

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

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2025] NZEmpC 69
EMPC 141/2024**

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

BETWEEN BREAD OF LIFE CHRISTIAN CHURCH
IN AUCKLAND
Plaintiff

AND XI (ROBERT) CHEN
Defendant

EMPC 181/2024

IN THE MATTER OF proceedings removed from the Employment
Relations Authority

BETWEEN XI (ROBERT) CHEN
Plaintiff

AND BREAD OF LIFE CHRISTIAN CHURCH
IN AUCKLAND
First Defendant

AND JULIA BUHAGIAR
Second Defendant

AND XIN (CONNIE) HUANG
Third Defendant

AND JIANAN (NANCY) ZHANG
Fourth Defendant

Hearing: 22–26 July 2024 and further submissions filed on 4 and 20
November 2025
(Heard at Auckland)

Appearances: G Pollak, counsel for Bread of Life Christian Church in Auckland
S Greening, counsel for Xi Chen

Judgment: 4 April 2025

JUDGMENT OF JUDGE KATHRYN BECK

Overview

[1] This case involves the dismissal of a pastor following an acrimonious and tragic church split. The church is divided over how to deal with its assets. The assets of the church include a commercial property and are held by a trust. The trust has six trustees. There are three trustees on each side of the divide. One of those trustees is Pastor Xi Chen.

[2] Pastor Chen has worked for the church since February 2015. He signed a fixed term agreement with the church on 2 September 2019. His fixed term ended on 31 March 2022. On 12 April 2022, the board discussed whether to continue Pastor Chen's salary, and three trustees decided that his salary should be suspended. Accordingly, on 14 April 2022, the treasurer of the trust suspended salary payments to him. The remaining two trustees objected, but no further payments were made. As Pastor Chen had a conflict of interest, he abstained from any decisions affecting him.

[3] Pastor Chen considered that he had been dismissed and filed proceedings in the Employment Relations Authority. The Authority determined that Pastor Chen was an employee of the trust and that he was unjustifiably dismissed, and ordered that he be reinstated, first on an interim basis and then permanently.¹ Five days after being permanently reinstated, Pastor Chen was again dismissed.

[4] This judgment resolves a challenge to the Authority's substantive determination.² It also resolves proceedings removed from the Authority whereby

¹ *Chen v Bread of Life Christian Church in Auckland* [2023] NZERA 298 (Member Larmer) [Interim reinstatement determination]; and *Chen v Bread of Life Christian Church in Auckland* [2024] NZERA 198 (Member Larmer) [Substantive determination].

² Two of the trustees, Jiedan Li and Yang Liu, support Pastor Chen's claims and the findings of the Authority. The other trustees, Xin (Connie) Huang, Julia Buhagiar and Jianan (Nancy) Zhang (the plaintiff trustees), oppose Pastor Chen's claims and seek to overturn the findings of the Authority.

Pastor Chen brought a further claim for unjustified dismissal after being dismissed a second time.³

[5] The issues for determination are:

- (a) whether Pastor Chen and the trust were in an employment relationship;
- (b) whether Pastor Chen was unjustifiably dismissed by the trust on 20 April 2022;
- (c) whether Pastor Chen was unjustifiably dismissed by the trust on 10 April 2024; and
- (d) what remedies are available to Pastor Chen and, in particular, whether he should be permanently reinstated.

Facts

The administration of the Church

[6] This case centres around the Bread of Life Christian Church in Auckland (the Church). The Church was established in New Zealand in 1998 by the Bread of Life Church in Taipei (the Mother Church). It is an unincorporated association of persons that operates in accordance with the Bible and the Mother Church's network governance philosophies.

[7] A registered charitable trust of the same name (the Trust) has a governance role in the Church and holds its assets. That Trust is the plaintiff in these proceedings.⁴ The assets of the Trust are comprised of donations made by members of the Church, a building at 75F Apollo Drive in Auckland, and rental income. The Trust is governed by a trust deed and was established on 21 July 1998. It presently has a board of six trustees (the Trust Board).

³ *Chen v Bread of Life Christian Church in Auckland* [2024] NZERA 310 (Member Larmer) [Removal determination].

⁴ See *Bread of Life Christian Church in Auckland v Chen* [2024] NZEmpC 4, [2024] ERNZ 1 at [23]–[35].

[8] The Church has a complex system of administrative committees that are or were involved in the running of the Church. For the purposes of this proceeding, it is necessary to acknowledge the existence of a group described in the documents as the Core Fellowship Committee (Core Fellowship Committee). It is also described variously as the Core Officer Committee, Council of Core Fellows, Core Leadership Committee, or CFC. Most of these variations, along with most of the variations in the names of the other committees, arise as a result of translation differences.

[9] The Core Fellowship Committee operated and managed the Church from 2015 or 2016, replacing a previously existing Executive Committee. The Core Fellowship Committee was in charge of all civil law matters, including human resources and employment issues, whereas another committee, the Preacher/Preaching Worker Committee (Preacher Worker Committee), Preacher/Preaching Fellowship Committee or PWC, was in charge of gospel works.

[10] Underneath the Core Fellowship Committee was a Human Resources Committee (Human Resources Committee), which was also described as the Personnel Management Committee, PMC or some variation of the above. That group was set up to establish and improve human resources rules and regulations.

[11] The Core Fellowship Committee ceased to be active around June 2020 or perhaps in 2021. The Human Resources Committee also ceased to function at some point. It is not clear why. In any case, by the time the present dispute arose, there was no longer a Core Fellowship Committee or Human Resources Committee. It may have been replaced by the Pastoral Fellowship Committee, but that body was only established after this dispute arose.

[12] The relationship between the Trust and the Core Fellowship Committee is illustrated by two documents. First, the Trust deed states that: “The Board may ... appoint any committee and may delegate in writing any of its powers and duties to any such committee”. Second, the revised “Protocol and Rules of Service” (Protocol and Rules of Service) of the Core Fellowship Committee dated 5 April 2017 states:

Bread of Life Christian Church in Auckland is registered with the New Zealand Government as a trust organization. The Core Officer Committee select Preachers, as well as representatives of Leader of Congregation, to form a Board of Trustees. The Board of Trustees will authorise the Core Officer Committee to manage the church, and also accept the resolutions made by the Core Officer Committee.

The Board of Trustees members will come from Preachers and Leaders of Congregation chosen by the Core Officer Committee, after which the Core Officer Committee will meet and issue a resolution and signs an “Agreement of Authorization Letter”, thereafter the Board of Trustees members will then effectively involved in the management of the Church.

When a Board of Trustees member behaves in an unethical way, be it economically or in violation of the Church’s beliefs and core values, if such behaviour be confirmed after investigation and a resolution is made by the Core Officer Committee, this member will be dismissed.

...

The rules and regulations contained in this document will be implemented after being passed by the Core Officers Committee, and will be included in the Board of Trustees documentation in the Government Registry for Charitable Trusts, as well as its amendments and variations.

[13] Although it is not clear that the Trust Board ever explicitly delegated its powers to the Core Fellowship Committee in writing as required by the Trust deed, the Protocol and Rules of Service makes it clear that this is what happened in practice. The extracts cited above illustrate that the Trust Board delegated its powers to the Core Fellowship Committee and accepted its decisions and that the Core Fellowship Committee also appointed and removed trustees.

[14] The reality of the relationship between the two entities is further confirmed in that while the Core Fellowship Committee existed, the Trust Board did not have any meetings, and the trustees only acted as trustees when signing legal documents on behalf of the Church.

[15] The Trust Board authorised the Core Fellowship Committee to manage the Church, so when that committee was disestablished, the power to manage the Church reverted to the Trust Board. That is also what happened in reality. After the Core Fellowship Committee and Human Resources Committee ceased to function, the Trust Board began to meet again and took over the roles previously undertaken by the two Committees.

[16] In addition to various committees, the Church was supported by pastors and preachers. The Protocol and Rules of Service of the Core Fellowship Committee set out rules for appointing and dismissing such leaders. Those rules were expanded in the “Personnel and Payroll Management Regulation” (the Payroll Regulations).

Pastor Chen was engaged to pastor the Church and became senior pastor

[17] In February 2015, Pastor Chen was engaged as a paid preacher. He was paid a salary by the Trust. However, there was no written agreement.

[18] In March 2018, he was ordained as a pastor of the Church. This was endorsed by the Mother Church.

[19] On 2 September 2019, Pastor Chen signed an agreement (the Agreement) with the “Bread of Life Christian Church in Auckland”. The signatories for the Church to the Agreement were Jack Cui and Becky Bi, who was a trustee at the time. They signed on behalf of the Core Fellowship Committee and the Human Resources Committee.

[20] Under the terms of the Agreement, Pastor Chen was appointed as pastor of the Church for the period 2 September 2019 to 31 March 2022. His duties and responsibilities were detailed in a job description, and he was paid a salary of \$43,056 per year. It is not disputed that the Trust paid Pastor Chen’s salary in accordance with the Agreement and remitted deductions (PAYE) to the Inland Revenue Department (IRD).

[21] Pastor Chen also signed a separate document acknowledging his call to ministry on 4 September 2019 (the Call Document).

[22] The original documents were in Mandarin. The Court was provided with an English translation of each document, including two different translations of the Agreement. Some of the complexities introduced by the translations are discussed in more detail below.

[23] At some point during the COVID-19 pandemic in 2020, at the direction of the Trust, Pastor Chen's salary was reduced to 80 per cent. The Trust applied for and received the COVID-19 Wage Subsidy.

[24] On 20 June 2020, the Trust Board resolved to disband the existing board and elect new members. On 6 September 2020, a new Trust Board was appointed consisting of Xin (Connie) Huang, Julia Buhagiar, Jianan (Nancy) Zhang, Jiedan Li, Yang Liu and the senior pastor at the time, Bin Zhou. When Pastor Zhou resigned, Pastor Chen was appointed to the Trust Board on 11 April 2021.

[25] On 10 May 2021, the Trust Board approved a motion that Pastor Chen would be appointed the principal or senior pastor (senior pastor) of the Church.

