

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI A TARA ROHE**

[2025] NZERA 412
3318700

BETWEEN	JOSEPH PARR Applicant
AND	IN YOUR POCKET MEDIA LIMITED Respondent

Member of Authority:	Davinnia Tan
Representatives:	Paul Mathews, advocate for the Applicant No appearance for the Respondent
Investigation Meeting:	15 May 2025 in Wellington
Submissions received:	At the investigation meeting from the Applicant None received from the Respondent
Determination:	14 July 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Joseph Parr (Mr Parr) was employed by the respondent, In Your Pocket Media Limited¹ (Pocket Media), from 14 November 2021 as Head of Digital Marketing for Pocket Media’s “Wellington Live” Facebook page, and claims that he was constructively dismissed, unjustifiably disadvantaged, and has wages owing to him.

Background

[2] Pocket Media was founded by Graham Bloxham, its current director and sole shareholder. In 2021, Pocket Media bought the social media page “Wellington Live” which is a community-based Facebook page.

¹ In Your Pocket Media (8237216).

[3] Mr Parr stated that Mr Bloxham was a family friend who had approached him to work on the Wellington Live Facebook page. Mr Parr stated it was his first “proper job” in a media related field after obtaining his degree.

[4] Mr Parr commenced employment at a rate of \$30 per hour, which he says was subsequently increased to \$32 per hour on or around May 2022.

Failure to pay agreed wages

[5] Mr Parr claims that following the agreement to increase his hourly wage, he did not receive the increased rate in his subsequent pay. Despite following up with Mr Bloxham, no adjustment was made in the following week. Mr Parr further claims that he did not receive any payslips during his employment nor were wages paid regularly. Mr Parr stated that apart from his first month of employment, he was not paid regularly nor were the amounts paid consistent. Bank account statements were provided in support.

Toxic environment

[6] For context, Mr Parr stated that throughout his employment he was subjected to humiliating treatment during his employment, including jokes made by Mr Bloxham about Mr Parr’s appearance. Mr Parr stated that female colleagues had also complained to him about Mr Bloxham allegedly sexually harassing them and there were often derogatory comments openly in the office about people. While these were mostly targeted at others, Mr Parr stated that it created a toxic work environment and he believed Mr Bloxham’s actions were not in line with what Mr Parr believed the Wellington Live page was about. Mr Parr stated that when he and other colleagues raised concerns about various work-related matters, Mr Bloxham’s responses were typically defensive and critical.

Unpaid IRD PAYE taxes

[7] In September 2022, Mr Parr and other colleagues discovered that Mr Bloxham had not been submitting payday filing information to Inland Revenue (IRD) during the period of their employment. While his net wages, after deductions, were paid into his bank account, there were no PAYE records filed with IRD in respect of his earnings.

[8] Mr Parr raised this issue with Mr Bloxham on 21 September 2022 upon discovering the issue. Mr Parr’s email of 21 September 2022 stated:

Subject: Please explain why IRD has no record of my employment and taxes

Graham, it has come to my attention that IRD has no idea that I'm working for you and has zero record of any taxes you've been deducting from my pay being sent to them. I don't think I need to say how serious this is...

[9] Later that day, Mr Bloxham wrote to Mr Parr:

I'll ask my accountant to look into this. I don't pay this. It could be that we deal with PAYE annually.

In terms of you taking a sick [sic] today this will cause major disruptions.

[...]

[10] Mr Parr stated he felt blatantly being lied to and that this was the "straw that broke the camel's back". On 22 September 2022 he resigned:

Graham, I am resigning from my position and will contact you again once I have found a suitable mediator to negotiate the terms of my leaving."

[11] Mr Bloxham responded: "So you will not complete any of [sic] projects or work out the two weeks we agreed in our contract."

[12] Mr Parr reiterated: "I will contact you again once I have found a suitable mediator to negotiate my leaving."

[13] Mr Bloxham then replied: "Can you just answer the question yes or no? I am in a really tight position. You do realise you have a contract that requires you to work out two weeks, right?"

