

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2025] NZERA 509  
3310180

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| BETWEEN | DAVID HANNAH<br>Applicant                             |
| AND     | THE SALVATION ARMY<br>NEW ZEALAND TRUST<br>Respondent |

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|------------------------|---|
| Member of Authority:   | Claire English  |
| Representatives:       | Robert Morgan, advocate for the Applicant<br>Alan Davis, counsel for the Respondent |
| Investigation Meeting: | 4 & 6 June 2025, in Gisborne and by AVL   |
| Submissions received:  | 9 and 17 June 2025 from Applicant<br>15 June 2025 from Respondent                   |
| Determination:         | 21 August 2025  |

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The applicant, Mr David Hannah worked for The Salvation Army (TSA) at one of its Furniture Stores. On 7 February 2024, Mr Hannah was working in the store when his team leader, Ms Ronele Geary, came into the store with another team leader Ms Jaye Pomana. Ms Pomana asked to speak to Mr Hannah. He refused. He ignored Ms Geary, as he was upset with her over the way stock in the store had been managed.

[2] When Ms Pomana persisted in attempting to speak with Mr Hannah, he became verbally abusive, and pushed Ms Pomana on his way out of the store. As he rode away on his motorbike, he called her by a derogatory name.

[3] Mr Hannah made a police report on the grounds that Ms Pomana had pushed open a door he was trying to hold shut, and that this amounted to assault. Ms Pomana says she had not known and could not see that Mr Hannah was holding the door shut when she pushed it open. Ms Geary also called the police when Mr Hannah pushed Ms Pomana, but Ms Pomana decided not to pursue matters.

[4] This incident was reported to the Area and Regional Managers. A disciplinary process followed, and Mr Hannah was dismissed for serious misconduct, which was said to be using “physical violence or abusive language”, and “refusal to carry out lawful instructions of a senior staff member” eg, refusing to talk to Ms Pomana when she asked to speak with him.

[5] Mr Hannah says he should not have been fired, and brings a claim of unjustified dismissal. TSA says that the dismissal was reasonable in the circumstances, especially in light of Mr Hannah’s admissions that he pushed Ms Pomana and called her by a derogatory slur.

### **The Authority’s investigation**

[6] For the Authority’s investigation written witness statements were lodged from Mr Hannah, Ms Pomana, Ms Geary, and the decision-maker, Ms Jamielee Samuels. All witnesses answered questions under affirmation from me and the parties’ representatives. The representatives also gave closing submissions.

[7] 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**

[8] The issues requiring investigation and determination were:

- (a) Was Mr Hannah unjustifiably dismissed?
- (b) If TSA’s actions were not justified, what remedies should be awarded, considering:
  - Lost wages (subject to evidence of reasonable endeavours to mitigate loss); and

- Compensation under s123(1)(c)(i) of the Act
- (c) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Mr Hannah that contributed to the situation giving rise to his grievance?
- (d) Should either party contribute to the costs of representation of the other party?

## **Background**

[9] Mr Hannah had worked for TSA since June 2022, in one of its furniture shops. He gave evidence that he enjoyed the work and the customer contact, and was always able to achieve the necessary sales targets. A relatively short time after Mr Hannah was employed, his manager at that time left, and was replaced by a Team Leader. That role was given to Ms Geary. Ms Geary worked relatively closely with Ms Pomana, the Team Leader for the Family Store, which was a separate much larger premises on the same street.

[10] Ms Geary and Ms Pomana had a degree of overlap in their team leader roles, as when one of them was absent (due to sickness, leave, or was otherwise unavailable), the other would manage their responsibilities.

[11] Mr Hannah says that in November 2023, Ms Geary accused him of stealing an item from the delivery truck, criticised him for leaving before 5pm, when in fact his employment agreement specified his working day ended at 4.30 pm, and was rude when doing this. He complained to the Area Manager, who agreed with him about his contractual hours of work, apologised to him, and said he would look into the matter and speak to Ms Geary. The matter was left there. TSA believed it had been resolved. Mr Hannah now says that the matter was never resolved because there was no meeting to resolve it. He accepts that he never asked for this at the time, and never followed up with the Area Manager but did agree not to pursue a formal complaint.