[26] On 27 May 2021, a "supplementary evaluation meeting" was held at which Pastor Chen's performance for the year was discussed and evaluated by pastors of the Mother Church and trustees, including Ms Huang. The Trust Board put forward suggestions for improvements. The opinions of the trustees on Pastor Chen's life as a leader, preaching, vision, and team building were recorded, as was his response in which he agreed with those opinions. The Trust Board then reconfirmed the resolution passed by the Trust Board on 10 May 2021 approving Pastor Chen as the Church's new senior pastor.

[27] Finally, Pastor Zhou announced this decision to the rest of the Church on Sunday 30 May 2021.

The Trust Board is split, and Pastor Chen was dismissed

[28] For historical reasons, the Trust Board never operated with a Chair.⁵ In August 2021, appointing a Chair was discussed, but no consensus was reached. The topic was left for future discussion after everyone prayed.

⁵ Clause 12 of the Trust deed provides: "The decisions of the Board shall be decided by consensus. If a consensus cannot be reached it shall be put to a vote. The Chairman shall have a casting vote if the voting is tied."

[29] As noted previously, 75F Apollo Drive, Albany, is a major asset of the Trust. Over the period of October 2021 to April 2022, there were various discussions in relation to what should be done with the building. It is common ground that it was not meeting the Church's needs in its current form. The options, in broad terms, were to redevelop it so it could be used,⁶ partially redevelop the building while continuing to lease part of the space, continue to lease it out and buy a different building using the rent to fund a new mortgage, or sell it and purchase a building that was fit for purpose.

[30] Further discussions also took place about the appointment of a Chair of the Trust Board in December 2021. Pastor Chen put himself forward for the position, as did Ms Huang. The vote was a 3:3 draw.

[31] The inability to resolve this issue appears to be the start of the friction between the trustees.

[32] The Trust Board was in a state of impasse in relation to the making of key decisions concerning the property. However, it seems that other business was able to continue as usual and be funded, although a review of the minutes of the Trust Board indicates a deterioration of the relationship between the trustees. For example, there were disagreements about how meetings were to be recorded, and separate meetings were being held by the separate groups.

[33] In January 2022, the trustees supporting Pastor Chen purported to hold a board meeting which was attended via Zoom by two pastors of the Mother Church, and at that meeting Pastor Chen was appointed Chairman. The plaintiff trustees did not attend that meeting, and they rejected the appointment as being invalid.

[34] Over the period March to April 2022, members of the Church, including the plaintiff trustees and others, wrote to the Mother Church as part of an evaluation process of Pastor Chen, raising concerns about him. While none of the correspondence was before the Court, it is apparent from the Mother Church's response on 29 April 2022 that letters in support of Pastor Chen were also received.

⁶ Resource and building consent had been obtained for redevelopment.

[35] On 12 April 2022, a board meeting was held from 7 to 9.30 pm in the Church office. A number of matters were discussed including that Pastor Chen's appointment had expired on 31 March 2022 and that no application for renewal had been received. A majority of three trustees (Pastor Chen abstained due to a conflict of interest) resolved that:

According to the "Bread of Life Church in Auckland Personnel and Salary Management Regulations", the Board would report to the Taipei mother church and listen to the mother church's opinions. Since the original employment contract has expired, salary payment will be suspended until the new employment contract is concluded.

[36] Further discussions regarding the decision took place between the trustees over WeChat from 14 April to 28 April 2022. There was strong disagreement from the trustees supporting Pastor Chen, but they were in the minority.

[37] Pastor Chen's salary was due to be paid around 20 April 2022. It was not paid. The plaintiff trustees confirmed at various times in the WeChat conversation that they regarded Pastor Chen's appointment as terminated.

[38] Despite the Mother Church confirming Pastor Chen's ongoing appointment as senior pastor of the Church in a letter dated 29 April 2022, the plaintiff trustees did not resume paying Pastor Chen's salary and continued to treat his appointment as terminated.

[39] However, despite Pastor Chen's dismissal, Church members who support him continued (and still do so) to meet in the Sunnynook Community Hall, which is where the Church met prior to the split. Pastor Chen continues to act as senior pastor and undertake his normal duties. Just over 100 people attend the services each week and are involved in the weekly life of the Church.

[40] Church members who do not support Pastor Chen began to meet independently for prayer meetings on Sundays at the Church's building at 75F Apollo Drive, Albany. Those meetings also continue to date and have been normally attended by about 20 people.

The proceedings between the parties thus far

[41] After being dismissed, Pastor Chen raised a personal grievance for unjustified dismissal and filed proceedings in the Authority.

[42] On 9 June 2023, the Authority determined that the parties were in an employment relationship and made an order that Pastor Chen be reinstated on an interim basis.⁷ The Trust challenged that determination and unsuccessfully applied for a stay of the order for interim reinstatement.⁸

[43] Subsequently, the Authority released its substantive determination on 5 April 2024. It determined that the Trust was not entitled to rely on the expiry date of the Agreement pursuant to s 66 of the Employment Relations Act 2000 (the Act).⁹ It determined that Pastor Chen's dismissal was not justified.¹⁰ It ordered that he be reinstated and made extensive recommendations for what should occur going forward.¹¹ The Trust has challenged that determination.

[44] Pastor Chen was again dismissed due to redundancy on 10 April 2024 – five days after the Authority issued its determination ordering him to be reinstated permanently. Pastor Chen claimed that the second dismissal was also unjustified and filed proceedings in the Authority. Those proceedings were removed to the Court on 24 May 2024.¹²

[45] As a result of the Authority releasing its substantive determination, the challenge to the interim reinstatement decision has been superseded. Accordingly, the Court now has to determine whether Pastor Chen was an employee, whether he was unjustifiably dismissed on either occasion, and whether he is entitled to reinstatement and/or reimbursement of lost earnings.

⁷ Interim reinstatement determination, above n 1, at [228]–[229].

⁸ *Bread of Life Christian Church in Auckland*, above n 4, at [61].

⁹ Substantive determination, above n 1, at [79]–[80].

¹⁰ At [102] and [107].

¹¹ At [141]–[153].

¹² Removal determination, above n 3, at [11].

[46] The plaintiff trustees filed proceedings in the High Court in July 2022 seeking that Pastor Chen, Ms Liu and Mr Li be removed as trustees of the Trust. The trustees supporting Pastor Chen have filed a counterclaim seeking that the plaintiff trustees be removed. They have also recently filed proceedings seeking that the Court appoint an interim administrator/receiver pending further order of the Court. That matter is set down for a five-day hearing commencing on 3 August 2025.

[47] In the meantime, Pastor Chen continues to work without pay.

The Court has received submissions on whether Pastor Chen was employed

[48] Mr Pollak, counsel for the plaintiff trustees, submitted that there exists in New Zealand's common law a category of worker covering religious leaders who are neither independent contractors nor employees. He acknowledged that religious leaders can be engaged as employees but submitted that what must be given primary consideration is whether they have been appointed for a fundamentally spiritual purpose.

[49] The Trust accepts that it and Pastor Chen were in a relationship of sorts. However, it says that Pastor Chen's key relationship was with the Church, rather than with the Trust, and that the relevant relationship is in the nature of a spiritual contract or a calling as opposed to a contract of service. It says that any relationship between it and Pastor Chen was simply functional for the purposes of paying his salary and deducting PAYE.

[50] Mr Pollak submitted that the Agreement signed by Pastor Chen was not signed on behalf of the Trust and that the Trust had nothing to do with the management of the Church or with the various committees of the Church. He submitted that the Trust could not become the employer by default merely because it was responsible for the Church's property.

[51] He also suggested that the Preacher Worker Committee was the primary committee dealing with Pastor Chen as it held the personnel file. Further, he cautioned against relying on the labels contained in the Agreement, particularly because of the translation difficulties arising from those labels.

[52] Mr Greening, counsel for Pastor Chen, submitted that Pastor Chen was both an employee and called to serve God. He said that two documents represented these relationships, one being the Agreement signed between Pastor Chen and the Trust on 2 September 2019, and the second being the Call Document acknowledging the call to ministry dated 4 September 2019.

[53] Mr Greening submitted that there is no presumption against the contractual character of the service of ministers (or pastors). He submitted that in recent years, courts in the United Kingdom, Australia and New Zealand have said that such a presumption no longer exists. He argued that in determining whether a contract for service exists between a minister and the Church, the key consideration is the manner in which the minister was engaged and the character of the terms governing his or her service, that is, the real nature of the relationship.

[54] Turning to the terms of service, Mr Greening submitted that the parties signed a contract, that the contract did not exclude an employment relationship, that the foundation of the contract was a spiritual call but that the call was separate to the Agreement, and that the Agreement had all the hallmarks of an employment agreement.

[55] In terms of the identity of the employer, Mr Greening submitted that the Bread of Life Christian Church in Auckland is both a congregation and a legal entity – the Trust. However, although he emphasised the singular nature of the Church, he also submitted that it was the Trust that acted as the employer in that it exercised power and control over Pastor Chen.

[56] After the hearing was concluded, the Court of Appeal released its decision in *Rasier Operations BV v E Tū Inc*, and the Court gave the parties an opportunity to file further submissions in respect of that decision.¹³ Mr Pollak emphasised that the Court must focus on the real nature of the relationship, with consideration given to the parties' written agreement. He also submitted that the parties' respective vulnerabilities are of little or no importance in the present dispute.

¹³ *Rasier Operations BV v E Tū Inc* [2024] NZCA 403, (2024) 20 NZELR 813.

[57] On the other hand, Mr Greening emphasised that the Court must focus on the parties' objective intentions about the substance of their relationship. He submitted that the evidence before the Court indicates that the parties intended for Pastor Chen to be employed as a pastor to fulfil his calling to serve the congregation. In response, Mr Pollak submitted that an objective person would have considered that the parties intended for Pastor Chen to hold a solely ecclesiastical position.

Was Pastor Chen an employee?