[14] In a separate email dated 23 September 2022 from Mr Bloxham to Mr Parr's colleague who also raised the non-payment of PAYE taxes to IRD, Mr Bloxham stated:

... Like I told Joseph we pay PAYE quarterly.

You've only worked for 5 minutes and it's not set up yet. It will be and your tax will be paid!

I suggest you stop all the conspiracy theories, following others and get on with your life.

Disappointing ...

[15] In another email Mr Bloxham also sent to Mr Parr and the other colleague on 23 September 2022, Mr Bloxham wrote:

... you are in breach of your agreement by sharing information about my company and your personal situation about IRD with one another.

I ask you which person shared information with the other please?

I take anything about IRD really seriously and I will hold who ever is sharing information about me or my companies to account as it is an extremely serious allegation and the consequences are extremely severe...

[...] in the absence of a reply I'll assume you have both broken the confidence of our agreement.

[16] Mr Parr also alleged that Mr Bloxham threatened him not to waste his time with mediation. Copies of communications were provided to the Authority which included the following response from Mr Bloxham to Mr Parr (on or around 25 September 2023):

...the more I look at you the less I like. I looked after you, paid you well, gave you days off...what did I do to you to get this shit.

...and you are obligated to work the two weeks and don't do that leaving me stranded! You watch mate...

[17] Mr Parr raised a personal grievance with Pocket Media on 27 September 2022.

[18] Mr Bloxham responded to Mr Parr that day and claimed that Mr Parr had "abandoned" his employment "last week" and "then resigned".

[19] Mr Parr's former colleague provided him with copies of messages from Mr Bloxham, which the Authority has sighted, in which Mr Bloxham referred to Mr Parr as "that idiot", and that he "has no idea what is coming for him! He thinks he has a pg [sic] against me..."

[20] Mr Parr received a payment on 28 September 2022, and received a further \$1.00 on 5 October 2022.

[21] Mr Parr gave evidence that the actions of Mr Bloxham and Pocket Media has caused him significant anxiety. Mr Parr is also concerned that the public connection to Mr Bloxham has the potential to negatively impact his future employment prospects in the digital marketing industry. Mr Parr says he has suffered hurt and humiliation as a result of the actions of Pocket Media which caused him to leave his employment.

The Authority's investigation

[22] To date, there has been no engagement by Pocket Media or Mr Bloxham with the Authority's proceedings, or compliance with the Authority's notices of direction, including the direction to mediation. Details of these are set out below.

No engagement by Pocket Media or Mr Bloxham

[23] Notice of Mr Parr's Statement of Problem (including a copy of the Statement of Problem) was couriered to Pocket Media's registered address and confirmed by the courier as being delivered on 27 August 2024. In its correspondence, the Authority sought a Statement in Reply within 14 days.

[24] On 12 September 2024, the Authority followed up by correspondence, sent to Pocket Media's registered address, requesting the now overdue Statement in Reply from Pocket Media. However, Pocket Media did not respond.

[25] The parties were directed to mediation on 7 November 2024.

Non-compliance by Pocket Media with direction to mediation

[26] On 12 November 2024, Mediation Services advised the Authority that Pocket Media "was not willing to participate in mediation despite the Authority's direction."

[27] Arrangements were then made for a case management conference (CMC) between the parties. On 25 November 2024, the courier confirmed delivery of the notice of the CMC to Pocket Media's registered company address.

No appearance by Pocket Media at Authority's proceedings

[28] The CMC took place on 17 December 2024. There was no appearance for Pocket Media. Attempts to call Mr Bloxham on the mobile number the Authority had on file went unanswered. Following the CMC, I issued a Notice of Direction setting the investigation meeting down for 16 May 2025. On 19 December 2024, the courier confirmed delivery of the Authority's Notice of Direction and Notice of Investigation Meeting.

[29] There was no appearance for Pocket Media at the investigation meeting of 15 May 2025.

[30] For the Authority's investigation written witness statements were lodged from Mr Parr and his former partner Kiera Peel. Ms Peel's statement was taken as read. Mr Parr answered questions under oath from me. Mr Mathews gave oral closing submissions.

