

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 493  
3312020 & 3311260

BETWEEN	KIMBERLEY MILLER Applicant in 3312020
AND	KYLIE LEPPER Applicant in 3311260
AND	GT ELECTRICAL SOLUTIONS LIMITED First Respondent
AND	GARY TROTTER Second Respondent

Member of Authority:	Alex Leulu
Representatives:	Lily Wilkie, counsel for the Applicants No appearance for the Respondent
Investigation Meeting:	15 April 2024 in Hamilton
Submissions received:	22 May and 26 June 2025 from the Applicants 13 June 2025 from the Respondent
Determination:	15 August 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Kimberley Miller was employed by GT Electrical Solutions Limited (GT Electrical) as an office manager. Ms Miller resigned from her role and her last day of work was on 18 April 2024.

[2] Kylie Lepper was also employed by GT Electrical as an office administrator. Ms Lepper's employment also ended on 18 April 2024 after resigning from her role.

[3] Both Ms Miller and Ms Lepper (the applicants) claimed they were each unjustifiably disadvantaged during their employment by GT Electrical and were owed unpaid annual leave.

[4] GT Electrical and Gary Trotter (the respondents) opposed the applicants' claims and lodged several counterclaims against both applicants including allegations of breaches of their respective employment agreements.

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

[5] Prior to the investigation meeting the applicants agreed for their respective claims against the respondents to be investigated and determined together by the Authority.

[6] For the Authority's investigation, written witness statements were lodged from Ms Miller, Ms Lepper, Calvin Trotter and Darragh Miller who all attended the investigation meeting. Witness statements were also lodged by Kaleb Ace and Cameron Torea. The applicants also answered questions under oath from me and their representative, Lily Wilkie. Ms Wilkie also lodged closing written submissions on the applicants' behalf.

[7] The respondents did not attend the investigation meeting. When the applicants lodged their claims in July 2024, the respondents did not lodge a statement in reply and failed to attend mediation after it was directed to do so by the Authority in October 2024.

[8] The first formal contact from the respondents came in the form of a statement of defence and an affidavit from a person named Stephanie McMullan. The statement of defence was signed by Mr Trotter. Both documents were lodged on 14 March 2025 approximately one month before the investigation meeting was scheduled to be heard. As part of their statement in defence, the respondents also raised counterclaims against the applicants. Apart from lodging written closing submissions, the respondents did not participate any further with the Authority's investigation.

[9] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

## **The issues**

[10] Along with the respondents' counterclaim, the issues requiring investigation and determination were:

- (a) Did GT Electrical breach its obligations in accordance with the:
  - (i) Holidays Act 2003 (Holidays Act) by failing to properly pay the applicants' holiday pay entitlements at the end of their employment; and
  - (ii) Wages Protection Act 1983 (WP Act) by making unlawful deductions from the applicants' final pay?
- (b) Did GT Electrical fail to keep holiday and leave records as required under ss 81 to 83 of the Holidays Act?
- (c) For any established breach under the Holidays Act and the WP Act, to determine whether:
  - (i) any arrears are to be paid by GT Electrical to either or both applicants; and
  - (ii) to impose a penalty against GT Electrical for any established breach?
- (d) Were the applicants unjustifiably disadvantaged during their employment with GT Electrical in relation to Mr Trotter's alleged actions where he:
  - (i) acted in an aggressive and bullying manner towards either or both applicants;
  - (ii) requesting either or both applicants to shift assets during the wind down of GT Electrical; and
  - (iii) making allegations against either or both applicants of being liable for losses and leading GT Electrical issuing invoices to either or both applicants for payment for the alleged losses?
- (e) If GT Electrical's actions were not justified towards either or both applicants, to determine whether either or both applicants are entitled to compensation for hurt and humiliation under s 123(1)(c)(i) of the Act?
- (f) Should either party contribute to the costs of representation of the other party?

## **Context**

### *The start of Ms Miller's employment*

[11] GT Electrical is a Hamilton based company which provided electrical services and installations of air conditioning units. It also provided equipment hire and printing services to its customers. Mr Trotter was the managing director for GT Electrical and the father of Ms Miller and Calvin Trotter who also worked for GT Electrical as an apprentice electrician.