General legal principles

[58] Section 6 of the Act relevantly states:

6 Meaning of employee

- (1) In this Act, unless the context otherwise requires, **employee**—
 - (a) means any person of any age employed by an employer to do any work for hire or reward under a contract of service; and...
- (2) In deciding for the purposes of subsection (1)(a) whether a person is employed by another person under a contract of service, the court or the Authority (as the case may be) must determine the real nature of the relationship between them.
- (3) For the purposes of subsection (2), the court or the Authority—
 - (a) must consider all relevant matters, including any matters that indicate the intention of the persons; and
 - (b) is not to treat as a determining matter any statement by the persons that describes the nature of their relationship....

[59] The leading authority on this provision is *Bryson v Three Foot Six Ltd*.¹⁴ In that case, the Supreme Court considered whether the Employment Court had correctly directed itself on the test in s 6. It held that when considering all relevant matters under s 6(3)(a), the Court will assess the written and oral terms of the contract between the parties which, it said, will usually contain indications of their common intention concerning the status of their relationship. There also needs to be an assessment of how the agreement has operated in practice.¹⁵ The Supreme Court went on to find:¹⁶

¹⁴ *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 721.

¹⁵ At [32].

¹⁶ At [32].

It is not until the Court or authority has examined the terms and conditions of the contract, and the way in which it actually operated in practice, that it will usually be possible to examine the relationship in light of the control, integration and fundamental tests.

[60] Applying the approach set out in *Bryson*, the Court of Appeal in *Rasier Operations BV v E Tū Inc* held that analysis under s 6 has two stages.¹⁷ The first stage involves identifying the substance of the parties' mutual rights and obligations as a matter of reality. It addresses what is being classified by considering, as a starting point:¹⁸

- (a) the written and oral terms of the contract between the parties;
- (b) how those terms have been implemented in practice;
- (c) the parties' common intention about the substance of their mutual rights and obligations;¹⁹ and
- (d) any relevant industry practice.

[61] The second stage involves determining whether the rights and obligations identified at the first stage amount to a contract of service. The relevant criteria for that assessment are the common law tests: the control test, the integration test, and the fundamental test.²⁰

[62] Mr Pollak submitted that the Court's decision in *Rasier* has no bearing on the present proceedings because there is no suggestion by the Trust that Pastor Chen was an independent contractor running an ecclesiastical business. However, although both *Bryson* and *Rasier* were decided in different circumstances to the present case, the principles developed in those cases remain applicable. They do not simply address the difference between employees and independent contractors. They also provide

¹⁷ *Rasier*, above n 13, at [97].

¹⁸ At [97], [98](a) and [143]–[219].

¹⁹ At [106]–[114] and [209]–[216].

²⁰ At [97], [98](b) and [220].

guidance on a central issue in this case: how to identify whether there is an employment relationship between two parties.²¹

Additional principles for religious cases

[63] Both counsel referred to cases which consider whether a religious leader, such as a minister of religion, can properly be characterised as an employee. It is appropriate to consider these authorities at the outset.

Religious organisations differ from each other.

[64] Each church has different structures. No assumption can or should be made that the legal structure of any given church or community is necessarily similar to the legal structure of any other church.²² Ultimately, it is the “particular arrangement between church and minister” that must be the focus of any analysis.²³ Lord Sumption SCJ emphasised this point in *Preston (formerly Moore) v President of the Methodist Conference*:²⁴

Part of the vice of the earlier authorities was that many of them proceeded by way of abstract categorisation of ministers of religion generally. The correct approach is to examine the rules and practices of the particular church and any special arrangements made with the particular minister.

[65] I observe that the approach described by Lord Sumption SCJ is essentially the first stage of analysis required by *Bryson* prior to the application of the common law tests.

²¹ Notably, *Rasier* dealt with a situation where the Uber group of companies disclaimed a broad range of relationships including both an employment relationship and an independent contractor relationship.

²² *Ermogenous v Greek Orthodox Community of SA Inc* [2002] HCA 8, (2002) 209 CLR 95 at [7]; and *Mabon v Conference of the Methodist Church of New Zealand* [1998] 3 NZLR 513 (CA) at 523. For an illustration of this point, compare the facts of this case with those outlined in *Sharpe v Worcester Diocesan Board of Finance Ltd* [2015] EWCA Civ 399, [2015] ICR 1241 at [134]–[164].

²³ *Mabon*, above n 22, at 524.

²⁴ *Preston (formerly Moore) v President of the Methodist Conference* [2013] UKSC 29, [2013] 2 AC 163 at [26].

There is no presumption against ministers of religion intending to be legally bound

[66] There has been some discussion in the authorities as to whether there is a presumption against ministers of religion intending to enter legal relations. However, that is not the position in New Zealand. In *Mabon v Conference of the Methodist Church of New Zealand*, the Court of Appeal acknowledged that it is necessary to prove an intent to be legally bound but cited one of its previous decisions which indicated that the issue of whether the parties intended to be legally bound had to be considered on a case-by-case basis.²⁵

The range of circumstances in cases such as these is likely to be so varied that in any particular case a presumption, albeit of fact, is likely to be of limited assistance. Each case will turn on its facts and there is no substitute for a careful examination of those facts. The subject-matter and attendant circumstances may well suggest that the parties had no intention of creating a legally enforceable obligation. The converse may equally be true. ... The plaintiff has the onus of satisfying the Court on the balance of probabilities that it is proper to draw the necessary inference.

[67] The High Court of Australia made detailed observations of the same nature in *Ermogenous v Greek Orthodox Community of SA Inc.*²⁶

[26] ... we doubt the utility of using the language of presumptions in this context. At best, the use of that language does no more than invite attention to identifying the party who bears the onus of proof. ...

[27] More importantly, the use of the language of presumptions may lead, as it did in this case, to treating one proposition (that an intention to create legal relations is not to be presumed) as equivalent to another, different proposition (that generally, or usually, or it is to be presumed that, an arrangement about remuneration of a minister of religion will not give rise to legally enforceable obligations). ... The latter proposition may then be understood as suggesting, in some way, that proof to the contrary is to be seen as particularly difficult and yet offer no guidance at all about how it may be done. ... In practice, the latter proposition may rapidly ossify into a rule of law, that there cannot be a contract of employment of a minister of religion, distorting the proper application of basic principles of the law of contract.

[28] It is equally important to notice that the second form of proposition that we have identified may hide the making of some unwarranted assumptions that certain principles and practices of church governance are “usual” or “general”, or that a particular kind of relationship between clergy

²⁵ *Mabon*, above n 22, at 524, citing *Fleming v Beevers* [1994] 1 NZLR 385 (CA) at 389.

²⁶ *Ermogenous*, above n 22.

and the church or community in which they work is the norm. No such assumptions may be made.

[68] The courts in the United Kingdom have been slower to rule out any presumption.²⁷ However, the most recent decision on the issue from the Supreme Court of the United Kingdom indicated that the question cannot be resolved “in the generality of cases ... by reference to any presumption against the contractual character of the service of ministers of religion”.²⁸

[69] Ultimately, there is no presumption in New Zealand that ministers of religion and churches do not intend to be legally bound. There is merely an onus on a claimant to prove that the parties intended to be legally bound by any arrangements or agreement between them.

The Court will be reluctant to resolve doctrinal disputes

[70] A related issue is that some cases have regarded the spiritual nature of a minister of religion’s calling as making it inappropriate to characterise the relationship with their church as giving rise to legal relationships at all.²⁹ Mr Pollak also argued this on behalf of the Trust. However, this point was rejected by the Court of Appeal in *Mabon*, which held that a distinction could be drawn between essentially ecclesiastical disputes and civil disputes that arise in a religious setting:³⁰

Clearly, and reflecting the separation of church and state, Courts must be reluctant to determine what are at heart ecclesiastical disputes where matters of faith or doctrine are at issue. But the Courts will intervene where civil or property rights are involved and can be expected to analyse carefully any argument that conventional incidents of a recognised relationship such as work do not give rise to contractual rights.

[71] A similar distinction was made by Lady Hale in *Percy v Board of National Mission of the Church of Scotland*:³¹

²⁷ *President of the Methodist Conference v Parfitt* [1984] 1 QB 368 (CA) at 376–377; *Diocese of Southwark v Coker* [1998] ICR 140 (CA) at [146]–[151]; *Percy v Board of National Mission of the Church of Scotland* [2005] UKHL 73, [2006] 2 AC 28 at [23]–[24], [62]–[63], and [102]–[108]; and *Preston*, above n 24, at [10].

²⁸ *Preston*, above n 24, at [10] and [12]. See also *Percy*, above n 27, at [151].

²⁹ See *Preston*, above n 24, at [5] and [10]; and *Ermogenous*, above n 22, at [36]–[38].

³⁰ *Mabon*, above n 22, at 523.

³¹ *Percy*, above n 27, at [152].

The Church is free to decide what its members should believe, how they should manifest their belief in worship and in teaching, how it should organise its internal government, and the qualifications for membership and office. But the processes whereby they make decisions about membership and office may be subject to the ordinary laws of the land.

[72] The distinction drawn in those two extracts is significant. Judicial intervention in ecclesiastical matters can engage the right to freedom of religion, and the Court will be reluctant to intervene where it is asked to examine and decide matters of faith or belief.³² On the other hand, where a claimant seeks a court to enforce private rights and obligations where religious issues or doctrinal disputes are involved, that court may have to determine such religious issues as are capable of objective ascertainment.³³

[73] This case is not intertwined with questions of religious doctrine. Mr Pollak asked various doctrinal questions of Pastor Chen, such as his position on same-sex marriage. He argued that Pastor Chen's answers, which were consistent with the doctrinal positions of the Church, were indicative of a spiritual relationship. However, the questions put by Mr Pollak were not issues between the parties at any time, so they are not engaged in this case. Pastor Chen does not deny a spiritual relationship with the Church but says he also has a legally binding relationship with the Trust.