[31] The investigation meeting was adjourned part-heard until 21 May 2025, to allow Mr Parr to provide further material at the Authority's request. I also invited further submissions to be provided by the parties no later than 21 May 2025.

[32] On 20 May 2025, all material was provided. Mr Parr withdrew his claim for wages outstanding from the pay increase.

[33] All material was fully considered. However as permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination has not recorded all evidence and submissions received.

The issues

[34] The issues requiring investigation and determination were:

- a. Are there wages owing from unpaid IRD PAYE taxes and if so, what are they?
- b. Whether Mr Parr was unjustifiably (constructively) dismissed?
- c. If Mr Parr was not constructively dismissed, was he disadvantaged by unjustified actions of Pocket Media?
- d. If a grievance is established, what remedies (if any) should Mr Parr receive?
- e. If Pocket Media's actions were not justified (by disadvantaging and/or dismissing Mr Parr) what remedies should be awarded, considering:
 - (i) Lost wages (subject to evidence of reasonable endeavours to mitigate his loss); and
 - (ii) Compensation under s123(1)(c)(i) of the Act?
- f. If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Mr Parr that contributed to the situation giving rise to his grievance?
- g. Should either party contribute to the costs of representation of the other party.

Arrears in wages claim

[35] Mr Parr's individual employment agreement (IEA) provided that he would be paid \$30.00 an hour and be paid fortnightly into his nominated NZ bank account. He claims that he worked 40 hours a week from the date of employment 14 November 2021 until 22 September 2022, which equates to 44 weeks and 4 days.

[36] As there were no payslips available, Mr Parr was only able to rely on his bank statements and the employment agreement as support for his wage arrears claim. I accept Mr Parr's evidence that Pocket Media failed to provide him with pay slips during his employment. This showed that Pocket Media did not keep or produce a wage and time record in respect of Mr Parr and had, to an extent, prejudiced Mr Parr's ability to bring an accurate wage arrears claim. This also meant Mr Parr withdrew part of the arrears claim as it related to the \$2.00 hourly pay increase he says Pocket Media agreed to. As such, Mr Parr only seeks the arrears that would have otherwise been paid to IRD as his PAYE taxes which were deducted from his gross pay which has been quantified as follows:

Wage arrears (PAYE tax deducted but not paid)

Gross pay of \$1,200.00 multiplied by 45 weeks equals \$54,000.00

Net pay was \$1,074.00 multiplied by 45 weeks equals \$48,330.00

Tax deducted (net pay subtracted from gross pay) equals \$5,670.00

[37] I accept that \$5,670.00 was deducted from Mr Parr's wages by Pocket Media, and that this sum should have been paid by Pocket Media to the Inland Revenue Department.

[38] As the jurisdiction to assess and collect tax payments, and enforce tax obligations, lies with the Commissioner of Inland Revenue, I decline to make any orders under the claim for wage arrears.

[39] However, in light of the obligation under section 6 of the Tax Administration Act 1994 (TA Act) to protect the integrity of the tax system on Ministers and every officer of any government agency, and the legislative knowledge offences set out in s143A of the TA Act, I have directed the Authority Officer accordingly, to provide a copy of this determination to the Inland Revenue Department (the IRD).

Constructive dismissal

Relevant law

[40] A resignation may amount to a dismissal in some circumstances.²

[41] The Court of Appeal in *Auckland Shop Employers Union v Woolworths (NZ) Limited* has listed three non-exhaustive situations where a constructive dismissal may occur.³

[42] One of these is where a breach of duty by the employer results in an employee resigning. That is the ground on which Mr Parr relies.

[43] The correct approach⁴ in constructive dismissal cases where breaches are alleged is to firstly conclude whether the resignation has been caused by a breach of duty on the part of the employer. In determining that matter all the circumstances of the resignation must be examined and not simply the communication of the resignation.⁵ The breach must be repudiatory as opposed to merely inconsiderate or causing unhappiness⁶ and there must be a causal link between it and the tendering of the resignation.⁷ The Authority needs to assess whether the breach of duty by the employer (if one is found), was of sufficient seriousness to make resignation reasonably foreseeable.