[12] On 6 September 2021 Ms Miller started working part time for GT Electrical as an office administrator. She said she started working for GT Electrical to help Mr Trotter with running the company. Her initial role included sorting the company's administrative financial records. Shortly after, her employment changed from part time to full time employment with her role expanding to cover a related business, GT Equipment Solutions.

[13] As her employment progressed, Ms Miller's duties began to expand to cover several various duties which fell outside their initial arrangement. As a result Ms Miller's role designation was changed to office manager.

[14] As her role increased, Ms Miller also said her relationship with her father, Mr Trotter began to deteriorate to a point where he would require every decision to be run past him and to verbally berate her for decisions she made at work.

### *The start of Ms Lepper's employment*

[15] Due to the increase in Ms Miller's workload, Mr Trotter agreed for Ms Lepper to be employed as an office administrator. Ms Lepper was a friend of Ms Miller and was recommended by Ms Miller for the role. As part of the role, Ms Lepper would load customer invoices into the company's finance system and ensure the GT Electrical staff had entered their time sheets for Ms Miller to process their pay.

[16] Ms Lepper and Ms Miller both signed written employment agreements on 22 December 2022 with Ms Miller formally confirming her role as office manager. Ms Lepper started her employment on 9 January 2023.

### *Mr Trotter's departure*

[17] As a result of a personal issue in August 2023, the applicants said Mr Trotter's mood in the workplace changed considerably. The applicants described Mr Trotter's behaviour at the time as intolerant and irritable. This led to him verbally berating Ms Miller on a weekly basis. Ms Lepper described the workplace situation as tense and on occasion she would ask Calvin Trotter to intervene when Gary Trotter would verbally berate Ms Miller.

[18] In November 2023 Mr Trotter met Calvin Trotter and Ms Miller and told them he was going to leave GT Electrical to work for another company. He also told them they were from then on, responsible for the running of GT Electrical.

[19] Ms Miller continued to run the company with help from Ms Lepper and Calvin Trotter. Although he left the company, Mr Trotter returned to the work premises on several occasions where the applicants said he continued to both berate Ms Miller and then proceeded to use company funds. Ms Miller said Mr Trotter also retrieved company equipment without consulting with her.

### *End of the applicants' employment relationship*

[20] In early 2024 GT Electrical struggled financially and had been facing increased pressure to meet customer demands and pay supplier bills. During this time Mr Trotter was not physically involved with the company but was still making decisions on behalf of the company.

[21] In early March 2024 Mr Trotter informed the applicants about winding down the company. It was clear at this stage, Mr Trotter and resumed control of the company. The applicants also said Mr Trotter provided them with a list of tasks which included moving company assets to a trust.

[22] Throughout March 2024 Mr Trotter began attending the workplace without any one's knowledge and continued to retrieve various company assets which included the removal of the company's surveillance camera.

[23] On 4 April 2024 the applicants resigned from their employment. Ms Lepper's last day of work was 18 April 2024. Ms Miller's last day of work was 19 April 2024.

After their employment ended GT Electrical began sending several invoices for alleged assets lost during their employment.

### ***Holiday pay arrears claim***

#### *The applicant's claims*

[24] The applicants claimed GT Electrical failed to pay their annual leave entitlements at the end of their employment in accordance with the Holidays Act. They also claimed GT Electrical failed to keep wage, holiday and time records as required by law.<sup>1</sup> Upon the end of their employment the applicants were entitled to payment of the balance of their outstanding annual holidays.<sup>2</sup>

[25] Because they were not paid annual holidays at the end of their employment, the applicants also sought a penalty against GT Electrical for breaching the terms of their respective employment agreements and the requirements of the WP Act.<sup>3</sup>

#### *The respondent's arguments*

[26] The respondents disputed the applicants claims about its record keeping and referred to the applicants' payslips which were submitted to the Authority as evidence. The respondents claimed the payslips showed evidence of wage and time records being kept for each applicant.

[27] Although the respondents did not specifically address whether it had paid the applicants' annual holiday pay, they argued they had complied with all its employment law obligations.

#### *The Authority's assessment of the applicants' holiday pay claims*

[28] The only evidence showing annual leave owing to the applicants were in the form of a final payslip for each applicant. Ms Miller's payslip was dated 4 April 2024 and showed she was owed 319 hours of annual leave.