The spiritual nature of a role is not determinative but is relevant

[74] Turning to the second half of the distinction drawn above, where a person is providing, as an employee, what might be described as spiritual services, they are still entitled to the protections provided by the law. On that latter point, the High Court of Australia held in *Ermogenous*:³⁴

[37] That the relationship between a minister of religion and the relevant religious body or group in which, and to which, he or she ministers is, at its root, concerned with matters spiritual is self-evidently true. That the minister's conduct as minister will at least be informed, if not wholly

³² New Zealand Bill of Rights Act 1990, ss 3, 13 and 15; *Marshall v National Spiritual Assembly of the Bahá'is of New Zealand Inc* [2003] 2 NZLR 205 (HC) at [31]–[38]; *Ermogenous*, above n 22, at [74]; and *R (Williamson) v Secretary of State for Education and Employment* [2005] UKHL 15, [2005] 2 AC 246 at [15]–[22].

³³ *Shergill v Khaira* [2014] UKSC 33, [2015] AC 359 at [45]–[59]; and *Matamu v Si'itia* [2017] NZCA 482, [2018] NZAR 348 at [28].

³⁴ *Ermogenous*, above n 22 (emphasis in original; citations omitted).

governed, by consideration of matters spiritual is likely self-evident. It by no means follow, however, that it is impossible that the relationship between the minister and the body or group which seeks or receives that ministry will be governed by a contract, ...

[38] ... although the proposition that the relationship between minister and church is pre-eminently or even entirely spiritual is couched in apparently absolute terms, it has been recognised that there *are* aspects of that relationship which may give rise to legally enforceable rights and duties. ... To say that a minister of religion serves God and those to whom he or she ministers may be right, but that is a description of the minister's spiritual duties. It leaves open the possibility that the minister has been engaged to do this under a contract of employment.

[75] A related issue arising from the case law is whether there is a distinction between office holders and employees.³⁵ Other categories could also be referred to, such as describing a ministerial role as a calling or vocation. However, it is possible for a person to be both an office holder and an employee.³⁶ As with the spiritual nature of a minister's role, the fact that ministers are office holders or working within a calling or a vocation is not determinative of whether that office, calling or vocation is being carried out under a contract of service.³⁷

[76] In light of these authorities, and although I accept that some cautiousness in cases involving churches is appropriate, I do not accept Mr Pollak's submission that the Court must give primary consideration to the spiritual nature of a minister's work. I also do not accept Mr Pollak's submission that there is a defined category of religious workers who are not employees. Many religious workers are no doubt not employees, but it is not possible to draw a strong distinction between religious workers who are or are not employees, apart from considering each situation on its own merits with a focus on the real nature of the relationship between the parties.

[77] On the other hand, the fact that a minister can be employed, and that there is no presumption against such a finding, does not mean that the spiritual character of a minister's work is irrelevant. The Court of Appeal held in *Mabon* that: "The concept of calling is an important part of the subject-matter but is not controlling."³⁸ Similarly,

³⁵ See *Preston*, above n 24, at [4]; and *Ermogenous*, above n 22, at [29]–[31].

³⁶ *Preston*, above n 24, at [10] and [37]; and *Percy*, above n 27, at [18].

³⁷ *Below v The Salvation Army New Zealand Trust* [2017] NZEmpC 87, [2017] ERNZ 405 at [71]; and *Mabon*, above n 22, at 524.

³⁸ *Mabon*, above n 22, at 524.

in *Below v The Salvation Army New Zealand Trust*, Judge Corkill noted that the spiritual purpose of a training programme was a factor to be assessed alongside other relevant factors in determining the real nature of the relationship.³⁹ Lord Sumption SCJ stated in *Preston* that the spiritual character of a role was “a significant part of the background against which the overt arrangements governing the service of ministers must be interpreted.”⁴⁰

Analysis

Did the parties intend to be legally bound?

[78] Mr Pollak submitted that the Agreement signed by Pastor Chen did not create any legal relationship. The question, according to Mr Pollak, is not whether the Agreement is a contract of service or contract for services but rather whether it is a contract of service or an appointment for a fundamentally spiritual purpose.

[79] As noted above, I do not accept that there is a category of religious workers who are excluded from being employees by reason of being appointed to a ministerial role for a fundamentally spiritual purpose; however, I accept that it is necessary to assess whether the parties intended to be legally bound by the Agreement.

[80] In the present case, the parties have a written agreement. There can be little doubt that they intended to be legally bound. The Agreement has all the hallmarks of a contract, and it is described as a contract in the Payroll Regulations. Further, there is no evidence to indicate that it was not intended to be legally binding.

[81] Two days after signing the Agreement, Pastor Chen signed the Call Document. The Payroll Regulations required him to sign both the Agreement and the Call Document.

[82] In the Call Document, he declared that he believed himself to be called by God. He also declared that if a dispute arose between him and the Church, he was willing

³⁹ *Below*, above n 37, at [71]; see also *Courage v Attorney-General* [2022] NZEmpC 77, (2022) 18 NZELR 746 at [143]–[149].

⁴⁰ *Preston*, above n 24, at [10], [19]–[20], and [26]; see also *Davies v Presbyterian Church of Wales* [1986] ICR 280 (HL) at 289–290.

to seek a solution through communication and negotiation with the Church. Finally, he declared that:

The preacher is a spiritual priesthood, and the church is a spiritual organization. In order to maintain the church's testimony and fulfil the truth of the Bible, my relationship with the church transcends the secular employment relationship. I am willing to give up any right of action that the law gives to me against Bread of Life Christian Church in Auckland.

[83] Mr Pollak submitted that this Call Document is a recognition that Pastor Chen is not an employee but has a calling and that his position is a calling. I accept Mr Pollak's submission that Pastor Chen considered himself to be in a calling, but that does not exclude him from also being an employee.

[84] I also accept that the Call Document indicates a desire by both Pastor Chen and the Church to avoid litigation in order to maintain the credibility of the Church. However, the extract only indicates that they saw their relationship as transcending, rather than excluding, their legal relationship. It simply means that the relationship has more to it than can be described in purely legal terms. Therefore, I do not consider that the statements contained in the Call Document indicate that the parties did not intend to be legally bound by the Agreement.

[85] The Agreement between the parties is written in Mandarin but has been translated for the Court. However, during the course of the proceedings, it became apparent that there are two different translations of the Agreement. One of the translations describes the Agreement as an "employment contract" whereas the other describes it as an "agreement on appointment". One of the witnesses noted that the Mandarin characters used can be translated in a range of different ways, including as employment, appointment, or engagement. This was confirmed by the court interpreter.

[86] Given that the label attached to the relationship by the parties is unclear, it is fortunate in this instance that labels are not determinative.⁴¹ Whichever translation is considered, either the "employment contract" or the "agreement on appointment", they both take the form of a binding contract.

⁴¹ Employment Relations Act 2000, s 6(3)(b).

What were the terms of Pastor Chen's Agreement?

[87] The preamble states the Agreement is described as being in accordance with the Church's Payroll Regulations. Clause 1 states that the relationship between the parties is founded upon Pastor Chen being called to serve the Church. Both translations indicate that the calling needs to be confirmed by both Pastor Chen and the Church.

[88] Clause 2 of the Agreement required Pastor Chen to agree with the vision and theology of the Church. He was also required to obey the Church's arrangements regarding service and to submit to the Church's spiritual authority. He also agreed to comply with the Payroll Regulations. Pastor Chen agreed to resolve any disputes that might arise based on biblical principles. In the event of him being dismissed or resigning, he agreed not to undermine the Church. The Agreement also included a non-disclosure provision.

[89] Pastor's Chen's duties and responsibilities were set out in an appendix to the Agreement. He agreed to coordinate the ministries of the Church alongside the senior pastor, pray with and support the preaching fellowship team/evangelistic staff team, preach on Sundays, lead Sunday school/bible studies, provide pastoral care to two pastoral areas, and support the church-building project committee.⁴²

[90] Clause 5 of the Agreement specified that he was to work 40 hours per week and that he had the ability to choose one day off per week other than Sunday as a rest day. His compensation was paid as a salary with PAYE deducted. His base salary was set as the minimum wage plus an additional set amount per hour with increases available for seniority. The Agreement noted that the compensation could be adjusted once per year in accordance with the Payroll Regulations. Pastor Chen was also paid KiwiSaver.

[91] Pastor Chen agreed to use his own vehicle for work purposes as necessary, and the Church agreed to reimburse him for fuel according to the rate set by the IRD. The

⁴² This position description was presumably superseded to some degree when Pastor Chen became senior pastor after Pastor Zhou left.

Church also agreed to reimburse him for any fees associated with theological training or working out of town or overseas.

[92] The Agreement's leave arrangements are set out in some detail. Pastor Chen agreed to work on public holidays, and the Agreement indicated that the holiday pay for such work is already included in the annual salary. He was entitled to four weeks' annual leave per year. After serving for seven years, he was entitled to three months' paid leave.

[93] He was entitled to paid sick leave, but any sick leave had to be filed with the Human Resources Committee and approved by the Core Fellowship Committee. He was also entitled to bereavement leave of varying lengths and personal leave where necessary. In the event of his death, the Church agreed to pay out three months' salary to his family, along with additional donations to the family as necessary in the circumstances.

[94] Clause 3 indicated that the Agreement had a fixed term between 2 September 2019 and 31 March 2022. The Church reserved the right to terminate the Agreement at the end of its term, subject to assessment by the Church and its work demands/personnel needs. Termination was not necessarily taken for granted at the end of the fixed term as the Church first needed to make an assessment of whether Pastor Chen was necessary for its needs.

[95] However, the Agreement indicated that if Pastor Chen wished for his contract to be renewed, he had to write to the Human Resources Committee two months before the contract expired. The Core Fellowship Committee would then make a decision based on the Payroll Regulations about whether his term would be extended, after which a new contract would need to be signed.

[96] The Agreement could be terminated if Pastor Chen engaged in serious misconduct, which was defined as including various illegal and immoral behaviours. The Church also reserved the right to terminate the Agreement if Pastor Chen did not meet the standards set by the Payroll Regulations. If he intended to resign, he was required to give three months' notice.

