

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
CHRISTCHURCH**

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI**

**[2024] NZEmpC 227
EMPC 375/2024**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

BETWEEN THE VICE CHANCELLOR OF
LINCOLN UNIVERSITY
Plaintiff

AND XINYI (ERIN) CHENG
Defendant

Hearing: 18 November 2024
(Heard at Queenstown)

Appearances: S G Wilson, counsel for plaintiff
R Bryant and G Hurring, counsel for defendant

Judgment: 22 November 2024

JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS

Introduction

[1] Ms Cheng was employed by the Vice Chancellor of Lincoln University as a research field technician from 1 February 2022. Her employment came to an end on 1 May 2024 when the University terminated her employment for redundancy. Ms Cheng pursued a personal grievance against the University claiming unjustified disadvantage and unjustified dismissal. She sought an order of permanent reinstatement by way of relief. She applied to the Authority for interim reinstatement pending determination of her grievance.

[2] The Authority granted Ms Cheng’s application for interim reinstatement in a determination dated 12 September 2024.¹ The University then filed a challenge to the determination. The parties agreed to a stay of the Authority’s determination pending the outcome of the challenge and sought orders from the Court accordingly. The stay was granted by consent on 9 October 2024 and was conditional on Ms Cheng being returned to the payroll but not returned to work.²

[3] The challenge was pursued by way of de novo hearing and heard on a priority basis; the original hearing date in this Court was adjourned for reasons relating to counsel’s availability. The challenge is solely concerned with whether Ms Cheng ought to be fully reinstated on an interim basis. This judgment does not decide whether she was unjustifiably dismissed. Nor does it decide whether, if she was unjustifiably dismissed, she will be reinstated on a permanent basis; or what additional/or other relief she might be entitled to.

[4] What is, however, required on the application before the Court is an assessment of whether Ms Cheng has an arguable case that she was unjustifiably dismissed and an arguable case that, if she was, she will be permanently reinstated. The Court’s assessment is based on untested evidence contained in sworn/affirmed affidavits.

The framework for analysis

[5] The law relating to interim injunctions is to be applied in determining whether to order interim reinstatement having regard to the object of the Employment Relations Act 2000 (the Act).³ In essence, the object of the Act is to build productive employment relationships through the promotion of good faith.⁴

[6] The approach to applications for interim reinstatement is well established and can be summarised as follows.⁵ An applicant must establish that there is a serious

¹ *Cheng v The Vice Chancellor of Lincoln University* [2024] NZERA 552 (Member van Keulen).

² *The Vice Chancellor of Lincoln University v Cheng* [2024] NZEmpC 196.

³ Employment Relations Act 2000, s 127(4).

⁴ Section 3.

⁵ *Humphrey v Canterbury District Health Board* [2021] NZEmpC 59, [2021] ERNZ 153 at [6]-[9], citing *NZ Tax Refunds Ltd v Brooks Homes Ltd* [2013] NZCA 90, (2013) 13 TCLR 531 at [12]-[13].

question to be tried. Consideration must be given to the balance of convenience, and the impact on the parties of the granting of, and the refusal to grant, an order. The impact on third parties will also be relevant to the weighting exercise. Finally, the overall interests of justice are considered, standing back from the detail required by the earlier steps. While the power to make an order for interim reinstatement is a discretionary one, the assessment of whether there is a serious question to be tried is not. It requires judicial evaluation.

[7] In a claim for interim reinstatement, the question of whether there is a serious question to be tried raises two sub-issues:⁶

- (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.

[8] As the Court of Appeal made clear in *Brooks Homes Ltd*, a serious question to be tried is one that is not vexatious and frivolous.⁷ Once that (relatively low) threshold is overcome, 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] As is usual in applications of this sort, evidence was produced by way of affidavits. That means that the Court proceeds on the basis of untested evidence. The evidence will be tested at the substantive hearing.

[10] The following emerges from the evidence at this stage.

