

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 551  
3307060

BETWEEN                      BRIAN GREEN  
   Applicant  
  
AND                              PROPERTY SERVICES  
   UNLIMITED (WAIKATO)  
   LIMITED  
   Respondent

Member of Authority:        Helen van Druten  
  
Representatives:              Applicant in person  
   Shiv Gounder, advocate for the Respondent  
  
Investigation meeting:        On the papers  
  
Submissions received:        No submissions from the Applicant  
   11 July 2025 from the Respondent  
  
Determination:                4 September 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     This determination resolves an application by Mr Brian Green raising grievance claims for unjustified dismissal, unjustified disadvantage, unlawful discrimination and breach of contract against Property Services Unlimited (Waikato) Limited (PSU) and Mr Michael Parton as director of PSU.

[2]     In his application, Mr Green reiterated the detail provided in the grievance he raised directly with PSU on 22 May 2024 including that he was forced to sign a training bonding agreement and that his role was changed by the company without consultation. He further says that he was not provided with his required hours and was unjustifiably dismissed when he attended a meeting on 17 May 2024.

[3] PSU says that from the commencement of his employment, Mr Green was a casual employee, and it disputes his claims as above. It further says that Mr Green obtained the necessary training to undertake asbestos removal without signing the training agreement. When an incident investigation revealed that he failed to wear correct personal protective equipment at work on 7 May 2024, he was invited to a formal meeting on 17 May 2024 with Mr Parton, director of PSU and Ms Dwyer, human resources manager. After discussions became heated, the meeting was adjourned. Mr Green did not return to work the next day as agreed with Ms Dwyer and had no further contact with PSU until the raising of his personal grievance on 22 May 2024.

[4] PSU denies that any wages are owing and confirmed that as a casual employee Mr Green was paid eight percent holiday pay within each applicable pay period.

### **Removal of Second Respondent**

[5] PSU filed an application for removal of Mr Parton as Second Respondent. As there was no response from Mr Green or his (then) representative, Kim Ahern, in response to this application, and there is no evidence presented to the Authority to suggest that PSU is unable to pay any arrears in wages or other money as required by s 142Y of the Act, Mr Parton is removed as Second Respondent pursuant to s 221 of the Act.

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

[6] Since the case management call with his representative on 7 April 2025, Mr Green has not engaged with the Authority and Ms Ahern was also unable to obtain further instructions from him and provide witness statements. As a result, on 4 June 2025 Ms Ahern advised the Authority that she was unable to continue representing him. From that date, all further communications from the Authority were sent to the address provided by his representative.

[7] In response to the change in representation for Mr Green, the parties were advised that all filing dates were extended by two weeks to allow Mr Green an opportunity to seek alternative representation if he wished. This was further extended by another two weeks by agreement with PSU. No documents were lodged or served by Mr Green or any representative on his behalf and Mr Green did not communicate with PSU or the Authority.

[8] On 9 June 2025, Mr Green was advised by the Authority of the provisions of s 12, Schedule 2 of the Act which states:

“If, without good cause shown, any party to a matter before the Authority fails to attend or be represented, the Authority may act as fully in the matter before it as if that party had duly attended or been represented.”

[9] On 11 July 2025, Mr Gounder filed a cost recovery application for PSU for legal costs incurred on the basis that Mr Green did not meet the Authority’s timetabling requirements. The investigation meeting remained timetabled in Hamilton for 5 August 2025. Written witness statements were lodged from Mr Michael Parton, as Director of PSU and Debbie Dwyer as human resources manager for PSU on 21 July 2025.

[10] By Member’s minute of 23 July 2025, Mr Green was given the opportunity to confirm his attendance at the investigation meeting, provide any further information relating to his application and provide any submission on the cost recovery application by 28 July 2025. He was also advised that if he wanted to withdraw his application, he needed to advise the Authority.

[11] Mr Green did not respond and consequently the investigation meeting was vacated and at PSU’s request, the matter has been determined on the papers.