[97] In the event of a dispute, including in relation to termination of the Agreement, Pastor Chen was entitled to file a claim with the Core Fellowship Committee. If that committee was unable to resolve the problem, the complaint could be escalated to the Mother Church and its representatives, who could then pass judgement on the matter.

[98] The Agreement was described as superseding all previous written or oral contracts. It also indicated that the Human Resources Committee would oversee the personnel file management and payroll management. Finally, the Agreement noted that any matters not covered by it would be governed by the Payroll Regulations.

[99] The Payroll Regulations set out the eligibility requirements and duties of the Church's pastors. It also detailed procedures for hiring, management, discipline, contract renewal, payroll, and leave. Many of the procedures overlap with those set out in the Agreement; however, the Payroll Regulations additionally provided for performance reviews, which were to be overseen by the Human Resources Committee, with an appeal able to be made to the Core Fellowship Committee and the senior pastor. Additionally, the Payroll Regulations state that principal or senior pastor could only be appointed and dismissed with the approval of the Mother Church.

[100] The Payroll Regulations also indicated that Pastors should work eight hours per day, with phone access, except for public holidays. They were permitted to carry out work outside of the Church, but limitations were placed on the amount of days that could be worked outside of the Church. Further, any payment received as a result of such work needed to be returned to the Church.

[101] Finally, the Payroll Regulations provided that the Church would reimburse any tuition fees incurred by staff attending a formal theological course approved by the Church.

How was the Agreement implemented in practice?

[102] In terms of Pastor Chen's working conditions, he worked from home. Mr Pollak submitted that Pastor Chen's hours of work were not fixed in reality and that he came and went without supervision. However, Pastor Chen was not cross-

examined on what hours he worked or whether they were fixed. Mr Pollak also stated that Pastor Chen used his own equipment and that his expenses were not paid.

[103] Although the Core Fellowship Committee and the Human Resources Committee had primary responsibility for managing Pastor Chen's relationship with the Church, in reality, once those committees were dissolved, the Trust Board took over those responsibilities.

[104] During the COVID-19 pandemic Pastor Chen's salary was reduced for a time, and the Trust Board applied for the government's COVID-19 wage subsidy. However, on 12 October 2020, the Trust Board unanimously agreed to restore his full salary to ensure his peace of mind.

[105] When Pastor Zhou stepped down as senior pastor in mid-2021, the Trust Board had a role in promoting Pastor Chen to the role. Pastor Chen had previously been performing the role of executive pastor. Board members were involved, along with delegates from the Mother Church, in evaluating Pastor Chen for the role, and the Trust Board passed motions on 10 May 2021 and 27 May 2021 to appoint him as senior pastor. It is not clear whether all of the trustees were present for the meetings in May 2021; however, there was no suggestion that the record of the Trust Board's decisions from those meetings was inaccurate.

[106] It was the Trust Board that decided that Pastor Chen's contract had come to an end, and the minutes of the meetings on 12 and 14 April 2022 indicate that it considered that it should have received any relevant applications for the Agreement being renewed. If the Agreement was between Pastor Chen and another entity, it is not clear why the Trust Board would be the right body to receive applications.

[107] On 12 April 2022, the Trust Board also debated but did not reach a consensus on whether Pastor Chen should be required to apologise publicly to the Church. Requiring an apology is a disciplinary measure.

[108] Similarly, in the minutes of the meeting on 14 April 2022, the Trust Board referred back to statements made at the performance review which occurred prior to

Pastor Chen being appointed to the role of senior pastor. The Trust Board minutes state that there had been no improvement in Pastor Chen's performance. Again, that indicates that the Board considered that it was the appropriate body to evaluate his performance.

[109] As noted by Mr Greening, although the Core Fellowship Committee was involved in Pastor Chen's appointment in 2019, the members of the Church and its committees were not involved in the process of ending his role. There was no vote, and there was no spiritual discernment process. The Trust Board was the sole decision maker.

[110] Throughout the period of Pastor Chen's employment, the Church received support and advice from the Mother Church. However, the most recent advice received from the Mother Church on 29 April 2022, that Pastor Chen continue as senior pastor, has been ignored by the Trust. The Mother Church does not itself have any power or responsibility over Pastor Chen.

[111] Finally, at the hearing, there was a suggestion that the Preaching Fellowship Committee presently holds Pastor Chen's personnel file. However, that suggestion seems to have arisen as a result of a misinterpretation of Ms Bi's evidence. She stated that she held the personnel files for Pastor Chen on her computer system because the Human Resources Committee and Core Fellowship Committee no longer exist; she did not suggest that the Preaching Fellowship Committee held the relevant files. There is no evidence that that committee has had anything to do with personnel or human resources issues for the Church.

What was the common intention of the parties?

[112] Although it is clear that the parties intended to be legally bound, it is less clear what they intended the nature of the relationship to be.

[113] As previously noted, it is not clear whether the Agreement described itself as an employment agreement as the Mandarin words used can be translated into English

in multiple ways.⁴³ However, it is worth observing that the Mandarin word used could be translated as “employment” so that such an employment agreement is not excluded.

[114] One of the signatories to the Agreement, Ms Bi, also gave evidence that the Agreement was a result of work done by the Human Resources Committee in 2019. She says that it was decided that they needed to do things properly. Previously, the pastors of the Church did not have written employment agreements, but a new agreement was drafted, based on legal research and other churches’ employment agreements, so as to follow local law in New Zealand.

[115] Ms Bi obtained a standard agreement which she refers to as an employment agreement. It was discussed with the Human Resources Committee and amended. It was then translated into Mandarin. Two documents were prepared – an employment agreement and a calling document. The WeChat messages at the time show that the separation between the Call Document and the Agreement was intentional. This evidence from Ms Bi indicates that the parties intended that their relationship would be an employment relationship.

[116] Ms Buhagiar gave evidence that the Agreement and the use of the word “employee” only arose as a result of accounting advice to the Church that any remuneration had to have PAYE deducted at source. There is no reason to doubt her evidence that accounting advice was relevant to the actions taken in developing the Agreement; however, the evidence from Ms Bi indicates that other sources of advice were also taken into account. As Ms Bi was directly involved in preparing the Agreement and the Call Document, I prefer her evidence insofar as Ms Buhagiar’s evidence is inconsistent with it.

[117] Other evidence provided by the witnesses for the parties variously described the relationship as an employment relationship or as some other form of relationship. There is also some evidence of communications between the parties where the relationship was described as an employment relationship. On the other hand, Pastor Tuyi Chiang, who was the senior pastor prior to Pastor Zhou, gave evidence that he never saw himself as an employee while working for the Church.

⁴³ See above at [85].

[118] However, it is not possible to place much weight on that evidence. The Court of Appeal noted in *Rasier* that when considering the parties' intention, the parties' subjective intentions are of little use – the Court has to objectively ascertain what their common intention was.⁴⁴ Further, the Court of Appeal emphasised that the relevant common intention must relate to the substance of the parties' mutual rights and obligations rather than their intention about how their relationship would be classified.⁴⁵

[119] There are two factors from within the Agreement and the Payroll Regulations that indicate that the relationship was intended to be an employment relationship. First, Mr Chen's salary was calculated with reference to the minimum wage. Second, the Payroll Regulations indicate a desire to comply with the Holidays Act 2003, which is reflected by the leave provisions in the Agreement. In incorporating those legislative requirements, the parties indicated that they intended for the relationship to be compliant with employment law. If they did not intend the relationship to be an employment relationship, the minimum standards legislation would be irrelevant.

Is there any relevant industry practice?

[120] No evidence was provided by the parties of broader industry practice in relation to ministers of religion in New Zealand. There is perhaps a societal expectation that Christian pastors are not employees, and no doubt many or even most pastors do not see themselves as employees. However, that does not resolve the issue. When looking at industry practice, it is not possible to view pastors as being in one abstract category. As set out above, all churches are different, and each church must be considered separately.

[121] The main body of evidence before the Court that could be relevant to industry practice was the evidence given in respect of the church's own practices. That evidence has been set out above in relation to the parties' common intention.

⁴⁴ *Rasier*, above n 13, at [210]–[211].

⁴⁵ At [114].

[122] Mr Pollak submitted that a party making a payment which constitutes income, including a stipend, is required to deduct PAYE from that payment, irrespective of whether the person receiving the payment is an employee. This is relevant to industry practice in New Zealand in that all, or at least most, paid religious leaders will have PAYE deducted from any income they receive, thus the fact that PAYE is deducted cannot have any bearing on whether or not Pastor Chen was an employee, apart from not being inconsistent with him being an employee.⁴⁶

[123] On the other hand, the deductions made for KiwiSaver are more indicative of an employment relationship as KiwiSaver deductions are not compulsory where there is no employment relationship.

The common law tests

[124] Having considered the nature of the parties' relationship, it is now possible to apply the common law tests – the control, integration and fundamental tests – to ascertain whether the parties' relationship amounts to an employment relationship.

[125] Mr Pollak submitted that the Trust did not exercise any control over Pastor Chen. Mr Greening acknowledged that Pastor Chen had a degree of freedom and that the Trust did not have intimate knowledge of his work schedule; however, he submitted, and I accept, that pastor Chen's role and relationship to the Trust Board was akin to the relationship of a chief executive officer of a charitable organisation and their board.

[126] Although Pastor Chen had a degree of freedom, the Trust also exercised a degree of control over him. After the dissolution of the Core Fellowship Committee and the Human Resources Committee, it exercised powers to undertake performance reviews, to review and change his salary, to take disciplinary steps, to dismiss him, and to make decisions about whether or not to renew his contract.

[127] Mr Pollak submitted that Pastor Chen would never be willing to admit that the Trust could exercise that kind of control over him. However, the Agreement and

⁴⁶ See *Mabon*, above n 22, at 526.

related documentation make it clear that such powers are in fact held by the Trust. Having signed the Agreement, Pastor Chen was bound by it, irrespective of his views on whether the Trust Board could or should exercise such powers.

