

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 400
3203679

BETWEEN DONALD JEFFERY
Applicant

AND APPLIANCES GALORE & MORE
LIMITED T/A REFRESH APPLIANCES
Respondent

Member of Authority: David G Beck

Representatives: Applicant in person
Matthew Carpenter for the Respondent

Investigation Meeting: On the papers

Submissions Received: 26 April 2025 from the Applicant
16 May 2025 from the Respondent

Date of Determination: 7 July 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This matter is the subject of an 11 July 2023, preliminary determination of the Authority in which I found Donald Jeffery had identified an unjustified disadvantage grievance within the 90 days period set out in s 114 of the Employment Relations Act 2000 (the Act). The determination categorised Mr Jeffery's claim broadly as whether his former employer took sufficient steps to address identified concerns relating to commitments he would be provided appropriate training opportunities and not whether Mr Jeffery was

unjustifiably dismissed constructively or otherwise.¹ I note on the latter issue, Mr Jeffery in his submissions alluded to having amended his personal grievance claim on 12 July 2023 to add an unjustified ‘constructive’ dismissal claim. To be clear this claim is out of time and has been determined as not being allowed to proceed by the Authority.

The Authority investigation

[2] Due to Refresh’s sole director Matthew Carpenter, being unable to physically attend an investigation meeting or participate by audio visual link, for reasons the Authority has accepted as valid, it was agreed by all parties that this matter be determined by submissions only (i.e. ‘on the papers’).

[3] As permitted by s 174E the Act, I make findings of fact and law and outline conclusions to resolve the disputed issues and make orders but I do not record all evidence and submissions except to observe the parties assisted in giving submissions that I have carefully considered.

What Caused the employment relationship problem?

[4] Following hearing evidence from Mr Jeffrey and Mr Carpenter at the preliminary investigation meeting the contextual matters causing the employment relationship problem were described and set out in the aforementioned preliminary determination. They are reproduced in part, as follows.

[5] In late September 2021, Mr Carpenter engaged with the Ministry of Social Development (MSD) as he was seeking to employ a sales and marketer and an appliance service technician. An initial 1 October email from an MSD employment co-ordinator, introduced Mr Jeffery as interested. The employment co-ordinator indicated: “He would be keen to get an apprenticeship” and he further mentioned an Apprentice Boost Scheme where Refresh could get government funding to take on an apprentice. Mr Jeffery’s Curriculum Vitae (CV) was attached to the email. The email also provided a personal promotional extract from Mr Jeffery in which he indicated he was “pretty handy with electrical stuff”; he gave

¹ [2023] NZERA 366.

examples and he asked, “would they take on someone in an apprenticeship capacity?” Mr Jeffery disclosed he had just been accepted into an electrical engineering pre-trade course at a local tertiary training provider commencing in mid-October 2021. Mr Jeffery’s CV detailed he also had sales and customer service experience and a significant communication background gained whilst working for a security company.

[6] It was apparent that Mr Carpenter in expressing an interest in Mr Jeffery, believed he could use him in a joint role. Refresh advised the Authority that they did gain a subsidy from MSD for Mr Jeffery’s first 6 months of employment but did not disclose what category of subsidy it was. How and whether this arrangement was communicated to Mr Jeffery is somewhat opaque.

[7] An interview took place on 15 October. Brief handwritten notes that Mr Carpenter disclosed for the preliminary investigation, show he had been advised Mr Jeffery was at a local tertiary institute between 8 am – 5pm Monday to Wednesday; his end goal was to be a service technician or electrician; and his sales and social media capabilities were mentioned. Mr Jeffery being eligible for an MSD wage subsidy is also noted. After a notation that Mr Jeffery would do a first day trial on 22 October, the notes end with a series of points including:

- Can do Night Class’s
- Whole end game Electrical Registration – electrical engineering pre – trade
- Matthew (Mr Carpenter) is committed to Donald being trained in all aspects of the business starting with sales and promotion.