[29] Ms Miller also confirmed she had taken 34 hours of annual leave at the end of her employment which was not reflected on her final payslip. This reduced her annual leave balance to 285 hours. Calculated at a pay rate of \$27 an hour, Ms Miller was

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<sup>1</sup> Holidays Act 2003, s 81 and Employment Relations Act 2000, s 130.

<sup>2</sup> Holidays Act 2003, s 27.

<sup>3</sup> Wages Protection Act 1983, s 13.

owed \$7,695 gross in annual holiday pay. GT Electrical is ordered to pay this amount to Ms Miller.

[30] Ms Lepper's payslip was dated 11 April 2024 and showed she had accumulated 204 hours of annual leave. Calculated at her hourly rate of \$23.15 an hour, she would have been owed \$4,722 gross in annual holiday pay. GT Electrical is ordered to pay this amount to Ms Lepper.

### *Penalties*

[31] Towards the end of their employment, Ms Miller and Ms Lepper were involved with managing and administering GT Electricals' ongoing business operation which included managing their wages. The respondents argued any failure to properly manage staff pay, holiday entitlements and financial bookkeeping were all responsibilities of the applicants.

[32] It was clear from email correspondence between Ms Lepper and Mr Trotter on April 18 2024, Mr Trotter was actively engaging in arranging the final pay for Ms Lepper. This was likely the case also for Ms Miller at the end of her employment. For this reason the responsibility for arranging final pay fell upon Mr Trotter on behalf of GT Electrical.

[33] As previously stated, the applicants were given payslips which appeared to show GT Electrical kept wage and time records. There was also evidence to show GT Electrical kept timesheets which allowed Ms Miller and Ms Lepper to arrange payment to company staff. I am satisfied GT Electrical kept wage, holiday and time records and for this reason no findings of a breach or an order for a penalty in this respect will be made.

[34] GT Electrical was liable to a maximum penalty of \$20,000 for breach of its obligations to pay annual holidays under the Holidays Act.<sup>4</sup> The Act sets out several relevant factors as a guide to determine the appropriate level of penalty for each given case.<sup>5</sup> In this case, employees have the right to ensure their outstanding holiday pay is paid when it is due.

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<sup>4</sup> Holidays Act 2003, s 75.

<sup>5</sup> Employment Relations Act 2000, s 133A.

[35] I accept GT Electrical's failure to pay the applicants' their annual holiday pay was intentional. There was also no evidence to show GT Electrical had taken steps to try and rectify its failure. For this reason and considering other comparative cases, I order a penalty against GT Electrical of \$5,000.

[36] In terms of the applicants' claims for unlawful deduction, there was little evidence to show what deductions were made and when. For this reason, the applicant's claims are unsubstantiated and no determination is made in respect of further penalties against GT Electrical.

#### *Liability of the Mr Trotter*

[37] In the event GT Electrical was unable to pay any penalty ordered by the Authority, the applicants also sought a transfer of liability from GT Electrical to Mr Trotter.

[38] Under the Act, a person's liability to pay a penalty for breach of an employment standard may be passed on to separate person who was also involved in the breach.<sup>6</sup> However, this can only be considered upon application to the Authority by a Labour Inspector.<sup>7</sup> Given this case was not initiated by a Labour Inspector, the applicants' request for transfer of liability is declined.

### **Grievance claims**

#### *The applicants' arguments*

[39] The applicants' claims against GT Electrical for unjustified disadvantage relied on the following allegations about Mr Trotter's actions:

- (a) his alleged aggressive and bullying manner towards Ms Miller throughout her employment (which was observed by Ms Lepper);
- (b) requesting Ms Miller and Ms Lepper to shift assets during the wind down process of GT Electrical; and
- (c) GT Electrical issuing invoices to both applicants for payment for lost company assets.

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<sup>6</sup> Employment Relations Act 2000, s 142W.

<sup>7</sup> Employment Relations Act 2000, s 142X.

[40] In terms of shifting assets, both applicants claimed they were asked by Mr Trotter to shift ownership of company assets to a trust account. The applicants' claimed this was a request to carry out an unlawful action to avoid declaring company assets as part of the accounting process for winding down the business. Although they did not follow Mr Trotter's request, both applicants claimed they were disadvantaged because they were asked to carry out a fraudulent action.