[128] More generally, he was required to approve of the Church's views on various doctrines and to align his views and actions with those of the Church. The Agreement also explicitly required that he obey the Church's spiritual authority.

[129] The Agreement required Pastor Chen to work 40 hours per week, and the Payroll Regulations required him to work eight hours per day with phone access. He was also required to carry out specific tasks on specific days, particularly in relation to the church's Sunday services. The Trust was able to and did exercise considerable control over him.

[130] Turning to the integration test, Pastor Chen was clearly fully integrated into the life of the Church. As senior pastor, he was essentially the face of the Church to the outside world.

[131] Finally, there can be no doubt that Pastor Chen was not in business on his own account. He received wages for time worked rather than according to task completion. He did not bear any risk of loss and had no way of making a profit from any particular task carried out. Although he was permitted to do a sizable but limited amount of work for other churches each year, he was not permitted to profit from any such work and was required to return any payment for such work to the Church.

[132] The Agreement and the Payroll Regulations do not expressly prohibit Pastor Chen subcontracting or delegating his role to others. However, it is clear, and Mr Pollak accepted, that his role could not be contracted out. Mr Pollak correctly submits that he regularly engaged others to preach sermons; however, that was consistent with how the Church functioned – the senior pastor was not expected to preach every Sunday. Significantly, any such arrangements did not involve Pastor Chen personally subcontracting his role or paying anyone personally.

[133] PAYE was deducted from his pay. However, as noted above, that is the case with all paid religious workers, and I place no weight on it apart from noting that deducting PAYE is consistent with Pastor Chen's claim of being an employee. Finally, Pastor Chen received KiwiSaver contributions as well as paid holidays and sick leave in accordance with the Holidays Act – all of which is indicative of an employment relationship.

[134] For completeness, I accept that Pastor Chen was not provided with work gear such as a laptop or cell phone. However, as noted by the Court of Appeal in *Rasier*, those items are owned by many people for personal and household use, so the requirement to provide these items is neutral for the purposes of this analysis.⁴⁷

[135] There is also no evidence that he sought repayment for his expenses or that he sought reimbursement for any theological course that he may have attended. However, the fact that he was entitled to such expenses and reimbursement indicates that he was an employee rather than in business on his own account.

Conclusion

[136] Control was exercised over Pastor Chen, he was integrated into the life of the Church, and he was not in business on his own account. Further, the parties intended for the relationship to be both a legal relationship and an employment relationship. The weight of evidence clearly indicates that Pastor Chen was an employee.

Was the Trust the employer?

[137] Mr Pollak submitted that even if Pastor Chen was an employee, he was employed by the Church, not the Trust.

Legal principles

[138] Section 5 of the Act defines the word employer as: “a person employing any employee or employees; and includes a person engaging or employing a homemaker”. The word person is not defined in the Act, but the Legislation Act 2019

⁴⁷ *Rasier*, above n 13, at [232].

defines the word for the purposes of “legislation” as including: “a corporation sole, a body corporate, and an unincorporated body”.⁴⁸ In *Pilgrim v Attorney-General (No 2)*, the Court indicated that the inquiry of who an employer is should be approached “on an objective basis, weighing the evidence to reach an informed assessment as to who, on the balance of probabilities, the employer is.”⁴⁹

[139] The High Court of Australia noted in *Ermogenous* a number of difficulties in bringing proceedings against an unincorporated body.⁵⁰ However, those difficulties are not necessarily insurmountable. Given the broad language of the relevant legislation, it is clearly possible for an unincorporated society to be an employer.⁵¹ Other problems were identified by the High Court of Australia in relation to a case where the alleged employer, such as a bishop, is not a juridical person.⁵² However, in *Pilgrim*, the Court found that the employer of members of the religious community in Gloriavale was the overseeing shepherd of that community – a role which is immediately analogous to that of a bishop.⁵³

[140] Additional helpful points on some of the complex issues arising were made by the Supreme Court of the United Kingdom in *Percy*.⁵⁴

[27] The final point calling for comment is the need to identify the parties to any alleged contract of service or for services. ... this can be a source of real difficulty with a nationwide church whose complex affairs are conducted through a multiplicity of boards and committees. There may be one body responsible for finance, allocating precious resources between competing demands, all of which are eminently worthy. There may be another body responsible for making payments. There may be a third body charged with selecting the candidate best suited to this or that appointment, a yet further body may formally make the appointment, and have power of dismissal; and so on.

[28] These different bodies are, in a broad sense but real sense, all part of “the Church” in question. But the “Church” may not be an entity capable of making a contract or of suing or being sued. This is so with the Church of England. ... This is also true of the Church of Scotland. Then the

⁴⁸ Legislation Act 2019, s 13.

⁴⁹ *Pilgrim v Attorney-General (No 2)* [2023] NZEmpC 227, [2023] ERNZ 1020 at [18]–[19].

⁵⁰ *Ermogenous*, above n 22, at [32]–[33].

⁵¹ *Pilgrim*, above n 49, at [32]–[36]. See also *Gilbert v QSM Trustees Ltd* [2016] NZSC 61, [2018] 1 NZLR 1 at [31]; *Peters v Collinge* [1993] 2 NZLR 554 (HC) at 557; and *Shergill*, above n 33, at [46]–[48].

⁵² *Ermogenous*, above n 22, at [34]–[35].

⁵³ *Pilgrim*, above n 49, at [31]–[41].

⁵⁴ *Percy*, above n 27.

fragmentation of functions within such an “umbrella” organisation may make it difficult to pin the role of employer on any particular board or committee. But this internal fragmentation ought not to stand in the way of otherwise well-founded claims.

[141] It is worth emphasising the final sentence of the extract, that internal fragmentation of responsibility within a church should not prevent a well-founded claim from being successful.

[142] Finally, I observe that where fragmentation is an issue, there may be some situations where a minister could pastor a church, and be ordained by a church, while being employed not by the church but by another entity to pastor the church. As the Court of Appeal noted in *Mabon*:⁵⁵

... there are no reasons of legal principle or public policy why the parties should not provide for certain distinct matters to be the subject of a legally-enforceable contract and at the same time intend and so allow other matters to be resolved in other ways.

[143] In the present case, Pastor Chen has relationships with the Church, the Mother Church, and the Trust. However, the fact that he has a relationship with each entity does not mean that he cannot be employed by one or all of those entities jointly. Ultimately, each case must be considered on its own facts.

Analysis

[144] Mr Pollak submitted that the Agreement was not actually between the Trust Board and Pastor Chen, but rather, that it was between the Church and Pastor Chen. He submitted that the Trust deals with things and not people and that its sole function is to own property and engage tenants. Further, he submitted that the Trust never resolved to employ anyone, never did employ anyone, and could not become the employer by default merely because it managed the property of the Church.

[145] Although the Church as a congregation is an unincorporated society, the legal face of the Church is the Trust. All of the Church’s legal responsibilities are handled by the Trust on its behalf as its corporal governance entity.

⁵⁵ *Mabon*, above n 22, at 524.

[146] As previously noted, the Trust deed allowed for the Trust Board to delegate to committees. One of those committees was the Core Fellowship Committee. Its rules noted that its powers derived from the Trust. Another committee, the Human Resources Committee, further derived its powers from the Core Fellowship Committee, which means that it also ultimately derived its powers from the Trust.

[147] The individuals who signed Pastor Chen's Agreement were members of the Core Fellowship Committee and the Human Resources Committee and signed on behalf of either the Core Fellowship Committee or the Human Resources Committee.⁵⁶ They did not sign on behalf of the Church as an unincorporated society. As the Agreement was signed on behalf of the Core Fellowship Committee and the Human Resources Committee and those committees were acting on delegated power from the Trust, that means that Pastor Chen's Agreement was ultimately with the Trust.

[148] Alternatively, even if I am wrong on that point, and the Agreement was originally with the Core Fellowship Committee or the Human Resources Committee rather than the Trust, by the time the dispute arose, those committees had collapsed back into the Trust so that any agreements with those groups were taken on by the Trust. This is confirmed by the fact that it took on the role of administering the relationship between Pastor Chen and the Church once those committees ceased to exist.

Conclusion

[149] It is clear that Pastor Chen was employed by the Trust at the time he was dismissed.

Was Pastor Chen unjustifiably dismissed by the Trust on 20 April 2022?

[150] Mr Greening submitted that the fixed term Agreement did not comply with s 66 of the Act. Further, he submitted that there were no allegations of misconduct against Pastor Chen at the time the dismissal occurred. Nor was there any suggestion his call had come to an end.

⁵⁶ One of the signatories, Betty Bi, was also a Trustee.

[151] Mr Pollak submitted that Pastor Chen was not dismissed on 20 April 2022. Rather, he submits that Pastor Chen's fixed term Agreement came to an end on 31 March 2022 and that, as a result, the Trust stopped paying him.⁵⁷ He submitted that Pastor Chen's Agreement was not renewed and that he has not made any attempts to renew his Agreement with the Church.

[152] On the other hand, Mr Pollak accepted that if Pastor Chen was an employee and that the Trust was the employer, the fixed term of the Agreement would likely not comply with s 66 of the Act. Mr Pollak further submitted that Pastor Chen's employment was not terminated as a result of misconduct.

[153] The Trust simply determined to stop paying him because it said he had not renewed the contract. There are a number of problems with this.

[154] First, although the Agreement was for a fixed term, it did not comply with the requirements of s 66 of the Act. That section states that if an employment agreement is agreed to end at the close of a specified period, the employer must have reasonable grounds for specifying that the employment of the employee is to end in that way and the employment agreement must state in writing the reasons for ending the employment in that way.⁵⁸ If the agreement does not include those reasons in writing, the employee is entitled to treat the fixed term of the employment as ineffective.⁵⁹

[155] In the present case, the Agreement did not include in writing the reasons for being of fixed duration. Further, Pastor Chen's position changed from executive pastor to senior pastor in 2021, and any reasons for the fixed term that may have applied to the former position did not necessarily apply to the latter position. Therefore, he was entitled to treat the fixed term as ineffective and has in fact treated it as such.