The facts

[11] Ms Cheng was a student at Lincoln University and obtained a first class honours degree in agricultural science. One of the professors at the University

⁶ See *McKean v Ports of Auckland Ltd* [2011] NZEmpC 128, [2011] ERNZ 312 at [4].

⁷ *Brooks Homes Ltd*, above n 5, at [12].

suggested that she apply for funding for a full-time position as a research field technician. Ms Cheng put in an application and it was approved. In November 2021, Ms Cheng was offered employment with the University as a research field technician at a high-country station held by the University's property portfolio, Mount Grand Station (the Station).⁸ Funding for the position had been obtained from the Struthers Family Trust (the Trust).

[12] Ms Cheng's role was set out in a position description. It included conducting day-to-day operational research, providing technical and field support to University staff and post graduate students at the Station (under the supervision of senior research academics) and providing practical farming support.

[13] The farm manager, who had been in the role for around a decade when Ms Cheng arrived, was her direct line manager, but she was also to take direction from senior research academics, as confirmed in the position description for the role. The academics who were involved were the Mount Grand Station Management Advisory Group (known as MAG). Professor Moir was a member of the group and was the academic who she worked with most closely; she also worked with Professor Moot.

[14] While Ms Cheng says that her relationship with the farm manager was initially amicable, things deteriorated when she asked him to provide her with Station records to enable her to undertake crop sampling. She says that he became obstructive; refused to provide any records and that this led to her raising the issue with academic staff, including Dr Gibbs. Dr Gibbs says that the issue was subsequently raised with the farm manager's overseer, and as a result the farm manager became angry and increasingly hostile towards her. She says that this included racist remarks, criticising her work and directing her to undertake unnecessary tasks. Ms Cheng began recording conversations which took place between herself and the farm manager, and the shepherd at the time (who she says was also abusive).

⁸ The properties are used for research and practical experience for students and staff at the University.

[15] Dr Gibbs says that Ms Cheng was reluctant to raise any concerns about the situation, preferring to stay quiet and work hard to pursue a long term career at the Station.

[16] By August 2023, the farm manager had raised concerns about Ms Cheng with the University's Human Resources team.⁹

[17] In early August 2023 the interim Dean of the Faculty of Agriculture and Life Sciences at the relevant time raised issues about Ms Cheng's role with her two academic supervisors (Professors Moir and Moot), advising them that the farm manager was her line manager and that she was to take direction from him, not them. They did not consider this sensible or desirable and withdrew from the advisory committee. It does not appear, at least on the evidence currently before the Court, that Ms Cheng was consulted and, as I have already said, her job description made reference to both the farm manager and senior research academics.

[18] On 6 September 2023, a meeting was held between the farm manager, Ms Cheng and a member of the Human Resources team. Dr Gibbs attended the meeting with Ms Cheng as her support person. During the course of the meeting Ms Cheng queried why the farm manager's concerns (which were said to date back to May) had not been raised with her at an earlier stage. She then went through a lengthy, and detailed, response. The response identified several concerns she had about the way in which the farm manager and the previous shepherd had dealt with her.

[19] It was agreed that there would be a catch-up meeting to see how things were going a couple of weeks later; that does not appear to have occurred.

[20] Ms Cheng says that following the 6 September meeting the farm manager began assigning her menial tasks.

[21] At this point in the chronology it is salient to note the involvement of the farm manager's line manager, Dr Greer. Dr Greer says that from January 2024 he was regularly meeting with the new interim Dean, Professor McKenzie, "to brief him on

⁹ Reflected in an email dated 21 August 2023 from the farm manager to Ms Cheng.

and discuss, among other things, operational and resourcing requirements across the Farms portfolio, including [Mount] Grand.” His evidence is that he apprised Professor McKenzie that there was low student and academic utilisation at the Station.