[12] Mr Hannah took 2 weeks annual leave over the Christmas and New Year period. Over this period, new furniture was set up in the Family Store on Saturday mornings to offer it for sale (as the furniture store was closed on Saturdays). Mr Hannah was greatly upset by this. He formed the view that Ms Geary was deliberately taking the better stock for the Family Store, that she was acting in a “sneaky” way, and that this was part of a plan to close the furniture store.

[13] He asked Ms Geary if the furniture store was going to close. Her evidence was that she told him “No”. Mr Hannah was dissatisfied with this, and rang the Area Manager, who also told him that the furniture store was not being closed. Despite this, Mr Hannah was adamant in his evidence that there was a plan by “management” to close the furniture store, and he was being kept in the dark about it. He rang Ms Geary and accused her of being “sneaky” and reinforced his views by a text message using the same words. Ms Geary said he then refused to speak to her. She was bemused by this, although she said this was not out of character for Mr Hannah.

[14] On Monday 5 February 2024, Mr Hannah noticed that the furniture shop phone and booking book had not been returned to the furniture shop from the Family Store following the weekend. He asked one of the delivery drivers to inquire about this and bring them back. On Wednesday 7 February, Ms Geary and Ms Pomana came to the furniture store with the booking book and the phone. Ms Geary’s evidence was that she brought Ms Pomana with her for support, as Mr Hannah was not on good speaking terms with her and she felt uncomfortable because of this. Ms Pomana’s evidence was that she was there to support Ms Geary, and to re-introduce herself to Mr Hannah as she had just returned to work after being away for eight or nine months with an injury that had required surgery. She wanted to let Mr Hannah know that she had returned, and to see if there was any support she could offer him as she was aware he had concerns with Ms Geary.

[15] When they entered the store, Mr Hannah was with a customer. He acknowledged Ms Pomana, but did not return Ms Geary’s greeting. Ms Geary went into the office to fetch some order dockets. Ms Pomana asked Mr Hannah how he was, and he replied that he felt he had been “shat on by having all the good stuff removed from my store”. Ms Pomana replied that the store had had to close when Mr Hannah took his holidays.

[16] Mr Hannah then said he did not want to talk anymore. He moved away, and started pricing objects in the store. Ms Pomana asked him to talk and he refused. Ms Pomana then asked the sole remaining customer to leave. It was around this time that the conversation became more heated. Mr Hannah then went out the back of the store to the carpark, he says so he could have a drink of water and clear his head.

[17] As he exited the door into the carpark, he stopped and held the door shut to prevent Ms Pomana from following him. Ms Pomana was not aware of this, and pushed the door open. Mr Hannah then accused her of assaulting him, which Ms Pomana found confusing.

[18] Mr Hannah then walked back inside past Ms Pomana. He says that he went to get his keys, helmet, and bag, as he was intending to leave. He accepts that on the way back out the door carrying his things, he pushed Ms Pomana with one hand on her chest. He then got on his motorbike and rode off. As he rode out of the carpark, he called Ms Pomana by a derogatory slur.

[19] Ms Pomana says that Mr Hannah pushed her firmly with both hands as he came back in the door, and then almost immediately returned again carrying helmet and bag. She was shocked and so did nothing in the interim but this all happened very fast. She says that he used some swear words as well as the admitted derogatory slur, including what she interpreted as a threat of violence when he said something along the lines of showing her what would happen to people like her if she was at his place. She says this was disquieting to her, as she and Mr Hannah actually live on the same street.

[20] Ms Geary was standing by Ms Pomana when she was pushed, and supports Ms Pomana's account of events. She says that after pushing Ms Pomana, she stepped between her and Mr Hannah looked at her and warned her to "stay away" before he grabbed his things and left.

[21] Both Ms Geary and Ms Pomana reported this to their Area Manager and Regional Manager (Ms Jamielee Samuels). Ms Samuels asked them both to immediately write down their account of events. Ms Pomana did so that afternoon, and emailed her statement to Ms Samuels. Ms Geary did likewise later that night.

[22] They were not otherwise involved in the disciplinary process that followed. Ms Geary says that she was not even told that Mr Hannah had been fired, she was simply told he was taking leave, and then a few weeks later, was told that he had moved on, and if anyone inquired, she was to say he no longer worked there and 'had moved on'.

