IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE

[2025] NZERA 529
3313980

	BETWEEN	DION GILBERT Applicant
	AND	THREE60DEGREES LIMITED Respondent
	AND	JOSHUA STEVENSON Second Respondent
Member of Authority:	Antoinette Baker	
Representatives:	Jo-Alta Myburgh and Lynda Mathieson, advocates for the Applicant No appearance for the Respondents	
Final information and Submissions received:	On the day, applicant only	
Investigation Meeting:	26 August 2025	
Date of Determination:	27 August 2025	

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Mr Gilbert claims he was disadvantaged by his former employer, the first respondent (T60) during his employment. This is in relation to not paying him on time, carrying out a poor redundancy process and in particular leaving him without payment of his final pay which largely constituted four weeks' notice upon being made redundant.

Mr Gilbert has not challenged the substantive reason for the end of his employment by redundancy. He claims compensation for the grievance and payment to him of his final pay which has been recorded on a final payslip as being paid by T60 on 22 July 2024. Mr Gilbert further claims a breach of good faith and seeks a penalty for this.

[2] Mr Gilbert has applied under s142W and 142Y of the Act[1] for leave to pursue Mr Stevenson the second respondent, the sole director of T60 and the sole director of its majority shareholder[2]. Notice of this and an opportunity to respond was provided to Mr Stevenson.[3]

[3] There have been no statements in reply from either respondent. There has been some contact from Mr Stevenson albeit challenges to having not received various documentation about the proceedings which I return to below. T60 is showing a Final Notice on the New Zealand Companies Office Register to remove.[4]

The Authority's Investigation process

[4] Mr Stevenson at various points has emailed the Authority saying he was either not aware of the details of the proceedings, or as recently as the day prior to the scheduled investigation meeting, that he wanted an adjournment because the matter was being claimed against himself personally and he had no information about this. An adjournment was declined based on the Authority's position that various past communications to Mr Stevenson had given him time to respond and consider the material before the Authority. This included material that there was an application seeking leave to pursue him personally. I am satisfied Mr Stevenson was sent Notice of the in person Investigation Meeting. Mr Stevenson's last email to the Authority after the adjournment was declined was later in the afternoon before the Investigation Meeting. He repeated assertions he had not been provided material and indicated he was 'out of coverage' until the day after the Investigation Meeting. The Authority having already indicated it was going ahead with the Investigation Meeting did so the next day giving some time at the start to ensure Mr Stevenson was not running late. He did not appear. There was also no appearance for T60. I continued with the meeting[5] and now make this determination.

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[1] Employment Relations Act 2000.
[2] https://app.companiesoffice.govt.nz/companies/app/ui/pages/companies/8192899
[3] Directions of the Authority dated 27 March 2025, Member Vincent at [6] - [8].
[4] As above at note 1.
[5] Employment Relations Act 2000, Schedule 2, clause 12.

[5] Mr Gilbert lodged a brief of evidence before the Investigation Meeting and on oath answered questions from me about his claims. To the extent Mr Stevenson has provided email comments in response, these were put to Mr Gilbert in the course of my questions to him. I heard a brief oral summing up from Mr Gilbert's representative.

[6] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings and expressed conclusions as necessary to dispose of the matter and make appropriate orders.

The issues

[7] The issues requiring investigation are:

a. How did Mr Gilbert's employment likely come to an end with T60?

b. Has T60 failed to pay final wages owed, and if so, should the Authority make an order for payment?

c. Is Mr Stevenson a person involved in terms of s 142W of the Act, and if so,

should the Authority grant leave to Mr Gilbert to recover any wages or other money payable to him under s 142Y of the Act in the event T60 defaults on any wages due that represent employment standards entitlement?

d. Did T60 unjustifiably disadvantage Mr Gilbert and if so, should it award him compensation of $10,000 as claimed under s 123(1)(c)(i) of the Act?

e. Did T60 breach its duty of good faith to Mr Gilbert warranting a penalty?

f. Should the Authority award costs, and if so, how much?

How did Mr Gilbert's employment likely come to an end with T60?

[8] I have a letter dated 11 July 2024 on 'Homes by Three60Degrees' letterhead, signed by Mr Stevenson to Mr Gilbert as follows:

> Thursday 11th July 2024
> To: Dion Gilbert
> Re: Notice of Redundancy

> Please be advise [sic] due to the current finical [sic] position of the company Three60degrees Limited we are not in a finical [sic] position to continue with the number of staff we currently have due to a client not paying and disputing a significant amount of money. As such I have no choice but to make a number of roles redundant. Please be advised that your role has been made redundant as of [sic] Today date. You will be paid out the 4 week notice period as per your contract. You are not required to work out your notice period [sic] Your final Pay will be processed on Thursday 18th July in full.
>
> Regards
> Josh Stevenson.

[9] While Mr Stevenson emailed the Authority the day prior to the Investigation Meeting stating that Mr Gilbert 'resigned without notice' this is wholly inconsistent with the above. That four weeks' notice was to be paid to Mr Gilbert is also supported by the final T60 payslip which includes a calculation for such a payment. I will return to Mr Gilbert's claim that the payment recorded by T60 remains unpaid.

