

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 608
3239099

BETWEEN	SEUNGWOOK DO Applicant
AND	URBANSTRA LIMITED (FORMALLY LEEHAN MANAGEMENT LIMITED) First Respondent
AND	JUNHO LEE Second Respondent

Member of Authority:	Andrew Gane
Representatives:	Michael Kim, counsel for the Applicant Mark Ryan, counsel for the Respondent
Investigation Meeting:	6 August 2024 and 2 July 2025 in Auckland
Submissions received:	16 July 2025 from the Applicant 30 July 2025 from the Respondent
Determination:	30 September 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Seunhwook (Henry) Do was employed by Leehan Management Limited in February 2021 as a development manager. On 4 March 2024 Leehan Management Limited changed its name to Urbanstra Limited (Urbanstra) and will be referred to as such throughout this determination.

[2] Mr Do resigned from his employment with Urbanstra in March 2023. Since then, he lodged claims to the Authority against Urbanstra claiming he was constructively dismissed and was owed outstanding wages and reimbursement for expenses incurred by him during his employment.

[3] Urbanstra opposed Mr Do's claims saying Mr Do resigned and left his employment on his own volition. It also said it had properly paid Mr Do all his wages for his work and any reimbursements for expenses incurred by him.

The Authority's investigation

[4] For the Authority's investigation written witness statements were lodged from Mr Do, Urbanstra director, Sunhe Lee-han, the second respondent, Urbanstra general manager, Junho (Bruce) Lee, Elena Kang and Parmesh Sharma. All witnesses answered questions under oath or affirmation from me and the parties' representatives.

[5] The investigation meeting was adjourned part heard by consent on 6 August 2024 for the parties to provide the Authority with a certified translation of documentary evidence which was presented in Korean. The investigation meeting was reconvened on 2 July 2025. The representatives then lodged with the Authority written closing submissions.

[6] 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

[7] The issues requiring investigation and determination were:

- (a) Was Mr Do unjustifiably disadvantaged during his employment with Urbanstra?
- (b) Was Mr Do constructively dismissed by Urbanstra?
- (c) If Urbanstra's actions were not justified, what remedies should be awarded to Mr Do, considering;
 - (i) reimbursement of lost wages under s 123(1)(b) of the Act (subject to evidence of reasonable endeavours to mitigate his loss); and
 - (ii) compensation under s 123(1)(c)(i) of the Act?
- (d) Did Urbanstra breach the terms of the employment agreement between it and Mr Do by:

- (i) paying Mr Do's salary incorrectly; and
 - (ii) failing to reimburse his expenses?
- (e) If Urbanstra is found to have breached Mr Do's employment agreement to determine also whether:
 - (i) Mr Do is entitled to any payments of arrears and/or reimbursements of amounts owing to him; and
 - (ii) a penalty is to be imposed against Urbanstra under s 134 of the Act?
- (f) Is Mr Do entitled to payment for overtime work he carried out for Urbanstra?
- (g) For any outstanding wage and holiday arrears ordered against Urbanstra, should:
 - (a) leave be granted to allow the arrears to be recovered directly from the second respondent, Mr Lee (in accordance with s 142Y of the Act); and
 - (b) a penalty be imposed against Mr Lee under s142X of the Act?
- (h) Should one party contribute to the costs of representation of the other party?

Background

The start of Mr Do's employment

[8] Urbanstra carried out business as a property management service provider based in Auckland. Mr Lee also worked for Urbanstra and was responsible for the company's management and administration.

[9] In November 2021 Mr Lee approached Mr Do about possibly working for Urbanstra as a development manager. During this time, Mr Do claimed Mr Lee offered him an annual salary of \$75,000. Urbanstra disputed Mr Do's claims and said Mr Do was offered \$70,000 as a starting annual salary rate for his employment for the company.

[10] Mr Do was given a written employment agreement by Urbanstra in December 2021. Upon review of his agreement, Mr Do said he realised his annual salary was identified as \$72,000 which was less than what was agreed with Urbanstra previously.

[11] After an attempt to clarify the discrepancy Mr Do said he signed the agreement because he was eager to start his role for the company. Mr Do started his employment on 1 February 2022, and he reported to Ms Kang.

[12] After receiving his first payslip in February 2022, Mr Do claimed his salary was further reduced to \$70,000. The parties dispute whether they had always agreed for Mr Do's salary to be paid at this amount.

Company issue from February 2022

[13] From February to October 2022 Urbanstra was engaged in a development project which suffered significant financial setbacks involving another company which operated as the head contractor for the project.

[14] As a result, Mr Do's work hours were reduced in May 2022. Mr Do was still paid his full salary and agreed to continue working for Urbanstra despite the uncertainties surrounding the project.

[15] The project continued throughout the rest of 2022 and was eventually completed in October 2022. In November 2022 Urbanstra granted Mr Do eight weeks of paid leave which commenced in December 2022.

Mr Do's resignation

[16] Mr Do returned to New Zealand in the New Year and from 13 February 2023, Mr Do claimed Mr Lee began making sarcastic remarks towards him such as "I pay you a lot of money, but you are doing little for the company. You should find another job." Mr Lee also began sending him text messages with similar comments urging Mr Do to quit and find other work.

[17] Mr Do claimed Mr Lee's verbal and text communications created a highly stressful and intolerable work environment which led him to resign from his employment on 10 March 2023.