[12] The Authority is satisfied that Mr Green has had multiple opportunities to engage with the investigation and has chosen not to do so. He was served with copies of all relevant documents including earlier directions and minutes which were sent to his representative up to 4 June 2025 and to Mr Green directly after that date. He was advised on three occasions in writing (9 June, 30 June and 23 July 2025) of potential implications of non-engagement including that his application would be determined on the papers along with the costs recovery application and provided an opportunity to provide comment and further information if he wished to do so.

[13] The Authority is not aware of any good cause for Mr Green’s lack of engagement in this matter. On that basis, I have continued the investigation as provided within Schedule 2 of the Act and also considered the costs recovery application.

[14] 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**

[15] The issues requiring investigation and determination were:

- a. whether Mr Brian Green was a casual or permanent employee of PSU.  
If he was a permanent employee, then:
  - i. was he unjustifiably dismissed?
  - ii. were his contracted hours provided to him?
  - iii. was his role changed unilaterally by the employer or not?
  - iv. are there wage arrears owed for a notice period?
- b. Was he disadvantaged in his employment by failing to sign the bonding agreement and/or PSU's failure to meet their safety obligations as employer?
- c. If PSU's actions were not justified (by disadvantaging and/or dismissing Mr Green), 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
- d. If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Mr Green that contributed to the situation giving rise to his grievance?
- e. Did the employer breach their good faith obligations by pressuring Mr Green to sign a training bonding agreement and if so, is a penalty appropriate?
- f. Should either party contribute to the costs of representation of the other party?

[16] The wage and time record claim under section 130 of the Act was withdrawn by Mr Green as these have now been provided.

### **Analysis and Findings**

[17] The Authority reviewed the material provided by Mr Parton and Ms Dwyer for PSU and the Statement of Problem provided by Mr Green.

### *Employment Status*

[18] The first issue to determine was whether Mr Green was a casual or permanent employee of PSU. Through his representative, Mr Green says that he was employed on a permanent basis, though he did not provide any evidence to support this claim.

[19] In contrast, Ms Dwyer says that she interviewed Mr Green for the position as Casual Asbestos Labourer / Pest Control and Restoration Technician so he understood that he was a casual employee at interview. He returned a signed copy of the Individual Employment Agreement as a casual employee prior to him commencing his employment within the company and shifts offered to Mr Green were on an "offer and acceptance" basis. He did not have regular or expected hours or days of work.

[20] Where the parties disagree on employment status, it is for the Authority to "consider all relevant matters, including any matters that indicate the intention of the persons and [the Authority] is not to treat as a determining matter any statement by the persons that describes the nature of their relationship".<sup>1</sup>

[21] Other than Mr Green's unsubstantiated claim of permanent employment, there is nothing to suggest that Mr Green was not a casual employee. On the contrary, PSU provided as evidence its casual employment agreement between Mr Green and itself that was signed by them both. Ms Dwyer confirmed that Mr Green was paid eight percent holiday pay with each pay period which is consistent with casual employment and payslips were sighted to support this. Mr Parton also said that Mr Green worked 28 days over five months. The infrequency of work is also consistent with the employment relationship being casual in nature as opposed to permanent employment.

[22] As a casual employee, each period of employment is treated as a separate period of employment and the employer is not obliged to offer ongoing work to the casual employee, nor is the casual employee obliged to accept it. On that basis, Mr Green's claim for unjustified dismissal is declined and it is not necessary for the Authority to consider his further claims regarding notice, changes in duties or provision of contracted hours.

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<sup>1</sup> Employment Relations Act 2000, s 6(3).

### *The training bonding agreement*

[23] Mr Green says that he was unjustifiably disadvantaged by his refusal to sign a training bonding agreement with PSU and was concerned that he would be offered less work by his refusal to sign it. He further says that he felt pressured to sign the agreement and this pressure was a breach of PSU's good faith obligations as an employer.