[22] This appears to have prompted Professor McKenzie to undertake a review of resourcing, based on his understanding that the number of students using the Station had not increased as anticipated, nor had the research projects. He decided that there might not be enough technical support work for Ms Cheng’s role but that there was an increased demand from students and staff for compliance monitoring, research analysis and technical support across the farms in the University’s portfolio. As a result, he says he formed the preliminary view that the Faculty’s needs might best be served by establishing a new field technician role at the University, rather than at the Station. He engaged with the University’s Human Resources team and issued Ms Cheng with a change proposal. Ms Cheng was the only person directly impacted by the change proposal, other than the farm manager, who would lose a direct report.

[23] A meeting followed on 11 March 2024, involving Ms Cheng, Professor McKenzie, Dr Gibbs and Ms Williamson, a member of the Human Resources team.

[24] The meeting was recorded. The meeting began by Professor McKenzie emphasising that they were seeking feedback on a proposal, and that any decision would not be made by him; rather it would be made by the Vice Chancellor. During the meeting Ms Chen raised concerns about the way in which her academic supervisors had been “blocked” from working with her and that the result had been a dry up of work for her. She referred to her alleged mistreatment by her manager, which she said the University was aware of; that the farm manager wanted her “gone” and that she deserved support from the University, rather than to have her job (which she valued) taken away from her and transferred to a different location.

[25] Ms Williamson acknowledged the earlier meeting, said the matters Ms Cheng had raised were “important and concerning” and asked Ms Cheng to send through further information. She then said that the proposal to shift the role to Lincoln campus was “not [borne of] the experiences you’re talking about” and that the concerns about how Ms Cheng had been treated were “a separate topic.” Professor McKenzie

reiterated Ms Williamson's expressed concern about the matters Ms Cheng had raised and said that he was "reasonably confident that [he] had no knowledge whatsoever of what went on in the past."

[26] Towards the end of the meeting Ms Cheng asked Professor McKenzie the following question:¹⁰

Ms Chen: So you mentioned there's irregular work for me. So how can you tell me the Dean's office has blocked all the work academically from Lincoln when [the farm manager] was made to my line manager and then now they are starting a new programme on Mount Grand and they are developing and I was told my job is not needed, it needs irregular work. How can this be possible?

Professor McKenzie: Really, I think that really what I'm saying Erin is we have more work on campus than we have in Mount Grand. There [is] no question about that. The work on campus is expanding very quickly and ... to a very significant magnitude. *We very much more need your skills on our campus than we do down at Mount Grand. And that is my opinion. There is no question about that at all. That [is] the reason for the proposal.*

[27] Dr Gibbs then said that he did not understand how, including because of the basis on which the role had been approved for funding from the Trust, it could be moved away from the Station. He said that he looked forward to seeing the data on it.

[28] Following the meeting the proposal was provided to other staff within the Lincoln University Farms portfolio and across the faculty. Ms Cheng says that the results of this consultation were not made known to her, and nor was she given an opportunity to comment on the points that were made. Nor does it appear that the data that was said to support the proposal was provided to Ms Cheng. Ms Cheng did not respond to the transfer proposal.

[29] The next step in the process from her perspective was receipt of an Outcomes Document, dated 28 March 2024 and advising that the research field technician role (which Ms Cheng held) was to be disestablished and a new position of field technician based at the University would be created. She was offered the newly created position.

[30] Ms Cheng raised concerns about the restructure through her union representative and a further meeting was held on 18 April 2024. She reiterated her

¹⁰ Emphasis added.

concerns about the way she had been treated by the farm manager; the apparent blocking of work at the Station by him; and the scope for technician work to continue at the Station. No further steps were taken by the University in respect of the process. In light of Ms Cheng's (lack of) response it says it formed the view that she did not wish to accept the new role and accordingly gave her notice of termination by reason of redundancy on 30 April 2024.