[10] I asked Mr Gilbert about the wording in his brief of evidence in relation to words about a 'resignation' discussion that occurred in the days before the above 11 July 2024 letter. I accept as plausible Mr Gilbert's explanation on oath that he was not overly familiar with the correct terminology and had never gone through a redundancy process before. I accept his straightforward explanation which was that it was Mr Stevenson who invited him to meet, told him his role would be ending due to the financial situation in the business and that Mr Gilbert should come back to him with other roles in the company he may think suitable. Mr Gilbert says he had no idea what other roles would be suitable. He described working in the build team and not being aware of any roles available. A second meeting was held at which Mr Gilbert says he was given the option by Mr Stevenson of either being paid out a four week notice period and not working, or working that paid notice period. Mr Gilbert says he agreed to the latter. The next day the above letter indicated he was not required to work and would be paid the notice period.

[11] Based on the above, I find that Mr Gilbert's employment ended by T60 through its sole director deciding Mr Gilbert's role was redundant.

Has T60 failed to pay final wages owed, and if so, should the Authority make an order for payment?

[12] Mr Gilbert in his evidence on oath confirmed that he does not dispute the calculations in the final T60 payslip. In other words, Mr Gilbert says that the key issue for him was to receive his final pay which despite the final T60 payslip recording payment day as 22 July 2024, was never paid to him.

[13] The T60 final payslip includes the same bank account reference for payment that the two other T60 payslips before me show. Mr Gilbert confirmed this was his bank account. I had him look up and provide me with his bank account statement for transactions across the time of the 22 July 2024. There is no deposit on that day or days either side in the bank statement for that account. This coupled with Mr Gilbert's straight forward evidence on oath satisfies me that he has not been paid the final pay showing in T60's final payslip. I have no evidence showing that T60 remitted PAYE or KiwiSaver as showing on the final payslip. T60 was given an opportunity to participate in this investigation and did not. I find on balance the money has not been paid and that T60 is to pay Mr Gilbert the full gross amount calculated for the final pay on the final payslip dated pay period 8-21 July 2024 being $11,210.81 gross. This will then leave Mr Gilbert to reconcile any tax obligations to the Inland Revenue Department on this amount and to his own KiwiSaver account.

Is Mr Stevenson a person involved in terms of s 142W of the Act, and if so, should the Authority grant leave to Mr Gilbert to recover any wages or other money payable to him under s 142Y of the Act in the event T60 defaults on any wages due that represent employment standards entitlement?

[14] The effect of ss 142W and 142Y of the Act is that an employee is able to recover money from a director of a company that has been held liable for non-performance of the company's employer obligations in relation to employment standard entitlements. Employment standards is defined as[6] including the provisions of the Wages Protection Act 1983 which at s4 provides that:

[6] Employment Relations Act 2000, s5.

> Subject to [sections applying to deductions and terms of employee consent for the same], an employer shall, when any wages become payable to a worker, pay the entire amount of those wages to that worker without deduction.

[15] I have found T60 has failed to pay the final pay due to Mr Gilbert when he left his employment. This is the amount stated on the final T60 payslip as 'paid' on 22 July 2024 into Mr Gilbert's bank account number which is inconsistent with the bank statement showing this amount was not in fact deposited at the time. This a breach of T60's statutory obligation under s 4 of the WPA being a failure to pay wages due without deduction. The breach falls within the definition of 'employment standards'[7] to which s142Y of the Act can apply.

[16] Mr Stevenson can be regarded as 'a person involved'[8] in the above breach as the director of T60. There is a corresponding provision under s11A of the Wages Protection Act 1983 for recovery in this manner. However, Mr Gilbert can only make such an application if the Authority grants leave for this to happen and then a recovery can only be ordered if T60 'is unable to pay the arrears in wages or other money.[9]'

[17] I am satisfied that it is appropriate to grant leave for Mr Gilbert to seek recovery of the wages due at the end of his employment from Mr Stevenson personally in the event of default due to T60 being 'unable to pay'. It seems that one situation in the absence of any other evidence may be that the company no longer exists on the register. As noted above at [3] there is a process underway to remove T60 from the New Zealand Companies Office Register.

[18] Accordingly, I grant leave to Mr Gilbert to return to the Authority in these proceedings in the event that T60 is 'unable to pay' the order of $11,210.81 gross being wages due at the end of Mr Gilbert's employment with T60. If Mr Gilbert does this I will then consider the application that Joshua Stevenson is to be held fully liable for this payment under s142Y of the Act and the corresponding s11A of the Wages Protection Act 1983 as a person involved under s142W of the Act. The parties should expect that if this matter returns a process giving both parties there will be an opportunity for the parties to be heard.

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[7] Employment Relations Act 2000, s5.
[8] Employment Relations Act 2000, s142W (2).
[9] Employment Relations Act 2000, s142Y (2)(a) and (b).

Did T60 unjustifiably disadvantage Mr Gilbert and if so, should it award him compensation of $10,000 as claimed under s 123(1)(c)(i) of the Act?