[24] In her evidence, Ms Dwyer said that completion of the safety training is a legal requirement for any employee wanting to work in asbestos removal, regardless of employment status. She acknowledges that Mr Green was asked to sign a training bonding agreement saying that he would stay with the company for two years or would be required to pay back the training cost. When he expressed concerns about this with Ms Dwyer, he was permitted to attend the course anyway and never signed the agreement.

[25] With the Authority's inability to test whether Mr Green's concerns were substantiated and no evidence presented to suggest that he was offered less work than others who signed the agreement, it has not been established that Mr Green's employment was disadvantaged as a result of his refusal to sign the agreement.

[26] Mr Green's claim of a good faith breach by PSU pressuring him to sign the agreement was also unfounded. Good faith in the employment relationship includes that the parties are active and constructive in establishing and maintaining the employment relationship and are, among other things, responsive and communicative.<sup>2</sup> Mr Green appropriately raised his concerns about signing the agreement with Ms Dwyer when it was presented to him. Ms Dwyer acknowledged that she expected him to sign the agreement as the training was expensive and PSU looked to dissuade employees joining PSU to get the qualification and then leaving. There was no evidence presented that Ms Dwyer was misleading or sought to undermine the employment relationship. Accordingly, this claim is also unsuccessful.

### *Safety concerns*

[27] Mr Green also claims disadvantage related to PSU's failure to meet its safety obligations. There was no evidence provided to support this claim. On the contrary,

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<sup>2</sup> Employment Relations Act 2000, s 4(1A)(b).

witness evidence from Mr Parton and Ms Dwyer say that for the first incident on 29 February 2024 Mr Green had taken off his safety harness in breach of health and safety protocols. For the second incident on 7 May 2024, their investigation indicated that he had again deliberately breached health and safety protocols by failing to wear his personal protective equipment.

#### *Wage arrears*

[28] Mr Green has claimed that he is owed his final pay. Ms Dwyer provided copies of Mr Green's payslips showing that he was paid as a casual employee. As a casual employee paid holiday pay with each pay period, the Authority considers it is unlikely that Mr Green is owed wage arrears however is unable to determine this without evidence to support such a claim.

#### **Summary of findings**

[29] The Authority was unable to test any evidence provided by Mr Green. Accordingly, this determination is made on the basis of the original documents submitted by the parties, discussions during the case management call and supporting evidence and witness statements provided by Mr Parton and Ms Dwyer for PSU.

[30] On the basis of the above information, Mr Green's claims cannot be substantiated and are unsuccessful.

#### **Application for costs**

[31] PSU incurred legal costs amounting to \$4,223.20 which it now seeks by way of an order for costs. A breakdown of these costs was sighted.

[32] Despite the invitation to submit a response on PSU's application for costs, nothing was received from Mr Green.

#### *Authority's approach to costs*

[33] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Act. The discretion to order a party to pay costs to another must be exercised on a principled basis and awards made consistent with the Authority's equity and good conscience jurisdiction. Those principles are well settled

and are outlined in the Authority's Practice Note,<sup>3</sup> and Practice Direction,<sup>4</sup> both publicly available online.

[34] Informing the Authority's approach to costs is the leading decision of *PBO Limited (formerly Rush Security Ltd) v Da Cruz (Da Cruz)* where the Employment Court established key principles for the Authority to consider when determining costs.<sup>5</sup> Those key principles include:

- (a) There is a discretion as to whether costs are awarded and in what amount;
- (b) The discretion is to be exercised in accordance with principle and not arbitrarily; and
- (c) That awards will be modest.