[31] The University says that it was concerned about the issues Ms Cheng had raised in relation to the farm manager and advised her that it was intending to undertake an investigation into them. An external investigator was appointed and, as at the date of the hearing, the investigation is ongoing. Counsel for the University, Mr Wilson, advised that the investigation was now in its final stages and it was anticipated that it would be available before the Authority's upcoming investigation.

Serious question to be tried in relation to the claim of unjustified dismissal?

[32] The University accepts that Ms Chen has an arguable case that her dismissal was unjustified. I agree (and would put it as strongly arguable, a point that is relevant to a consideration of where the balance of convenience and interests of justice might lie).¹¹

[33] There is clearly an arguable case that the University's decision to make Ms Cheng's position redundant was driven by a desire to deal with difficulties in the working relationship between the farm manager and Ms Cheng, rather than genuine reasons related to the position itself. The University strongly refuted this, and it is (of course) a matter that cannot be finally resolved until the substantive investigation in the Authority, and after the evidence has been tested. For present purposes it is sufficient to note that the University submitted that Professor McKenzie did not know about the interrelationship issues and that they came as a surprise to Ms Williamson too – the first they knew was when Ms Cheng raised concerns about the farm manager at the March 2024 meeting when the proposal to transfer the position was discussed with her. It was submitted entirely speculative to suggest, as Ms Cheng had, that there was a causal link between the interrelationship issues and the transfer proposal.

¹¹ *Humphrey*, above n 5, at [41].

[34] On the untested evidence before the Court at this early stage, an inference can arguably be drawn that the proposal was a way of resolving a difficult situation. In this regard, the farm manager had raised concerns about Ms Cheng with Human Resources, a meeting had been convened and shortly thereafter the proposal was drafted; Dr Greer (who had extensive discussions with Professor McKenzie in early 2024) was well aware of the serious nature of the relationship issue as at November 2023 (in an email dated 16 November 2023, he states: “I ... don’t want to get into who is at blame for the break-down between [the farm manager] and [Ms Cheng].” Neither Professor McKenzie, nor Ms Williamson, give specific evidence that the relationship issue had nothing to do with the proposal. As I have said, the farm manager has not given evidence about the discussions he may have had over the relevant period. Nor was there any evidence before the Court from the person who made the decision, namely the Vice Chancellor. There was no evidence as to what they knew or did not know, and why they made the decision to disestablish Ms Cheng’s role.

[35] There is also clearly an arguable case that the process followed by the University was flawed, including because of an alleged failure to provide Ms Cheng with sufficient information to enable her to understand the proposal and to provide feedback on it. For example, data which was said to support the proposal does not appear to have been provided; employers are obliged under s 4 of the Act to provide access to information to an employee that may be relevant to the continuation of their employment.¹²

[36] The extent to which the University took reasonable steps to deal with the concerns it had will no doubt be in focus at the Authority’s substantive investigation meeting. However, it is arguable that, even if it had no actual or imputed knowledge of the relationship issue and concerns about the farm manager’s conduct, rather than proceeding with the proposal to transfer Ms Cheng’s role, it should have paused after the March meeting and considered (rather than immediately dismissing) the possibility that the two matters (what underlay the proposal to transfer and the serious concerns Ms Cheng had raised) might indeed be interrelated, not separate as was asserted.

¹² Employment Relations Act 2000, s 4(1A)(c).

[37] Further, there appears to be strength in the point made by Mr Bryant, counsel for Ms Cheng, that the University failed to comply with its own undertakings in respect of the process it said it would follow, including that it would follow a process “to explore viable alternatives to compulsory redundancy including; redeployment to other positions, retraining, retirement and voluntary redundancy options.” It is well-established that a failure to follow a sign-posted process may support a finding of unjustified dismissal. While the letter of dismissal refers to the University continuing to explore possible redeployment options during her notice period, there does not appear to be any evidence that this was done and it appears to have been a requirement under cl 35 of Ms Cheng’s employment agreement. The obligation under the clause arose prior to dismissal, not after.