Reasons for resignation

[44] Mr Parr resigned because he discovered that the deductions Pocket Media made from his wages on the guise that they were PAYE taxes paid to IRD, had not in fact been paid to the IRD during the entirety of his employment with Pocket Media, and the discovery was compounded by the aggressive and threatening responses by Mr Bloxham when Mr Parr raised his concerns.

Was there a breach of duty?

[45] Deductions were made to Mr Parr's wages on the pretence that those deductions were being paid to the IRD, as legally required, by Pocket Media, as Mr Parr's employer. The responses by Mr Bloxham are not of the calibre of a responsible or

² *Wellington Clerical Union v Greenwich* [1983] ACJ 965 (CA) at 975.

³ *Auckland Shop Employees Union v Woolworths (NZ) Limited* [1985] 2 NZLR 37 (CA) at 374.

⁴ *Auckland Electric Power Board v Auckland Provincial District Local Authorities Offices' Industrial Union of Worker Inc (IUOW Inc)* [1994] 1 NZLR 415 (CA).t

⁵ *Auckland Electric Power Board v Auckland Provincial District Local Authorities Offices' Industrial Union of Worker Inc (IUOW Inc)* [1994] 1 NZLR 415 (CA).

⁶ *Wellington etc Clerical Workers etc IUOW v Greenwich* [1982] ACJ 965 at 975.

⁷ *Z v A* [1993] 2 ERNZ 469.

honest employer that had an oversight or made an inadvertent accounting error. These deductions were made on every wage payment for almost 45 weeks' of Mr Parr's employment with Pocket Media with no evidence of payment to the IRD of Mr Parr's PAYE taxes. On the evidence available to the Authority, the failure to pay the IRD from deductions made to Mr Parr's gross pay were deliberate. There is no ambiguity that this constituted a breach of Pocket Media's duty of good faith as required under s 4 of the Act, which extend beyond obligations of trust and confidence. The financial mismanagement was deliberate and deceitful, which Pocket Media benefited from at the expense of Mr Parr.

[46] In these circumstances, the breaches of the minimum obligations of trust and confidence were deliberate. Further, when Mr Parr sought to discuss his concerns prior to his resignation, instead of responding constructively to the issues raised, Mr Bloxham denied it was an issue, stating that Pocket Media likely paid PAYE "annually" and that he would get his "accountant to look into it."

[47] However there was no evidence Pocket Media ever "looked into it" nor were attempts made by Pocket Media to rectify the issues raised. Instead, the correspondence from Mr Bloxham to Mr Parr that immediately followed showed Mr Bloxham reacted in complete denial and anger towards Mr Parr.

Was the resignation caused by a breach of duty?

[48] There is a direct causal link between the breach of duty and Mr Parr's resignation. As Mr Parr's evidence shows, the breach of duty was the "last straw" and Mr Parr resigned almost immediately in response.

Were the breaches of duty sufficiently serious so that resignation was foreseeable?

[49] In determining whether Mr Parr's resignation was reasonably foreseeable, I must have regard to all the circumstances.⁸

[50] It is reasonably foreseeable that an employee would resign when an employer acts disingenuously and dishonestly. An employer deducting money from an employee's wages and withholding payment to the IRD of PAYE taxes is unlawful and a serious breach of trust and confidence such that Mr Parr's resignation was foreseeable.

⁸ *Auckland Electric Power Board v Auckland Provincial District Local Authorities Offices' Industrial Union of Worker Inc (IUOW Inc)* [1994] 1 NZLR 415 (CA).

[51] Accordingly I find that Mr Parr's claim for unjustified (constructive) dismissal is made out on these grounds.

Unjustified disadvantage

[52] Given that Mr Parr is successful in his claim of unjustifiable (constructive) dismissal, I do not need, therefore, to further consider the claim made in the alternative that he was unjustifiably disadvantaged by Pocket Media.

[53] This claim is based upon the same facts as formed the basis of his successful unjustifiable dismissal claim for which he has been awarded remedies. There is no separate remedy award under this head.