*The respondents' response*

[41] The respondents denied all the applicants' allegations against them and submitted the applicants:

- (a) claims of aggressive and bullying behaviour by Mr Trotter towards Ms Miller were not true and were raised by the applicants to elevate the validity of all their claims before the Authority;
- (b) no fraudulent actions or request to carry out fraudulent actions were made by Mr Trotter to either applicant; and
- (c) the applicants failed in their duties to GT Electrical which led to the loss of company assets. As a result, the respondents said the applicants were liable for the losses and this was reflected within the invoices which were issued against them after their employment had ended.

[42] The respondents also submitted to the Authority for it to consider Ms Miller and Mr Trotter's familial relationship when assessing the applicants' claims of abuse and bullying. An inference taken from the submission being for the Authority to view the allegations of the interactions more as personal family disagreements as opposed to a professional employment engagement between them.

[43] The respondent also made several other allegations against both applicants of collusion and lying to increase the chances of success of their claims before the Authority.

*Assessing the respondents' evidence*

[44] Reasonable attempts were made by the Authority to allow the respondents to participate with the Authority's investigation. Up until the respondents submitted Ms McMullan's affidavit and Mr Trotter's statement in defence, the respondents avoided

meaningful engagement with the Authority. Even after lodging the above documents, the respondent still chose to not attend the scheduled investigation meeting. Because the respondents did not attend the investigation meeting:

- (a) the respondents' evidence could not be sworn on oath or affirmation before the Authority; and
- (b) the Authority was unable to test any of the respondent's evidence to properly consider their opposition to the applicants' claims. This was especially given there was significant evidence about Mr Trotter's conduct in the workplace which required further scrutiny with Mr Trotter himself (such as his interactions with Ms Miller).

[45] Parties who decline to properly participate with the Authority's investigation should not benefit from any reluctance to adhere and attend the Authority's investigation.

[46] Furthermore, Ms McMullan's affidavit and Mr Trotter's statement in defence were not properly sworn before an appropriate authority (such as a lawyer or Justice of the Peace) as set out under New Zealand law.<sup>8</sup> Because these documents were not properly sworn (and Ms McMullan and Mr Trotter did not attend the investigation meeting), little weight can be given to both documents as evidence.

#### *Assessing Ms Miller's grievance claims*

[47] The evidence from Ms Miller, Ms Lepper and Calvin Trotter all support the allegations against Mr Trotter for abusive behaviour towards Ms Miller on several occasions throughout Ms Miller's employment for GT Electrical. The types of behaviour described in the evidence included Mr Trotter's actions of angrily shouting at Ms Miller and throwing objects around the office. These appeared to occur regularly within the workplace.

[48] I disagree with the respondents' assertions that the allegations were false or the communications between Mr Trotter and Ms Miller were solely conducted within the familial context. It was clear Mr Trotter's outbursts were unreasonable and related to

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<sup>8</sup> Oaths and Declarations Act 1957, s 9.

Ms Miller's role and work for the company. For reasons stated, Ms Miller was disadvantaged as result of Mr Trotter's abusive behaviour towards her in the workplace.

[49] Although Ms Lepper had observed most (if not all) of Mr Trotter's behaviour towards Ms Miller, she said the behaviour did not extend towards her. I acknowledge this would have caused some disharmony in the workplace and had some impact on Ms Lepper. However, it was difficult to assess from her evidence the extent of any impact of Mr Trotter's behaviour on her alleged disadvantage. Accordingly, Ms Lepper's unjustified disadvantage claim relating to Mr Trotter's abuse was not substantiated.

#### *The remaining grievance claims*

[50] After reviewing the evidence before the Authority, the applicant's remaining unjustified disadvantage claims were unsubstantiated for different reasons. Firstly, there was insufficient evidence to reasonably conclude Mr Trotter had asked both applicants to shift company assets for fraudulent purposes.

[51] Although the evidence showed Mr Trotter had provided the applicants with a list of tasks associated with the wind down of the company, it was difficult to confirm whether this amounted to an attempt to fraudulently hide assets for the purpose of winding up the company (and in turn attempt to implicate the applicants as accessories to any wrongdoing).