[8] Mr Carpenter then emailed Mr Jeffery on 17 October, with the subject heading “Service Tech Position – Refresh Appliances”. The email is discursive and platitude laden but it did indicate in summary:

- Mr Carpenter was interested in Mr Jeffery’s aspiration to become a registered electrician and: “Certainly there is a need for qualified tradesmen and the training involved has its own merits in the disciplines you would develop” and “you will be supported at Refresh in building that future.”

- Understood that Mr Jeffery was available to work for Refresh on Thursdays, Fridays and possibly weekends – depending on how long his tertiary course would last.
- Refresh were also interested in Mr Jeffery’s social media capability and sales background and his interest in wearing “multiple hats” would serve him well.
- Refresh is primarily “a sales and marketing company” but sales promotion had recently been neglected.

[9] The letter concluded with an invite to meet with an experienced worker Mr Jeffery would impliedly be working with.

[10] Mr Jeffery responded on the same day lauding Mr Carpenter for being accepting of his aspiration to be an electrician. He advised his pre trade course would end in August 2022 and he offered to explore available MSD grants or subsidies with a contact he had. In an indication a job offer had already been secured, Mr Jeffery said he would arrange to meet the existing experienced worker in the coming week. He also noted he had examined Refresh’s Facebook page and could make suggestions for improvement that he would discuss with Mr Carpenter “later on when you tell me what parameters you want me working within.”

[11] Mr Jeffery recalled having a day’s trial on 22 October and then getting an email of 27 October from Mr Carpenter headed: “Employment Offer Draft – Donald Jeffery”. The offer that was described as “a basis for Addition and Discussion” used a somewhat expansive job title: “Trainee Service technician, Sales, Deliveries, Promotion (Outcall and Social Media).” It stated:

- 1/ Offer is for a minimum 30 hours/week (Days by Negotiation)
- 2/ Initial Training will be at 492 Moorhouse Ave to build Product and System Knowledge
- 3/ Prime intent is to support Donald’s Electrical Certification (Specify)
- 4/ Job Plus Subsidy to be secured to support Donald’s training for new position.
- 5/ Starting wage will be \$20/hour

6/ Standard Employment Contract to be Signed by Donald and Appliances Galore & More Ltd.

10/ Start date on 4 November or on securing Job Plus Subsidy.

(**Note:** the reference to a Job Plus Subsidy is reference to a discontinued pre-2012 MSD subsidy).

[12] The above “terms” document was signed by both parties on 27 October 2021.

[13] In addition, in a further email of 2 November, Mr Carpenter indicated: “We have an Appliance Service Technician (Registration being Renewed) starting simultaneously with you”. Mr Carpenter alluded to a friend who was a fully registered electrician researching registration matters “with a view to overseeing what is required for you under the new regulations.” Mr Carpenter also mentioned another registered electrician who previously had done work for Refresh “who if needed I believe would support in whatever manner is required.” Mr Carpenter then invited Mr Jeffery if he wanted, to make an alternative arrangement for his training support needs. Mr Carpenter closed the email by acknowledging it may need to take a “bit of a left field thinking” approach to arrange support to get Mr Jeffery certificated but he would “bring whatever is required to make that happen for you and for Refresh Appliances.”

[14] I observe the above exchanges demonstrated that Mr Carpenter, although enthusiastic in promoting the service technician role to Mr Jeffery, had not arranged or had in place, adequate training and support mechanisms. It was also not abundantly clear from the documentation, that the role on offer was a service technician. This transpired to be the case, as the expectations became that Mr Jeffery occupy a hybrid role. This initially was sales and promotion focused. This premise, is reinforced by a 10 November email Mr Carpenter sent to MSD of 10 November, in which he indicated that he was awaiting surgery and that his existing staff would have to ‘step up’ in the interim and:

Refresh Appliances works on a policy of role interchangeability Sales people must clean sweep and deliver and Techs also are trained to Sell but this level of versatility requires Time and Training.