[19] Section 103(1)(b) of the Act sets out the type of grievance Mr Gilbert brings: '1 or more conditions of the employee's employment (including any condition that survives termination of the employment).' I accept that the 'condition' is the late payment of Mr Gilbert's pay in April 2024, and the nonpayment of Mr Gilbert's final pay. To the extent Mr Gilbert has claimed issues with the suddenness and procedural deficiencies of the redundancy, I find he accepts that there were two discussions, and he is Stating in his claim that he has no issue with the substantive reasoning. I consider the issues he raises are best dealt with as part of his disadvantage claim and rely on s160 of the Act to do this.

[20] Mr Gilbert refers me to the April 2024 pay that was paid approximately 8 days late and highlights the lack of follow up from Mr Stevenson. I accept this delay would have been stressful during that short period for what I accept was a gap in Mr Gilbert's earnings with a young family and a mortgage. However, I am not satisfied I have a continued action as Mr Gilbert explained to me that then connects to the nonpayment of the final pay in July 2024. To that end I focus only on the actions of T60 and the nonpayment of the final pay. The nonpayment is a continued breach of employment standards under the Wages Protections Act 1983 going on now for over a year. I consider this fits without the definition of a grievance of disadvantage in that the effect was seriously unfair to Mr Gilbert continuing to be so beyond the end of his employment, employment that came to a quick end without pay beyond that date. The amount owed is not insignificant for a family man supporting a young family. I accept that Mr Gilbert's partner at the time was not working and was about two months from delivering their second child. I accept there was a mortgage and likely other outgoings to be paid. I accept there would have been pressure and humiliation for Mr Gilbert caused by T60's action of nonpayment. I find these effects are what compensation is for.

[21] I have paused to consider whether I should not order compensation under s 103(1)(c) of the Act in the context of a claim that is effectively for 'unpaid wages'. Sometimes disputes relating to employment standards can also amount to unjustified disadvantage[10]. I consider that Mr Gilbert has been poorly treated by T60 through its sole director. To end an

[10] *O'Boyle v McCue* [2020] NZEmpC 175.

employee's employment and then write to them that this will be on 4 weeks paid notice for redundancy, and to also produce a pay slip indicating the notice period in the final pay period has been paid, when it has not, has an element of something more than inadvertent. This has been exacerbated by the way Mr Stevenson has largely not engaged to resolve this matter or provide T60s response beyond intermittent brief words in email in his communications to the Authority in these proceedings. As the Court observed in *O'Boyle*[11], this is a case that should never have had to get this far. It involved a simple case of an employee being entitled to a final four weeks' notice period, a notice period that the employer stated flowed from its decision (and not the employee's decision) to make the employee's role redundant.

[22] Accordingly, I do not consider this is a case of 'double dipping' a remedy. The additional likely humiliation and injury to feelings as well as the unfair distress caused should in my finding attract a compensatory payment of $3,000.00. This is more appropriately at a lower end of the scale to that which was proposed on Mr Gilbert's behalf. I do not consider I have evidence to show a higher penalty is appropriate compared to other cases where the adverse behaviour was comparatively more evidenced and serious.[12]

Under s 124 of the Act are any remedies to be reduced for employee contribution to the grievance?

[23] I do not find this is a matter attracting any reduction in remedies due to Mr Gilbert's contribution to the grievance. While Mr Stevenson in his emails to the Authority alludes to equipment not returned, the unfair disadvantageous action is founded on a starting point of a breach of employment standards. An employer cannot 'set off' against a statutory obligation. Further, I asked Mr Gilbert under oath if he had retained T60's equipment. His answer was a plausible, straightforward no.

Did T60 breach its duty of good faith to Mr Gilbert warranting a penalty?

[24] Mr Gilbert appeared unsure about this aspect of his claim when I asked him. His stated focus was to recover his final pay. I can accept there is a likely breach of good faith for not communicating reliably about the payment. However, I have ordered remedies above and would be unlikely to award a portion to Mr Gilbert on any penalty, because of this. I also have

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[11] Above at note 10.
[12] Above at note 10.

nothing little before me to support a penalty under the factors I must consider under s 3 and s133A of the Act.

[25] This part of Mr Gilbert's claim is unsuccessful.

Should the Authority award costs, and if so, how much?

[26] The Authority considers costs for a successful party from the starting point of a 'daily tariff' unless factors require an adjustment.[13] Mr Gilbert has been largely successful. He is entitled to an award for costs. T60 is ordered to pay Mr Gilbert $1,125.00 as a contribution to his costs (a quarter day investigation meeting) together with the filing fee of $71.55.

Summary of outcome

[27] Within 21 days from the date of this Determination Three60Degrees Limited is to pay Dion Gilbert the following:

a. Compensation of $3,000.00 under s 123(1)(c)(i) of the Act.

b. Final pay wage arrears of $11,210.81 gross.

c. Costs of $1,125.00.

d. Filing fee of $71.55.

[28] If Three60Degrees Limited defaults on the $11,210.81 gross to be paid above at [27]b. Dion Gilbert may return to the Authority in these proceedings to seek to recover this amount from Joshua Stevenson as a 'person involved' under s 142W of the Act.

Antoinette Baker
Member of the Employment Relations Authority

[13] www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1