[23] When asked to explain what had occurred, Mr Hannah said that he felt "entrapped" and that Ms Pomana and Ms Geary had come to the shop for some ulterior purpose. He repeated many times that he would not speak to Ms Pomana because he

believed he was being “entrapped”. He was not able to explain what he meant by this word, but referred to his conviction that the furniture store was going to be closed down and attempts to sell some furniture in the Family Store on Saturdays when the furniture store was closed was proof of this occurring. He was very clear that he did not believe either Ms Geary or the Regional Manager who had denied this when he had asked, and criticised both them and TSA for failing to be more communicative about what he said was the pending closure of the furniture store.

[24] Mr Hannah was also critical of Ms Pomana for repeatedly asking to speak with him when he had refused. He took the view that she was not in fact his team leader, despite Ms Pomana and Ms Geary explaining how they shared some responsibilities. He relies on his view that Ms Pomana was not his team leader to justify his refusal to speak to her, even in circumstances where he acknowledged he was not currently speaking to Ms Geary. He criticises Ms Pomana’s attempts to speak with him while also explaining how TSA did not communicate with him adequately, and admitting that he disregarded what was said to him by Ms Geary and the Regional Manager if he did not consider it satisfactory. Finally, I note that Mr Hannah critiqued Ms Pomana’s height, weight/size, and hand size, in addition to referring to her by a derogatory slur.

[25] Ms Pomana stated that she accepted she was somewhat overweight, but did not consider it relevant to the matters at hand.

### **Analysis**

[26] I must consider whether TSA’s actions in dismissing Mr Hannah were what a fair and reasonable employer could have done in the circumstances. When considering this, I must also consider whether:

- a. TSA sufficiently investigated the allegations against Mr Hannah;
- b. TSA raised the concerns that it had with Mr Hannah before taking action;
- c. TSA gave Mr Hannah a reasonable opportunity to respond to these concerns before dismissing him; and
- d. TSA genuinely considered Mr Hannah’s explanation (if any) before dismissing him.

[27] I may also take into account any other factors I think appropriate.

[28] TSA carried out a disciplinary process prior to reaching the decision to dismiss Mr Hannah. He was first invited to a formal disciplinary meeting to discuss three potential issues: failing to follow instructions from a team leader when Ms Pomana and Ms Geary asked to discuss things with him; physical abuse against a co-worker by pushing Ms Pomana and having a rowing machine fall on Ms Geary's foot; and use of abusive language and threatening behaviour in relation to Ms Pomana and more general use of threatening and derogatory language.

[29] These concerns were set out briefly and clearly in the letter inviting Mr Hannah to a disciplinary meeting. The letter also made it clear that TSA was "seriously concerned" and termination of employment might result.

[30] Mr Hannah takes issue with the written complaints from Ms Geary and Ms Pomana relied on by TSA, and says that TSA should have interviewed or questioned both Ms Geary and Ms Pomana more vigorously. I consider this to be a submission to the effect that TSA did not sufficiently investigate the allegations that were put to him.

[31] However, the documentary and in-person evidence does not bear this out. TSA received verbal complaints from two team leaders and from Mr Hannah himself about a concerning incident happening in store during work time. TSA sought written reports from all three, and once those were received, it put concerns to Mr Hannah based on those reports. This was not inappropriate. The complaints appeared serious on their face. Part of TSA's process was to put them to Mr Hannah to get his response. Putting complaints to Mr Hannah does not suggest TSA adopted those complaints uncritically.

[32] Mr Hannah also takes issue with parts of the allegations as put to him. He points out that Ms Pomana was not his team leader, and says that he was not obliged to talk to her. He goes further to suggest that he was not obliged to talk to Ms Geary as this was not a "formal" visit and/or there was in his view no need for Ms Geary or Ms Pomana (separately or together) to be present at all as someone else could have brought over the bookings book. He also points out that Ms Geary having a piece of equipment fall on her foot was not his fault.

[33] Looking at the correspondence from TSA, it is apparent that it has accepted Mr Hannah's concerns in part. In particular, the allegation that a rowing machine fell on Ms Geary's foot or that Mr Hannah was directly responsible for this is not carried forwards. TSA also referred to a refusal to carry out lawful instructions from a senior

staff member, rather than a team leader. Both these changes suggest that TSA was engaging with and considering Mr Hannah's position through the disciplinary process.