[15] A further piece of the puzzle to determine what was offered to Mr Jeffery and what role was envisaged, is a letter disclosed from the MSD Employment Co-ordinator to Studylink of 7 December 2021, that confirms the offer was brokered by MSD and that:

The employer came to me to advertise a position as an electrical assistant in their workshop. The belief was that they would put him through an apprenticeship as his goal was to become a fully qualified electrician.

[16] Mr Jeffery commenced employment with Refresh on or around 10 January 2022, initially without an employment agreement.

[17] Documentation disclosed the first month of employment did not go well and after ten days (23 January) Mr Carpenter emailed MSD indicating Mr Jeffery: “Needs Lots of Training” and suggested Refresh be given a “substantial increase in the Flexiwege Subsidy”.

[18] An individual employment agreement was executed on 17 February 2022, with a position description and job title of: “Sales, Service, Promotion, Sales Support”. Clause 8 of the agreement noted the employment purported to be based on a three months’ trial basis. While the trial period was clearly invalid as it was not entered into prior to Mr Jeffery commencing employment, it optimistically stated during the first six weeks, Mr Jeffery was expected to “gain competency in each facet of the position requirements” (that were not set out in the attached position description). The second six weeks was described as a “consolidation period” in which Mr Jeffery was to “demonstrate and maintain the level of competency required.” Thereafter, Mr Jeffery was expected to be “fully trained and competent to manage the designated function.” To achieve these stated objectives the employment agreement noted regular appraisal meetings would occur and that: “Full training and encouragement will be given to ensure competency is achieved.” Unfortunately, despite Refresh committing itself to such support, Mr Jeffery asserted his experience was one of a lack of encouragement and structured training and, that several assurances of technical training from qualified sources, did not materialise.

[19] An example of the tone of early communication and objectively lack of constructive feedback, was a 23 January email from Mr Carpenter to Mr Jeffery, addressing the temporary absence of a co-worker (Paul), reproduced in full and at the time copied to Paul, as follows;

In other words – You need To “Cause Your Commitment”, Days, Times, that you will be “Reliable For!”.

And then with me and Paul “Actions For You” to take “Forward Your Training” and “To Have You become A Reliable and Effective Team Member at Refresh Appliances”

Please be clear that, until you have learned “The BASICS of how We Do It at Refresh Appliances,” there will be no possibility of your flair being harnessed in any area that will benefit the business.

I am not prepared to have your Training be a Convoluted Drawn Out, Messy Interruption To Other Team Members!

You will realize when, “You Are A Demand On Yourself To Be Trained”, that others will step up and “Contribute To You”. Until then you will Occur As An Irritation and a Pain in the Arse rather than a Contribution to the Refresh Team.

I look forward to your enrolment and vigorous participation within the above parameters.

Yours Regards

Matthew Carpenter

[20] Mr Carpenter’s perspective as expressed to MSD, was that Mr Jeffery was in his first ten days although personable and having ability, “relatively unproductive” and “challenging, and distracting to others in the team.” Mr Carpenter claimed that because Mr Jeffery was not displaying the basics of sales and promotion tasks, he chose not to focus on providing technical training during January and February. Mr Carpenter had also undergone orthopaedic surgery in December 2021 and during an enforced recovery period, he says he was too tired and not completely focused on work issues.

[21] In addition, Mr Jeffery says he was having difficulty balancing up working for Refresh and attending his pre-trade training course. He disclosed he was latterly only attending the course on Mondays as he felt he needed to spend more time at Refresh to be available for training earlier in the week for sales and promotion work. This meant he was missing practical course assessments.

[22] Matters came ‘to a head’ when on Tuesday 15 March 2022, Mr Jeffery emailed Mr Carpenter to indicate he would be absent “the next few days” as he had been advised the previous day, the tertiary provider had declined to allow him to continue with his “level 3

electrical engineering theory course” for “lack of engagement”. Mr Jeffery assured he thought this would get sorted in the next few days and then proceeded to highlight communication issues he was experiencing with Mr Carpenter while working for Refresh.