[156] As the fixed term was ineffective, Pastor Chen was a permanent employee, and the reason given by the Trust for dismissing him could not justify a dismissal.

⁵⁷ The Trust's finances are controlled by the plaintiff trustees, in particular the treasurer, Ms Buhagiar.

⁵⁸ Employment Relations Act, ss 66(2) and 66(4).

⁵⁹ Section 66(6).

[157] Secondly, the process in relation to the dismissal was unfair. He was given no notice. Three of the plaintiff trustees simply determined that the Trust would stop paying him.

[158] The reasons for this have varied over time. Although the initial reason was that the contract had ended, in the Court it was apparent that there were performance concerns that had not been put to Pastor Chen, although that point was not pursued by Mr Pollak in his submissions. It was also very clear that the real reason the plaintiff trustees terminated the relationship with him was because they did not agree with his proposals in relation to the church building.

[159] Had the stated real reason been genuine – that the Agreement had come to an end so that the Trust had no legal basis to continue to pay him – the fact that the majority of the Church, along with the Mother Church, endorsed him should have addressed this concern. However, the Trust still did not reinstate his payment, even though the Mother Church advised that he should continue in his role on 29 April 2022, which was just over a week after he was dismissed. The alleged end of the Agreement was convenient to the Trust, given the disagreement that had arisen between the parties.

[160] The fact that the Mother Church opposed Pastor Chen being dismissed is also relevant as the Payroll Regulations state that the appointment or dismissal of the principal or senior pastor must be approved by the Mother Church. As no approval was obtained from the Mother Church, the dismissal did not comply with its own procedures and was necessarily unlawful.

[161] Therefore, I find that Pastor Chen was unjustifiably dismissed on 20 April 2022.

Was Pastor Chen unjustifiably dismissed by the Trust on 10 April 2024?

[162] Mr Greening submitted that Pastor Chen's second dismissal was unjustified as there was no substantive justification for making his position redundant. He submitted that the Trust had sufficient donations to cover Pastor Chen's salary, that the board's treasurer, Ms Buhagiar, made decisions without the Trust Board's approval regarding

how Pastor Chen's salary was paid, that there was no genuine reason for making his position redundant, and that the real reason for the dismissal was the tension within the Trust Board.

[163] Mr Greening also submitted that the dismissal was unjustified because the Trust did not provide Pastor Chen with any information, he was not invited to discuss any proposal in relation to him being made redundant, and there was no consultation with him. Further, the Trust did not take any steps to seek further donations so as to support Pastor Chen's salary.

[164] Mr Pollak submitted that Pastor Chen's dismissal was justifiable. He submitted that there were not enough donations to cover his salary on top of the rest of the Trust's financial obligations. He also submitted that it was Pastor Chen's responsibility to ensure that donations for his salary increased and that it was not the Trust's responsibility to take care of that. Further, he submitted that Pastor Chen refused to engage in any form of discussion about donations and that all attempts to consult and engage with him were rebuffed.

[165] There was no proper consultation process before Pastor Chen's employment was terminated due to redundancy. Mr Pollak emailed counsel for Pastor Chen on 28 February 2024. He stated:

The Chen account set up for his wages has \$368.00 left in it. There have been no funds received for his wages from congregants since 17 February. Do you or your client know if the congregants are going to make any donations? Our instructions are that any funds from congregants will be paid to Mr Chen. If congregants do not contribute, the Trust will not be able to pay wages. The trust will not be able to pay for its pastor and his role will become redundant due to the financial imperative. Perhaps Mr Chen could ask his congregants or at least his supporting trustees could ask for donations towards his wages. Happy to work through a solution with you but the whole basis of being able to [employ] Mr Chen is based on congregants contributing.

[166] Pastor Chen's counsel replied to Mr Pollak the next day advising that they would discuss it with Pastor Chen.

[167] There does not appear to be any further correspondence from either party until nearly six weeks later. On 10 April 2024, Mr Pollak wrote on behalf of the Trust

terminating Pastor Chen's employment effective immediately "due to the Trust's lack of income".

[168] The Trust took no steps to consult with Pastor Chen in between its brief email of 28 February 2024 and its notice of dismissal on 10 April 2024.

[169] While Mr Pollak makes a fair point that Pastor Chen did not engage after the 28 February 2024 email, there is no evidence of the Trust following up at all. As the employer, the onus was on the Trust to follow a fair and reasonable process. It did not do so.

[170] While Pastor Chen could see what was in the bank accounts, the Trust did not provide him with any further information other than that contained in the 28 February email. It did not advise him that if donations did not reach a certain level by a particular date, his employment would be terminated. It did not discuss alternatives to redundancy with him before making the decision to terminate his employment. He was not warned that his employment may be terminated. Further, he was given no notice of such termination – it was made effective immediately.

[171] The evidence in relation to the Trust's finances is not compelling. Up until his first dismissal Pastor Chen's salary had been paid from the general account to which most funds were directed, other than those specifically noted as being for other purposes, such as for the building. After his reinstatement, a separate bank account was set up for the sole purpose of receiving donations directed to paying his salary.⁶⁰ Pastor Chen was then paid from this account. The Trust did not top this up at all in the event that funds were insufficient to meet the salary payment, despite it having sufficient funds to do so. The reason given was that these funds were for "other financial commitments". Ms Buhagiar also gave evidence that donations in general had dropped off due to the contentious situation that the Church was in and the uncertainty around the building. She also attributed the drop-off to Pastor Chen's actions, but there was no evidence to support this view.

⁶⁰ The Trust asserts that this was done at the suggestion of the Authority Member. While this is correct, the Authority Member also considered that the Trust should be using funds in its general account to meet its salary obligations (as it had in the past). The Trust did not accept this aspect of the Authority's advice.

[172] The audited accounts did show a reduction in income. The Court is not in a position to attribute this decline to either party's actions, although it was not disputed that the Trust did not take any steps to seek further donations to support Pastor Chen's salary. It seems to have considered that to be his or his supporters' responsibility. I accept that donations had declined in general as well for Pastor Chen. However, they appear to have picked up again for him at the time of his dismissal. He was normally paid on the 20th of the month. He was dismissed and paid his final pay on 10 April 2024. Further donations totalling \$5,020.00 came in between 10 and 20 April 2024, which would have meant that there were more than sufficient funds to meet his salary for that month. Had a proper consultation process been followed, then the issue of donations may well have been able to be addressed. However, Pastor Chen was not given this opportunity.⁶¹

[173] I accept that Mr Greening and Pastor Chen should have been more co-operative in relation to seeking to address the issue of funds, but that did not justify the Trust dismissing him as it did, particularly in the face of an order from the Authority.

[174] Further, as with the first dismissal, the Payroll Regulations required that the Trust obtain approval from the Mother Church before dismissing Pastor Chen. As no approval was obtained, the dismissal was unlawful.

[175] Therefore, for all the reasons set out above, I find that Pastor Chen was unjustifiably dismissed on 10 April 2024.

Should lost remuneration be awarded to Pastor Chen?

[176] Pastor Chen is entitled to lost remuneration from 1 April 2022 to the date of this judgment. I exercise my discretion to award more than three months' lost remuneration in light of the fact that he continued in his role as senior pastor without pay since being dismissed.⁶²

⁶¹ I note that a substantial amount of backpay was owed to Pastor Chen. There is no evidence that he was taking any steps to recover that debt. He was (at least up until his second dismissal) accepting of the Trust's attempts to reduce it over time. Like his salary, however, the Trust was choosing to only use funds specifically noted as being for Pastor Chen to make such reductions.

⁶² Employment Relations Act, s 128.

[177] The Authority's determination on 3 July 2024 set out the amounts owing from 1 April 2022 to 10 April 2024.⁶³ I confirm those orders. Any of those amounts still outstanding must be paid.

[178] The Court does not have any current evidence about how much lost remuneration Pastor Chen is owed for the subsequent period. The parties are therefore encouraged to resolve that amount by agreement. The parties are also encouraged to agree on a payment plan for any arrears.

Should Pastor Chen be reinstated?

[179] Mr Greening submitted that Pastor Chen should be reinstated. He said that the plaintiff trustees have no issue with him continuing in his role but that they simply do not believe the Trust should pay him. He acknowledged that there is friction within the Trust but submitted that the trustees are evenly divided and that the friction involves all of them. He submitted that the Trust's internal disagreements should not have a bearing on whether Pastor Chen should be reinstated. Further, he submitted that the Trust can afford to pay Pastor Chen and that its income could have increased if members of his congregation had been given the opportunity to increase their donations as a result of the Trust following a fair consultation process.

[180] Mr Pollak submitted that it is neither reasonable nor practicable for Pastor Chen to be reinstated. He acknowledged that Pastor Chen has continued undertaking his duties as per the Agreement and that he is still a Bread of Life church pastor. He accepted that funds paid into the Trust account for Pastor Chen's benefit since his dismissal have been paid to him but submitted that the Trust does not have sufficient funds to pay his salary. He also submitted that the relationships between Pastor Chen and the trustees have broken down to the extent that it is simply not workable to have him back in the role. Further, he submitted that Pastor Chen's relationship with certain parts of the congregation has also broken down as a result of his conduct.

⁶³ *Chen v Bread of Life Christian Church in Auckland* [2024] NZERA 394 at [11].