[52] In terms of the unjustified disadvantage claims for the provision of the invoices to the applicants, the invoices were issued after the applicant's employment had ended. They fell outside of the applicant's ambit for raising a personal grievance for unjustified disadvantage.

[53] For the sake of completion, given the Authority's reasons stated above, all Ms Lepper's claims for alleged unjustified disadvantage were unsuccessful.

#### **Remedies**

[54] Ms Miller had established a personal grievance for unjustified disadvantage and was entitled to an assessment of remedies to address her grievance. As a result of Mr Trotter's actions on behalf of GT Electrical, Ms Miller sought an award of \$20,000 for hurt and humiliation.

[55] As a result of her experiences Ms Miller said she went into what she described as a low patch which led to an increase in her medication for depression. She also explained her guilt and distress associated with her treatment of her own family because of her trying to deal with her low mood.

[56] Apart from their opposition to Ms Miller's grievance claims, the respondents did not make any submissions regarding remedies. Weighing the circumstances of this case with the range of awards made in similar cases, an appropriate award of compensation for the humiliation, loss of dignity and injury to feelings Ms Miller suffered is \$15,000.

[57] There was also no evidence to show Ms Miller had contributed the grounds which gave rise to her grievance. For this reason, no deduction is applied to her awarded remedy.

### **The Respondent's counterclaim**

[58] In its statement in defence, the respondents raised several counterclaims which related to allegations against the applicants of theft, fraud, privacy breaches and employment agreement breaches. The respondents sought various forms of remedies which included seeking monetary payments from the applicants.

[59] The counterclaim was raised at relatively late stage of the Authority's investigation. The applicants did not oppose the late lodging of the counterclaim.

[60] The counterclaims meant the respondents were essentially the applicant and therefore there was an onus on the respondents to prove their claims. This meant, it had to produce sworn evidence and attend the investigation meeting to support their counterclaims. As previously stated, this would also have allowed the Authority to test the respondents evidence in support of its counterclaims. The respondents did not attend the investigation meeting and therefore their counterclaims were dismissed for lack of prosecution.

### **Summary of orders**

[61] Considering the findings reached in this determination, the following orders are made:

(a) GT electrical must pay Ms Miller compensation of \$15,000 for humiliation, loss of dignity and injury to her feelings.

(b) GT Electrical is to pay the following arrears under the Holidays Act to the applicants:

(i) \$7,695 gross to Ms Miller; and

(ii) \$4,722 gross to Ms Lepper;

(c) For breach of the Holidays Act, GT Electrical must pay a penalty of \$5,000 to the Authority. On recovering the penalty, the Authority must pay:

(i) \$1,500 to Ms Lepper;

(ii) \$1,500 to Ms Miller; and

(iii) \$2,000 to a Crown bank account.

[62] All payments referred to in these orders must be made within 28 days of the date of this determination.

### **Costs**

[63] Having succeeded in their application the applicants were entitled to an order requiring GT Electrical to contribute to their costs of representation.

[64] The Authority has clear statutory power to order costs and expenses to be paid as the Authority thinks reasonable.<sup>9</sup> Costs are awarded at the Authority's discretion and it well established for costs to follow the event.<sup>10</sup> There is no basis for the Authority to depart from this approach.

[65] The Authority uses a "tariff" based approach in awarding such costs. This approach has been approved by the Employment Court.<sup>11</sup> The current tariff for a one-day investigation meeting is \$4,500. The investigation meeting for this matter proceeded for almost a full day and I am satisfied that the tariff for a one-day investigation was the appropriate starting point. There were no grounds for an uplift of this starting point.

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<sup>9</sup> Employment Relations Act 2000, Schedule 2, clause 15.

<sup>10</sup> *Victoria University of Wellington v Alton-Lee* [2001] ERNZ 305 (CA) at [48].

<sup>11</sup> See: *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135.

[66] Therefore, GT Electrical is ordered to pay the applicants \$4,500 to contribute to their costs of representation. Both applicants are also each entitled to a payment of \$71.55 to reimburse the expense of paying the Authority filing fee of \$71.55. These payments are also to be paid with 28 days of this determination.

Alex Leulu  
Member of the Employment Relations Authority