[23] In ending the email, Mr Jeffery raised a concern that Refresh’s expressed commitment to his gaining an electrical trade qualification and getting qualified support was not happening. Mr Jeffery noted he had done approximately one hour service work in seven weeks and sarcastically noted that at that rate, it would be 750 years before he was qualified.

[24] Mr Carpenter responded to Mr Jeffery’s email, by first chastising him for copying his email to the general office address as being an inappropriate medium to raise personal matters, before responding in extensive detail to points raised. Mr Carpenter was then personally critical of Mr Jeffery. Mr Carpenter’s response then proceeded to suggest in respect to supporting a pathway to an electrical qualification, that he was consulting two qualified people and another friend who may be able to assist. He then held out the possibility of Mr Jeffery working in Refresh’s workshop alongside an unqualified technician but then stated:

I just need to crush your EGO a bit more and be clear you will bring constructive support to him, not fill the space with your dominant need to indulge in verbosity just for the sake of it. Most normal people find it irritating!

[25] Mr Jeffery conceded he was placed in the workshop during March/April and the unqualified repair person was of assistance but nothing came of any structured training by qualified people as Mr Carpenter had alluded to.

[26] Mr Jeffery says he met with Mr Carpenter in early April to raise concerns about his lack of qualified support for his technical training and in response, he was given an assurance an electrician would soon be engaged to assist but says nothing came of this.

[27] Mr Carpenter says he became very frustrated that Mr Jeffery was not undertaking the promotional aspects of his job and in a 1 May email, he set out various expectations on what Mr Jeffery should focus upon. It describes in block capitals that Mr Jeffery’s prime focus was now selling whiteware and developing promotional strategies with other team members.

[28] The email did not mention any aspects of Mr Jeffery's technical role and it sought feedback in writing by 10 am, 3 May. Mr Jeffery responded on 3 May indicating he was not going to be at work but would respond later.

[29] I was provided with a response to the 1 May missive that Mr Jeffery emailed Mr Carpenter on 13 June, setting out observations on operational and pricing matters and Mr Carpenter responded in critical terms. This exchange again did not touch upon Mr Jeffery's training needs.

[30] Also in June, Mr Jeffery says he raised a concern about being asked to assist in installing a washing machine that he declined due to him feeling he was not technically qualified enough. He recalled this prompted another discussion with Mr Carpenter about getting him more appropriate training but says again he was 'left hanging.'

[31] In mid-July, Mr Jeffery says he entered discussion with the tertiary provider about returning to a trade course and that he discussed this with Mr Carpenter, including once again raising his lack of technical training at Refresh. He says further technical support was offered but again nothing came of it.

Ending of the employment relationship

[32] By email of Friday 5 August 2022, Mr Jeffery using the office email, announced to his team of co-workers that he had confirmed he was able to return to study the following week and that he was now effectively unavailable to Refresh: "Monday to Wednesday" and at that point was unsure of the training end date.

[33] In a response email of 9 August, Mr Carpenter indicated it was "inconvenient you are taking this action without consulting me as your employer". He then said after briefly reviewing Mr Jeffery's "terms and Conditions of Employment," that Refresh was prepared to offer 15 hours work on Thursdays and Fridays between the hours of 9.30 am to 5.00pm. He suggested a meeting on 11 August "for a brief chat". I note that this was a unilateral breach of Mr Jeffery's employment agreement that entitled him to a minimum of 30 hours per week work but acknowledge that Mr Jeffery had signalled his available days were changing. Unfortunately, the employment agreement was silent on actual days to be worked.