[38] In summary, I conclude that there is clearly a serious question to be tried in relation to the unjustified dismissal claim.

Serious question to be tried in relation to the claim of permanent reinstatement?

[39] The University’s key argument was that there was no serious question to be tried in relation to permanent reinstatement and the application should be dismissed on that basis. I do not accept that the claim for permanent reinstatement is as weak as the University contends.

[40] The University submits that reinstatement is unlikely to be found to be practical because of two main reasons. First, it is submitted that reinstatement would give rise to serious health and safety concerns, given the issues Ms Cheng has raised about difficulties with the farm manager which are subject to investigation. Second, there is no role for Ms Cheng to be reinstated to and if she was reinstated there would be no work for her to undertake.

[41] As to the interrelationship issues which are referred to as giving rise to health and safety concerns, Ms Cheng suggests that they can be successfully managed and she could report to the current shepherd, who she says she worked well with; the shepherd has sworn an affidavit saying that he would have to reconsider remaining on the farm if Ms Cheng returned.

[42] It appears that the University was well aware of the interrelationship issues between the farm manager and Ms Cheng, from around March 2022. As at September 2023 the University was prepared to deal with matters via what it described as an informal meeting convened with Human Resources, and a follow-up meeting to see how things were going (which does not appear to have eventuated) a couple of weeks later. It did not refer to relationship issues, or concerns about health and safety, in its March 2024 proposal. In other words it appears that at this stage it considered that any health and safety issues that difficulties in the relationships on the farm could be managed on an informal basis. The farm manager has not given any evidence as to what, if any, health and safety risks he perceives in the event that Ms Cheng is reinstated; and Ms Cheng is confident that the concerns can be appropriately managed.

[43] Dr Greer has given evidence about the remoteness of the Station, and its high risk physical environment. It is notable, however, that Ms Cheng managed to work in that environment in what both she and the farm manager appear to agree was very difficult from an interpersonal perspective, without any physical health and safety concerns emerging. Dr Gibbs (who deposes that he has had lengthy experience on farms in the area) is dismissive of the concerns raised by Dr Greer, essentially on the basis that they are exaggerated.

[44] While I accept that the shepherd's stated concern as to the perceived impact of a return to work is relevant to the strength of the claim for permanent reinstatement, his engagement with Ms Cheng has been relatively limited and the interpersonal issues appear to have been focussed on Ms Cheng, the farm manager and the previous shepherd.

[45] It is also notable that there appears to have been no attempt (other than the September 2023 meeting convened by Human Resources at the farm manager's request) to work with those at the centre of the working relationship to pave a way through.

[46] The University is well resourced and has specialist Human Resources capacity. This fact is relevant to the assessment.

[47] A broader issue arises in claims of interim reinstatement. As the Court has previously emphasised, money is a poor substitute for the loss of a job. Routinely declining orders of reinstatement in the face of unlawful action monetises the employment relationship. That, in turn, serves to undermine the dignity of workers, contrary to fundamental precepts of employment law.¹³

[48] The benefits of a restorative approach to the breakdown of employment relationships has been gaining increased recognition, and has synergies with the underlying objectives of the legislation and the primacy of reinstatement as a remedy.¹⁴ I also consider that it accords with tikanga norms and values.¹⁵ With appropriate support (which the University appears on the evidence to be in a position to provide) there is a relatively strong basis for arguing that permanent reinstatement is both practicable and reasonable.

[49] The second limb of the University’s argument against reinstatement is directed at a lack of work. That argument hinges, at least to some extent, on the genuineness of the redundancy. I have already held that there is a clearly arguable case that the redundancy was not genuine. The evidence (untested) at this stage is mixed on the point as to whether any work still exists, in the sense that there is work to be done. The University submits not, but there is evidence suggesting otherwise from Dr Gibbs, an academic at the University. He explained that the research technician tasks associated with baseline monitoring are still required, as well as two specific animal health issues Ms Cheng could address.