Remedies

Wages owing

[54] I have found that \$5,670.00 would have been the PAYE taxes paid to IRD, but had otherwise been deducted and retained by Pocket Media.

[55] However as discussed above, I decline to make any orders as the jurisdiction to enforce tax obligations on Pocket Media for payment of Mr Parr's PAYE taxes lies with the Commissioner of Inland Revenue.

Reimbursement of lost wages s123(1)(b) and s128

[56] With respect to wages, s 128(2) of the Act requires the payment of the lesser of a sum equal to lost remuneration or three months' ordinary time remuneration. The Authority may, in its discretion under s 128(3) of the Act, order payment of a greater sum by way of compensation for remuneration lost by that employee as a result of the personal grievance.

[57] Mr Parr provided evidence that he took up several casual jobs at minimum wage following his resignation from Pocket Media. The wages he received from these jobs were not comparable to his hourly wage at Pocket Media. However, Mr Parr shared with the Authority how in those circumstances he was desperate for any job in order to survive and that was not with Pocket Media. During this time, he had to give up his flat due to an inability to continue rent payments and had to live with family. In a desperate effort to ensure he was not completely reliant on family for his livelihood, he accepted any role that he was successful in attaining quickly so there was incoming money. IRD records show that he earned a total of \$7,305.13 over the next three months (13 weeks).

[58] Mr Parr is seeking the difference of his salary at Pocket Media (\$1,200.00 multiplied by 13 weeks) and the earnings (\$7,305.13) over this period, which is \$8,294.87 gross as lost remuneration.

Compensation for humiliation, loss of dignity and injury to feelings

[59] As Mr Parr's unjustifiable (constructive) dismissal claim is made out, he is entitled to compensation for humiliation and injury to feelings pursuant to s 123(1)(c)(i) of the Act.

[60] The harm caused by Pocket Media in these circumstances has been significant on Mr Parr. Having assessed Mr Parr's credibility and manner, the level of dejection and humiliation he had felt from how his employment with Pocket Media ended was obvious. Mr Parr had been excited to begin a new career in media with a company owned by Mr Bloxham who also had a long history with his family. This was Mr Parr's first entry into an exciting career he had worked hard to attain. However, the manner in which his employment ended swiftly and adversely impacted on Mr Parr's ambitions for career progression. He was humiliated by having to rely on family and low paying jobs to get by and distressed by the fact Mr Bloxham had, until the dispute arose, been a longstanding family friend. The hurt and humiliation was further exacerbated by Mr Bloxham's failures of good faith to engage constructively and act with accountability when the issue was brought to his attention.

[61] For these reasons and having balanced the evidence against current trends in both the Court⁹ and the Authority, I consider \$20,000 appropriate.

[62] Mr Parr is successful in his claim of unjustifiable (constructive) dismissal for which he has been awarded remedies. As his unjustifiable disadvantage claim was pleaded in the alternative and is based upon the same facts, there is no separate remedy award under this head.

Contributory conduct

[63] I am required under s 124 of the Act to consider the issue of any contribution that may influence the remedies awarded. There are no issues of contribution here.

⁹ *Pyne v Invacare NZ Ltd* [2023] NZEmpC 179; *GF v Customs* [2023] NZEmpC 101; *Pact Group v Robinson* [2023] NZEmpC 173.

Orders

[64] For the reasons set out above, I consider that all of Mr Parr's claims have been made out. Accordingly, I order In Your Pocket Media Limited to pay Mr Joseph Parr within 28 days of the date of this determination:

- a. \$8,294.87 (wages lost as a result of the grievance); and
- b. \$20,000.00 (compensation).

[65] No orders are made in respect of the sum of \$5,670.00 for Mr Parr's unpaid PAYE taxes. The Authority Officer will provide a copy of this determination to the IRD for its enforcement purposes.

Costs

[66] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[67] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Parr may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Pocket Media will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[68] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual "daily tariff" basis unless circumstances or factors, require an adjustment upwards or downwards.¹⁰

Davinnia Tan
Member of the Employment Relations Authority

¹⁰ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1