, as noted earlier in my determination, if the dismissal grievance is made out, because redeployment was not properly considered, DSV could not argue that it would be unreasonable or impracticable to reinstate Ms Zhao.<sup>16</sup>

[60] For the reasons set out earlier in this determination, the balance of convenience is in favour of Ms Zhao being reinstated on an interim basis. Ms Zhao has sought alternative employment. Ms Zhao has the means to meet any award of damages. In the meantime, Ms Zhao remains unemployed.

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<sup>15</sup> *Waikato District Health Board v Archibald* [2017] NZEmpC 132 at [39].

<sup>16</sup> Above at 8 at [119].

[61] Standing back, overall justice also favours interim reinstatement.

### **Summary and orders**

[62] I order DSV to reinstate Ms Zhao to the payroll within 5 days of the date of this determination.

[63] The parties are directed to mediation. Mediation is to occur within 21 days of the date of this determination.

[64] I order DSV to place Ms Zhao in a position no less advantageous than her former position with DSV, within 28 days of the date of this determination.<sup>17</sup>

[65] A case management conference is to be convened to progress this matter to a substantive investigation meeting, following mediation.

[66] Costs are reserved.

Simon Greening  
Member of the Employment Relations Authority

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<sup>17</sup> Employment Relations Act 2000, s 123(1)(a).