[50] It may be noted that at the March 2024 meeting to discuss the proposal Professor McKenzie did not attempt to assert that the work had gone. Rather he said that the University had “*more* work on campus than we have in Mount Grand.” He also referred to “*an irregular and a limited demand* for Technical Support and assistance to staff and students at Mount Grand.” In other words, it appears it was accepted that there *was* work to be done at the Station, just not as much as previously

¹³ See generally Declaration concerning the aims and purposes of the International Labour Organisation (10 May 1944) (Declaration of Philadelphia).

¹⁴ *Humphrey*, above n 5, at [52].

¹⁵ See *GF v Comptroller of the New Zealand Customs Service* [2023] NZEmpC 101, [2023] ERNZ 409.

and there was a more pressing need at the campus. I pause to note that there is no evidence before the Court as to what, if anything, has happened with the work since Ms Cheng's departure. I note too that if Ms Cheng is reinstated it will be incumbent on the University to provide her with work in accordance with the terms and conditions of her employment.

[51] I have already referred to the significance of reinstatement being conferred primary remedy status under the Act, but touch on it again because it is an important point on claims for interim reinstatement, and the Court's assessment of the strength of the case for permanent reinstatement.

[52] The 2018 amendment to the Act (making it clear that reinstatement was to be the primary remedy) made it crystal clear that reinstatement was to be the primary remedy in cases involving unjustified dismissal and disadvantage. The Minister of Workplace Relations and Safety described the proposed amendments contained within the Employment Relations Amendment Bill 2018 (13-3) in the following way:¹⁶

I just want to clarify for members exactly what this bill does: it restores reinstatement as the primary remedy. Reinstatement is a remedy that is available right now. It is certainly an option for the Employment Relations Authority can find that someone ought to be reinstated to their role. What we're saying here is that reinstatement should be the primary remedy, and the point of that is that is to get the conversation back to being one about how we can put this relationship back together again. Rather than saying, "How big a payout is it going to take to see someone off and never darken their employer's doorstep again?", let's see if there's a possibility to restore the relationship. ... it is about changing the nature of that conversation. ... So, just to reiterate, this is about restoring reinstatement as the primary remedy – not as the only remedy and not as a compulsory remedy – and it's simply about changing the conversation from one of "What does it take to get out of this relationship?" to being one of "Is there any opportunity to restore the relationship?"

[53] As the Court has previously observed, properly interpreted, the amendment to s 125 reflected a Parliamentary intention to raise the bar that employers would have to negotiate in order to prove that reinstatement was neither reasonable nor practicable.¹⁷ All of this is relevant to the Court's assessment of arguability.

¹⁶ See (4 December 2018) 735 NZPD 8529.

¹⁷ *Humphrey*, above n 5, at [48].

[54] I conclude that there is an arguable case for permanent reinstatement.

Balance of convenience

[55] This part of the analysis ultimately involves a weighing exercise in the Court's discretion.

[56] I first deal with timing. The Authority's substantive investigation is scheduled for 17-19 December 2024, so in three weeks. Mr Wilson submitted that the proximity to the Authority's investigation weighed in favour of no order for full reinstatement being made (rather, Ms Cheng should remain partially reinstated on the payroll).

[57] There are difficulties with putting too much weight on proximity to the Authority's investigation. Assuming the investigation proceeds as scheduled, a determination may not issue for some time. Depending on the outcome, the University would then have a right to challenge, including on a de novo basis. If that right was exercised, the process would inevitably involve many more months.

[58] As was observed in *Humphrey*:¹⁸

Experience suggests that as the passage of time grows the likelihood of successful reintegration fades and with it, the strength of the case for permanent reinstatement. Jobs are important and money is often a poor substitute. I see the 2018 amendment as reinforcing this point.¹⁹ In this regard the Act has both an educative and regulatory function, which the Court recognises when dealing with applications for reinstatement.