Legal principles

[181] Where the Court finds in favour of an employee on a personal grievance and the employee seeks reinstatement, the Court must order reinstatement wherever practicable and reasonable, irrespective of whether it provides for any other remedy.⁶⁴

[182] In respect of the importance of reinstatement, the Court has previously noted that “money is a poor substitute for the loss of a job.”⁶⁵ Elsewhere, it has held that: “to award routinely compensation for the job loss instead of reinstating is to create a system for licensing unjustifiable dismissals.”⁶⁶

[183] Practicability is the capability of being carried out in action, feasibility or the potential for the reimposition of the employment relationship to be done or carried out successfully.⁶⁷ It cannot be construed narrowly. Proof of lack of practicability rests with the employer.⁶⁸ The requirement for reasonableness invokes a broad inquiry into the equities of the parties’ cases so far as the prospective consideration of reinstatement is concerned.⁶⁹

[184] Reinstatement of a dismissed employee is invariably a challenging process for all concerned – the employer, the employee and, in this case, the congregation. It often brings a complex range of issues that need to be navigated. Parliament can be taken to have understood this when mandating reinstatement as the primary remedy.⁷⁰

[185] This is an unusual situation. While Pastor Chen seeks reinstatement to his position, his claim is probably better described as him seeking to be reinstated to the employment of the Trust and placed back on the payroll. This is because up until now, he has continued to undertake the duties of his position, albeit on an unpaid basis, for long periods of time.

⁶⁴ Employment Relations Act, s 125.

⁶⁵ *The Vice Chancellor of Lincoln University v Cheng* [2024] NZEmpC 227 at [47] and [51]–[53].

⁶⁶ *Ashton v Shoreline Hotel* [1994] 1 ERNZ 421 (EmpC) at 436.

⁶⁷ *The New Zealand Educational Institute v Board of Trustees of Auckland Normal Intermediate School* [1994] 2 ERNZ 414 (CA)

⁶⁸ *Lewis v Howick College Board of Trustees* [2010] NZCA 320

⁶⁹ *Angus & McKean v Ports of Auckland* [2011] NZEmpc 160, [2011] ERNZ 466.

⁷⁰ *DQJ v The Commissioner of Inland Revenue* [2025] NZEmpC 10 at [56].

Analysis

Is there an irretrievable breakdown in the relationship?

[186] The first reason given by Mr Pollak for his submission that reinstatement should not be awarded was that the parties' relationship is not repairable. I accept that reinstatement would present challenges for both parties to navigate. However, the parties' relationship must be considered in the context of the church split underlying these proceedings. That split largely arose out of a dispute over how the Trust should be controlled and its assets dealt with. After the church split, two groups are now gathering, and there are three trustees on each side of the split.

[187] Both groups claim that they are entitled to control over the assets of the Trust, but that issue is being resolved in another jurisdiction. However, given the nature of those proceedings, neither group can claim primacy when it comes to the issue of the quality of their relationship with Pastor Chen and the question of whether that relationship has irreparably broken down. In particular, the plaintiff trustees cannot assert that it is his relationship with them that should take precedence simply because they currently control the funds. The issue of who should control the funds is neutral in this court; it is an issue to be resolved in another court. Accordingly, I do not consider I am able to find that Pastor Chen's relationship with his employer, the Trust, has irreparably broken down.

[188] While it appears that there are issues between Pastor Chen and some members of the congregation, there was also evidence to show that a significant number of the congregation support him and have continued to attend services organised by him. As with his relationship with the Trust, it is not possible to place much weight on this issue either way prior to another court releasing its decision on which Trustees are entitled to control the Trust and therefore which portion of the Church is entitled to the benefit of the assets of the Trust.

[189] Alternatively, even if I were to find that the relationship has broken down, I note that an employer cannot be justified in dismissing an employee on the basis of

irreconcilable differences if it was itself substantially the cause of those differences.⁷¹ The same must apply when looking at the issue of reinstatement. An employer cannot justifiably resist reinstatement on the grounds of a breakdown in a relationship where it must also shoulder some responsibility for that breakdown. In the present case, the plaintiff trustees must necessarily also bear some responsibility for the way in which the relationship has broken down.

[190] When asked what he would do to address relationship issues, Pastor Chen said that he would seek assistance from Pastor Zhou to come and help repair the broken relationships within the Trust Board. He indicated a desire for a third party to assist in resolving the difficulties that have arisen so as to avoid the necessity of proceedings in the High Court. Pastor Chen also indicated a willingness to meet and pray with the plaintiff trustees and anyone else who has left the Sunnynook congregation. He stated that he would welcome anyone back to the Sunnynook congregation who wished to return. He also indicated that he was willing to apologise and to ask for forgiveness where he had been in the wrong.

[191] In light of Pastor Chen's evidence, I consider that the parties may still be in a position to salvage their working relationship. They all presumably joined the Church in good faith with a similar vision. I consider that if the parties all made a reasonable effort to negotiate their differences with the assistance of a third party, such as Pastor Zhou or a representative from the Mother Church, there is, in my view, a real possibility that their differences could be resolved or at least managed in a way that would enable Pastor Chen to continue to carry out his role. On that point, I make directions on steps that the parties should take below. I expect such steps to be undertaken by the parties with the obligation to be active and constructive in establishing and maintaining a productive employment relationship in mind.⁷²

[192] In short, I do not accept that the state of the relationship between the parties is a disqualifying factor.

⁷¹ *Reid v New Zealand Fire Service Commission* [1999] 1 ERNZ 104 (CA) at 107.

⁷² Employment Relations Act, s 4(1A)(b).

Ability to pay

[193] Mr Pollak's second submission was that the Trust cannot afford to pay Pastor Chen. I do not accept that submission. As submitted by Mr Greening, the Trust has sufficient funds that it can draw down on. In light of court orders to reinstate Pastor Chen, it cannot lawfully decline to use the funds within its general accounts to pay Pastor Chen's arrears. If further funds are required for subsequent payments, the evidence before the Court indicated that money could be raised through donations from the congregation. As the Trust failed to carry out a fair consultation process before dismissing Pastor Chen, it is not in a position to argue that no more donations were possible.

[194] In short, I do not consider that the Trust's finances are a disqualifying factor.

Is it reasonable to reinstate?

[195] As noted above, money is often a poor substitute for a job. This is particularly the case in this instance where Pastor Chen has made it clear that money (other than payment for his work) is not his goal and that his preferred remedy is reinstatement. He has not sought any damages under s 123(1)(c)(i) of the Act, although arguably his case for doing so would have been strong.

[196] Further, there is a risk that declining an order of reinstatement would incentivise unlawful behaviour. The Authority found that the Trust delayed in reinstating Pastor Chen on an interim basis, and I have found that it unjustifiably dismissed Pastor Chen five days after the Authority ordered his permanent reinstatement.⁷³ It has consistently failed to follow its own internal procedures and, as set out above, has acted with disregard for its good faith obligations to Pastor Chen. I accept that there are strong and genuine feelings on the part of the plaintiff trustees, but these have impacted their decision making to the extent that the actions of the Trust have been unlawful.

[197] The equities of the parties' cases support Pastor Chen's claim for reinstatement.

⁷³ Substantive determination, above n 1, at [11].

Conclusion

[198] Accordingly, I consider that Pastor Chen ought to be reinstated on the same terms as previously, subject to the fact that the Agreement was never lawfully a fixed-term agreement.

Other issues

[199] Having ordered that Pastor Chen must be reinstated, I acknowledge that this judgment will not resolve the feelings of grievance that lie between Pastor Chen and the plaintiff trustees or between his supporters and the plaintiff trustees. I do not expect that the parties' views of each other will change (at least not immediately); however, their conduct must change.

[200] The plaintiff trustees are required to facilitate Pastor Chen's reinstatement to his former position and to conduct themselves in accordance with the Trust's obligations of good faith. He is to be reinstated to the payroll within seven days of the date of this judgment.

[201] There will no doubt be practical matters arising in relation to the reinstatement that will need to be discussed and resolved. Further, there will likely be disputes arising from various matters in the future.

[202] The contract between the parties sets out a dispute resolution process which may assist them in resolving any disputes including any issues arising in relation to the implementation of reinstatement. It provides for the involvement of the Mother Church or the Mother Church's Oceania and New Zealand representatives.

[203] While s 188 of the Act would enable me to refer the parties to mediation, I consider that their own processes are likely to be more effective in the circumstances. Section 189(1) of the Act provides the Court with jurisdiction to make orders that are consistent with the parties' own dispute resolution process.

[204] In the circumstances, I consider it will assist the parties to meet with representatives from the Mother Church to discuss the practical steps necessary to

ensure a managed transition back into the employment of the Trust. I consider that the Mother Church and its representatives may be well placed to mediate or facilitate resolution of the parties' dispute.

[205] I order the parties to arrange and attend such a meeting within 28 days of the date of this judgment to identify and implement the necessary steps to ensure a managed return to all aspects of his former position. The topics for discussion would include but not be limited to arrangements for future salary payments, Pastor Chen's access to the Apollo Drive premises, and funding arrangements in relation to the Church's Sunday services. The parties may also wish to discuss a payment plan for arrears and any other issues between them in relation to the operation of the employment relationship.

[206] For completeness, I also note that the Arbitrators' and Mediators' Institute of New Zealand lists various mediators with Mandarin language skills that may be able to assist the parties, alongside the representatives of the Mother Church, to resolve any issues between them.

Outcome

[207] I have found that the Trust employed Pastor Chen and that it unjustifiably dismissed him on 20 April 2022 and 10 April 2024.

[208] I make the following orders:

- (a) The Trust is to pay Pastor Chen lost remuneration from 1 April 2022 to the date of his being reinstated to the payroll.
- (b) Pastor Chen is to be reinstated to the payroll within seven days of the date of this judgment.
- (c) Within 28 days of the date of this judgment, the parties are to organise and attend a meeting with representatives from the Mother Church to identify and implement the necessary steps to ensure Pastor Chen's full reinstatement to his former position.

- (d) Pastor Chen is to be reinstated on a full basis within six weeks of the date of this judgment.

[209] If agreement cannot be reached on the lost remuneration owing or any payment plan, the parties may seek further orders from the Court.

[210] Pastor Chen is entitled to costs. If the parties are unable to agree, Pastor Chen will have 21 days from the date of this judgment within which to file and serve any memorandum and supporting material, with the Trust having a further 21 days within which to respond. Any reply should be filed within a further seven days.

Kathryn Beck
Judge

Judgment signed at 12.45 pm on 4 April 2025