Resignation

[34] Mr Jeffery responded on 10 August, saying he believed he had consulted Mr Carpenter numerous times about his intention to return to study and he reiterated the promised technical training by qualified people had not been provided in the last 8 months. In what turned out to be an ambiguous resignation, Mr Jeffery stated: “Truth is, it’s impossible for me to maintain employment at Refresh Appliances and be serious about getting trade certified....” He then suggested a lack of progress on getting him properly supervised was an impediment to his time at Refresh as counting for anything toward a future qualification. Mr Jeffery finished by indicating he was not available to meet Mr Carpenter on 11 August saying his course ran over five days and not three (contradicting what he had told co-workers in his 5 August email).

[35] I observe that the combination of the wording used above and lack of reciprocity to the offer of ongoing employment (albeit on altered terms) or acceptance of the offer to meet, coupled with the decision to return to study, objectively, amounted to Mr Jeffery’s resignation.

Personal grievance

[36] No further contact occurred until Mr Jeffery says he became aware that his student allowance application had been declined on the ground he had not completed over 50% of his previous study course. Mr Jeffery raised a personal grievance with Mr Carpenter by email of 14 August 2022 “due to my employment at Refresh Appliances”. The remedy initially identified that Mr Jeffery was seeking was reimbursement of his lost student allowance. The email ended with reference to him having previously raised issues of the lack of training by appropriately qualified people during his employment at Refresh.

[37] Mr Jeffery suggested a legal basis for his grievance was pre-employment misrepresentation by Refresh’s Mr Carpenter (citing an email of 8 November 2021) suggesting a core condition of his acceptance of employment at Refresh was the offer of advancing his technical qualification and that he had also been misled by representations made.

[38] Mr Jeffery identified an unjustified disadvantage claim concerning the actions and omissions of Refresh that he considers caused him detriment. Broadly these included a suggestion that the job was misrepresented to him or he was misled; and once he commenced, he says he was given insufficient time and technical support to pursue his expressed goal of advancing his trade qualification and that led to him to resign. The description of the role and the extent of assurances made by Refresh to Mr Jeffery about supporting his desire to pursue a qualified trade are at issue. In addition, Mr Jeffery says he was impacted by what he perceived as the negative and bullying tone of Mr Carpenter's exchanges with him including cited emails.

[39] Refresh's Mr Carpenter, in contrast, maintained, that before engaging in technical training, Mr Jeffery had to satisfactorily demonstrate a knowledge of Refresh's sales process and that he was later provided with support in technical areas but he resigned to pursue his trade qualification at a tertiary provider and therefore Mr Jeffery was not disadvantaged in his employment. Mr Carpenter says he found Mr Jeffery a challenging employee who was easily distracted and at times failed to follow direction.

Unjustified disadvantage claims

[40] In *Spotless Facility Services NZ Ltd v Mackay*, the Employment Court sets out the definitional elements of an unjustified disadvantage claim as:

Turning to the statutory definition of a disadvantage grievance, s 103(1)(b) of the Act allows an employee to bring a personal grievance if the employee's employment, or one or more conditions thereof, is or are affected to the employee's disadvantage by some unjustifiable action by the employer. The issue of whether the action in question is unjustified requires a consideration of the test of justification as provided in s 103A of the Act.

The meaning of "conditions" of employment is well established. It includes all the rights, benefits and obligations arising out of the employment relationship; the concept is necessarily wider than the terms of an employment agreement.

I also observe that the statutory context within which this assessment must arise includes the obligation in s 4(1A)(b)

that the parties be active and constructive in establishing and maintaining a productive employment relationship, in which they are, amongst other things, responsive and communicative.²

[41] The definition above envisages a distinct form of personal grievance that can arise during an employment relationship with a focus upon whether the actions of an employer are in context fair and reasonable.

Assessment

[42] The objective test to apply is to initially examine how Refresh's Mr Carpenter portrayed the role undertaken and how he approached the situation of ongoing support for Mr Jeffery's training needs and then assess as per s 103A of the Act, if the actions "were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred". This includes how Mr Carpenter engaged with Mr Jeffery throughout the employment period.