[59] And, as the Court pointed out in *Ashton v Shoreline Hotel*:²⁰

[To] award routinely compensation for the job loss instead of reinstating is to create a system for licensing unjustified dismissals.

[60] The likely delay in having the substantive claim finally determined weighs in favour of interim reinstatement.

¹⁸ At [37].

¹⁹ Employment Relations Amendment Bill 2018 (13-3).

²⁰ *Ashton v Shoreline Hotel* [1994] 1 ERNZ 421 (EmpC) at 436.

[61] I have already touched on the likely merits of the claim for unjustified dismissal and permanent reinstatement, insofar as they can be assessed at this stage. Each case is fact dependent. The threshold in a claim for interim reinstatement is an arguable case. It will be apparent from my analysis that I consider there is an arguable case and this weighs in favour of interim reinstatement being ordered.

[62] I accept that reinstatement on an interim basis would pose some difficulties for the University. This concern must be weighed with other relevant factors. The University is a well-resourced organisation with internal resources, which is better placed than many to deal with such issues, including because of its Human Resources capability. My concerns about ordering interim reinstatement largely centre on the potential impact on colleagues. However, I have concluded that appropriate measures can be put in place to reduce such impact, including via a supported and structured return to work. My conclusion is reinforced by the resources available to the University, which can be expected to be well placed to support a safe and appropriate reintegration, managed in a constructive manner. Ms Chen's expressed willingness to constructively move forward, in order to progress a career she highly values, is relevant to the balance of convenience, lending weight to the prospect of a successful reintegration.

[63] As observed in *Humphrey*:

[52] Our understanding of the benefits of a restorative approach in supporting successful employment relationships is developing at a pace, and is consistent with the underlying objectives of the legislation and the mutual obligations of good faith. This has implications for the steps that a fair and reasonable employer, particularly a well-resourced one, can be expected to take in dealing with relationship difficulties. The conversation has, as the Minister of Workplace Relations noted when introducing the 2018 amendment, changed.

...

In such circumstances, restorative practices in which parties can expect to engage actively, are likely to become an increasingly helpful tool.

[64] I conclude that the balance of convenience weighs in favour of interim reinstatement.

Overall interests of justice

[65] The overall interests of justice favour the grant of interim reinstatement in this case. There is clearly a seriously arguable case that Ms Cheng's dismissal was unjustified and that she would be permanently reinstated to her role following a substantive investigation in the Authority. At this stage, and on the basis of untested evidence, I have concluded that the merits weigh in her favour. I do not accept that damages will be an adequate remedy, in light of the aspirations Ms Cheng has for her career, which very much centre on the Central Otago high country.

Conclusion

[66] The University's challenge is unsuccessful and the application for interim reinstatement is granted.

[67] I order that Ms Cheng be reinstated to her former position at Mount Grand Station pending the outcome of the Authority's substantive investigation.

[68] Reinstatement is to be achieved via a managed process, during which Ms Cheng is to remain on the payroll. The parties are directed to attend urgent mediation to identify and implement the necessary steps to ensure a managed transition, including one which recognises and appropriately safeguards the interests of her colleagues.

[69] A copy of this judgment is to be provided to the national manager, Mediation Services of the Ministry of Business, Innovation and Employment by counsel for the University. Mediation Services is requested to make the necessary arrangements for a mediator with expertise in restorative practices to assist the parties in the reinstatement process.

[70] As s 188 makes clear, the parties are required to attend the mediation I have directed in accordance with the good faith provisions contained in the Act.

[71] I anticipate that the parties will be able to agree the necessary arrangements and the timing of mediation. However, if that does not prove possible leave is reserved to apply to the Court on short notice for urgent orders to be made.

[72] If costs cannot be agreed I will receive memoranda, with the defendant filing and serving within 20 working days of this judgment; the plaintiff within a further 10 working days; and anything strictly in reply within a further five working days.

Christina Inglis
Chief Judge

Judgment signed at 4.30 pm on 22 November 2024