#### *Withdrawal of claims prior to the investigation meeting*

[35] The decision in *Eden v Rutherford & Bond Toyota Limited* held that costs can still be awarded when proceedings are withdrawn prior to the investigation meeting.<sup>6</sup> Mr Eden withdrew his claims the day before the investigation meeting. It was accepted that the company was put to expense for which it should be reimbursed and directed Mr Eden to pay a contribution to costs of \$4,500. The Court noted that:

There is no time limit for withdrawing proceedings that will affect precisely the question of costs. As a matter of commonsense, however, the closer in time that proceedings are withdrawn before a hearing, the greater will probably have been the time put into their preparation by the other party and, therefore, the costs which the other party will have incurred reasonably and which may be the subject of an order.<sup>7</sup>

[36] In that decision, the Court held that the most important factor is the proximity of the withdrawal to the scheduled hearing, and all the circumstances in which the withdrawal was made.

#### *Application of costs principles to PSU's application*

[37] Mr Green's representative attended a case management call on 7 April 2025 where timetabling of documents was set for an investigation meeting scheduled on 5 August 2025.

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<sup>3</sup> [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-).

<sup>4</sup> <https://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf>.

<sup>5</sup> *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

<sup>6</sup> *Eden v Rutherford & Bond Toyota Limited* [2010] NZEmpC 43.

<sup>7</sup> Above n 2 at [8].

[38] Unlike in *Eden*,<sup>8</sup> Mr Green did not withdraw from the investigation meeting; he was silent on the matter and failed to engage at all. I do not differentiate between an active withdrawal of the application or silence in these circumstances. By his inaction, Mr Green protracted the uncertainty for PSU with the investigation meeting and PSU incurred unnecessary legal costs. Mr Green could have easily reduced the other party's legal costs by engaging with the Authority if he did not wish to pursue his application.

[39] As advised by the Member's minute of 23 July 2025, Mr Green was given until 28 July 2025 to engage with the Authority, provide any submissions on the cost recovery application and confirm if he would be attending the investigation meeting. With no response, the investigation meeting was cancelled on 29 July 2025.

[40] I considered whether preparation of witness statements by PSU was reasonable and necessary after 4 June 2025 when Mr Green was no longer represented and had not communicated with the Authority despite two extensions to the Authority's timetable directions. Despite it being likely Mr Green would not attend the investigation meeting the investigation meeting remained timetabled by the Authority until 28 July 2025 to allow Mr Green every reasonable opportunity to engage in the process. I do conclude that the preparation of witness statements by PSU was necessary to be prepared in the event that he did attend. PSU kept to the timetable directions in submission of its documents. PSU did not need to incur any representative's expense for investigation meeting preparation or attendance.

[41] As is well established, costs are not to be used as a punishment or as an expression of disapproval of the other person's conduct,<sup>9</sup> they are to recompense the other party for costs incurred in accordance with the Authority's practice note on costs. I am satisfied that PSU incurred these reasonable legal costs responding to the claims made against them and that Mr Green is responsible for bearing his share of those costs.

[42] This matter was dealt with on the papers. When a party has incurred costs for representation by a lawyer or other advocate, the Authority may order whichever party is unsuccessful to contribute to any reasonably incurred costs of the other party.

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<sup>8</sup> Above n 2.

<sup>9</sup> Above n 5.

[43] As to quantum of costs, I refer to guidance provided by the decisions and principles of the Court in both *Eden* and *PBO Limited*. This decision is based on:

- a. the relativity of the notional tariff to the amount awarded in *Eden*,
- b. the proximity to the investigation meeting date,
- c. costs incurred by PSU and Mr Parton,
- d. Mr Green's decision not to mitigate PSU's costs by communicating with PSU or the Authority;
- e. A modest award exercised in accordance with principle; and
- f. the unknown financial situation of Mr Green,

[44] Applying these principles, I consider a proportional contribution to costs is appropriate.

### **Order**

[45] I order Mr Green to pay \$2,533.92 to Property Services Unlimited (Waikato) Limited as a contribution to 60 percent of their legal costs. As Mr Green's financial situation is unknown, half of this amount (\$1,267.00) is to be paid within 28 days of this determination, with the remainder paid within 90 days of this determination.

Helen van Druten  
Member of the Employment Relations Authority