[43] In assessing the evidence of both parties, it was clear that Refresh did not have in place a formal supported training plan for Mr Jeffery. Although I do acknowledge Mr Carpenter had some difficulty accessing training support and he was experiencing some physical health issues, it was evident that he misled Mr Jeffery as to the level of technical support he could expect. Mr Carpenter had sufficient time to resolve this issue but consistently failed to do so. In addition, the tone of the correspondence from Mr Carpenter was unusually confrontational and inappropriate and likely undermined Mr Jeffery's confidence.

[44] I conclude that Refresh acted in a manner that caused Mr Jeffery ongoing detriment and distress and he has made out an unjustified disadvantage personal grievance and is entitled to consideration of compensatory remedies.

[45] In concluding Refresh's Mr Carpenter did not act appropriately, I have considered the fact they are a small employer who did not access legal assistance until the personal grievance proceed to the Authority.

² *Spotless Facility Services Ltd v Mackay (No2)* [2017] ERNZ 64 at [49] – [51].

[46] Given Mr Jeffery at the time made himself unavailable for continued employment, an award of lost wage is not appropriate but Mr Jeffery is seeking to be compensated under s 123(1)(c)(i) of the Act for “humiliation, loss of dignity and injury to feelings”. This claimed remedy is discussed below.

Compensation for hurt and humiliation.

[47] Mr Jeffery gave evidence at the preliminary investigation of the impact of Refresh’s lack of commitment to his training and the uncertainty and distress it created at a time when Mr Jeffery was vulnerable in the job market and struggling to get a new career start. Mr Jeffery noted his aspirations were frustrated and delayed at a time when as a mature student, he needed to advance his training in a timely fashion.

[48] Mr Jeffery was entitled to feel he had been treated shabbily and at times Mr Carpenter used an unnecessarily hectoring tone in exchanges. At the ending of the relationship, while Mr Carpenter portrayed his offer as ongoing work to accommodate Mr Jeffery, it was also a reduction in hours.

[49] I find Mr Jeffery understandably would have felt frustrated, distressed, and isolated by how events evolved and the emerging lack of commitment to the original ideal of ensuring his role as a service technician would progress.

Finding

[50] I am convinced that at the time, Mr Jeffery suffered humiliation, loss of dignity and injury to feelings but has now moved on. Considering the overall circumstances and the aggravating factor of the inappropriate communication, I consider in all the circumstances that Mr Jeffery’s evidence warrants compensation of \$8,000 under s 123(1)(c)(i) of the Act.

Contribution

[51] Section 124 of the Act states that I must consider the extent to what, if any, Mr Jeffery’s actions contributed to the situation that gave rise to his personal grievance and then assess whether any calculated remedy should be reduced. I have considered in this context

the relevant factors summarised by the Employment Court in *Maddigan v Director General of Conservation*.³

[52] Mr Jeffery had a reciprocal good faith duty to be active, communicative, and responsive in for example keeping Refresh apprised of his tertiary study commitments. He at times failed in this duty and given his evidence on the ending of the relationship it was apparent that he could have engaged in a meeting with Mr Carpenter who was making some belated effort to resolve matters. However, given I have found the predominant causative factor was the manner by which Resolve failed to provide Mr Jeffery reasonable access to technical training and how they interacted with Mr Jeffery, I consider only a modest reduction in the remedy I have granted is warranted and I fix that at 5%.

Orders

[53] I have found that:

- a. Donald Jeffery was unjustifiably disadvantaged in his employment with Appliances Galore & More Limited.
- b. Appliances Galore & More Limited is ordered to pay Donald Jeffery the amounts below within 28 days of this determination being issued:
 - (i) \$7,600 compensation without deduction pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000; and:
 - (ii) \$71.56 as reimbursement of the Authority filing fee.

³ *Maddigan v Director General of Conservation* [2019] NZEmpC 190 at [71] – [76].

Costs

[54] Other than the filing fee awarded above there are no issues as to costs as Donald Jeffery represented himself.

David G Beck
Member of the Employment Relations Authority