[34] However, these concerns raised on behalf of Mr Hannah do not go to the heart of the matter. Mr Hannah admits, both in his in-person evidence and in his response to TSA at the time, that he physically pushed Ms Pomana, a team leader and senior staff member, pushing her away from him rather than speaking to her at all when she visited the family store. He further admits to calling her by a derogatory slur. TSA considered these two actions by Mr Hannah, which are not in dispute, to be sufficient to justify termination.

[35] Mr Hannah's position before the Authority is that his admitted actions were not sufficient to justify termination, and that he should have received a lesser consequence such as a warning instead.

[36] In support of this plea, Mr Hannah said that he felt "entrapped" (he could not explain further what he meant), and he would not speak with Ms Geary who he acknowledged was his team leader because he believed there was an undisclosed plan to close the furniture store even though Ms Geary and the Regional Manager had both told him this was not the case. Mr Hannah said that his feelings on these matters should have been taken into account when TSA decided what outcome was appropriate, and this meant dismissal was not an appropriate outcome.

[37] I find that Mr Hannah's admitted actions, that is physical violence and abusive and/or derogatory language towards a co-worker were sufficient to justify dismissal. Case law demonstrates that physical violence in the workplace is commonly considered to be a form of serious misconduct sufficient to justify dismissal. Abusive language may also justify dismissal, and again this is accepted by Mr Hannah to have occurred here, in a way which supports, intensifies, and personalises the physical assault. I note that Mr Hannah denied using other abusive language and swear words, but after hearing the evidence, my view is that it is more likely than not that this occurred as well.

[38] Mr Hannah must take responsibility for the consequences of his admitted actions. How he acted was not acceptable in the workplace. In addition, Mr Hannah contributed directly to the situation that unfolded. He, by his own account, both accepted that Ms Geary was his team leader, and stated that he was refusing to talk to her in the workplace. He cannot then complain that another team leader who was

already known to him and had some shared responsibilities relating to his work, came to speak with him. His refusal to speak with either Ms Geary or Ms Pomana was not well-founded. Both of them had a right to speak with him in the workplace about work matters. I do not accept his unfounded evidence that this was some form of “trap” or as later submitted on his behalf, that it amounted to “provocation”. Faced with Mr Hannah’s refusal to speak with Ms Geary, it was both natural and responsible for TSA to see if he would be willing to communicate with another team leader.

[39] In addition, Mr Hannah’s evidence was that he felt anxious or unsettled because of the pending closure of the furniture store. He was unable to explain why he thought the store was going to be closed when both Ms Geary and the Regional Manager had spoken with him about this and told him this was not what TSA intended. Mr Hannah continued to maintain that this was false or misleading, and that he did not believe them, but he was simply unable to point to any supporting evidence. It was apparent from both his written and in-person evidence that he had formed a distrust of Ms Geary, Ms Pomana, and the Regional Manager, and his repeated comments about Ms Pomana’s appearance suggest a personal dislike, but there was no apparent reason for this.

[40] Despite it being clear from the evidence that Mr Hannah’s concerns about the closure of the family store were speculative, I further note after hearing evidence on this matter that there was no particular reason this would have resulted in an adverse employment outcome for Mr Hannah as the TSA had a much larger store close by that was in need of staff.

[41] Taking all this into consideration, I am not persuaded by the submissions on behalf of Mr Hannah that the sanction for his admitted actions could only have been something short of dismissal. Mr Hannah has failed to appreciate the inherent seriousness of his actions in assaulting a co-worker, and the aggravating features of derogatory language and her seniority in the workplace. He has also failed to appreciate that it was his own refusal to communicate effectively with Ms Geary that led directly to an attempt to communicate with him by Ms Pomana in the first place.

[42] I find that TSA did give Mr Hannah a reasonable opportunity to respond to its concerns and did consider Mr Hannah’s explanations. However, the decision to dismiss was a decision that was open to TSA in all the circumstances at the time.

[43] Mr Hannah's personal grievance claim of unjustified dismissal is not made out. No orders are made.

### **Costs**

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

[45] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the respondent 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 the applicant 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.

[46] 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.<sup>1</sup>

Claire English  
Member of the Employment Relations Authority

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<sup>1</sup> For further information about the factors considered in assessing costs see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)