Unjustified disadvantage

[18] Mr Do claimed he was unjustifiably disadvantaged by Urbanstra for several reasons which included allegations against Urbanstra for:

- (a) requiring him to carry out manual tasks which fell below his professional role as a development manager;
- (b) not paying Mr Do the correct salary as agreed between them before he started his employment;
- (c) not paying him for overtime work; and
- (d) not properly reimbursing him for expenses he incurred as part of carrying out his work for the company.

[19] Urbanstra opposed Mr Do's unjustified disadvantage allegations on the basis that his employment agreement did not require him to be paid for overtime work. Urbanstra did not address the other aspects of Mr Do's claims.

[20] Each of Mr Do's claims for unjustified disadvantage relate to a clear dispute as to the operation of his employment agreement with Urbanstra. Ordinarily these types of claims do not fall within the ambit of a grievance under the Act. As confirmed by the Employment Court it found that:¹

...unjustifiable action by the employer does not include an action deriving solely from the interpretation, application or operation, or disputed interpretation, application, or operation, of any provision of any employment agreement.

[21] The grounds of Mr Do's unjustified disadvantage claims fell more appropriately within the ambit of a dispute as opposed to a grievance under the Act. Accordingly, Mr Do's unjustified disadvantage claims were unsuccessful.

[22] In line with Mr Do's statement of problem, some of the grounds of his unsuccessful unjustified disadvantages claim are also assessed as part of the Authority's investigation into Mr Do's claims of breach of his employment agreement. These will be addressed later in this determination.

¹ *Breen v Prime Resources Company Ltd* [2023] ERNZ 816 at [25].

Constructive Dismissal

Legal principles relating to claims for constructive dismissal

[23] A constructive dismissal is when an employer's conduct compels a worker to resign. This includes circumstances where an employee's dismissal was caused by an employer's breach of obligations owed to the employee.

[24] A resignation may be deemed to be a constructive dismissal if an employer could reasonably foresee an employee would resign rather than put up with the ongoing breaches.²

Mr Do's claims

[25] Mr Do claimed Urbanstra's actions forced him to resign from his role. Specifically, Mr Lee's verbal conduct towards him and confirmation of his conduct through his various text messages which he claimed was hostile.

[26] Along with Mr Lee's alleged verbal comments towards him, Mr Do referred to text messages confirming Mr Lee's continued attempts to make him resign. This included a text message sent from Mr Lee to him on 25 February 2023 saying the following:

I can't reach you. Seungwook, if you don't want to work, you can quit and find another job. I'll give you time. There's no need to whine behind my back to others.

[27] Mr Do also relied on a communication from Mr Lee on behalf of Urbanstra to Mr Do's legal representative saying:

I have asked him to resign as he was not reachable and was at least one hour late between 13th February and the 25th February.

The respondents' response to Mr Do's dismissal claims

[28] Urbanstra maintained its view that Mr Do willingly resigned from his employment on his own volition. It said Mr Do's decision to resign arose from the prospect that only limited work would be available to him (because of Urbanstra's project finished at the end of 2022).

² *Auckland Shop Employees IUOW v Woolworths (NZ) Ltd* [1985] 2 NZLR 372 at 374-375.

[29] Urbanstra said it communicated to Mr Do the likelihood of only limited work in a further email from Mr Lee to him on 28 February 2023, stating:

I will give you another 2 weeks so you can attend interviews ... I don't have too much appetite to expand further works at this stage you should be looking for the different work quickly so I can start look and find another business owner who can take over this office lease...

[30] Urbanstra also claimed Mr Do had in fact breached the term of his employment agreement as he did not give four weeks' notice in writing prior to his resignation.

The Authority's assessment

[31] It was clear from the evidence that Mr Lee no longer wanted Mr Do to continue working for Urbanstra. The text messages plainly showed Urbanstra's attempt to persuade Mr Do to leave his employment. Given the evidence relating to Mr Lee's text messages to Mr Do in February 2023, it was also likely Mr Lee had reiterated his views to Mr Do (to leave his employment) through verbal communications with him.

[32] Given there was limited work available for Mr Do, it was understandable why Urbanstra no longer needed him. However, this did not entitle Urbanstra to tacitly and unreasonably push Mr Do towards resignation through several text and verbal communications.

[33] Although some communications appear to also accuse Mr Do of workplace issues (such as being late to work), there was no evidence to show Urbanstra had taken reasonable steps to either address Mr Do's conduct or to discuss with him the limited work available.

[34] It should be noted that Mr Do's employment agreement also had redundancy provisions to address when his role was no longer needed. There was no evidence to show Urbanstra had initiated a redundancy process.

[35] Based on the available evidence, it was clear Urbanstra no longer needed Mr Do to work for the company and took steps to attain Mr Do's resignation by unreasonable communications through text and verbal discussions. For this reason, Mr Do was constructively dismissed from his employment by Urbanstra.

Remedies

Lost wages

[36] Mr Do claimed he should be reimbursed three months for lost wages which amounted to \$16,440. The respondents disputed his claims on the basis that Mr Do did not provide any evidence confirming the steps he had taken to mitigate his situation after his employment ended with Urbanstra.

[37] There was minimal evidence before the Authority to ascertain Mr Do's circumstances after he resigned from his employment with Urbanstra. After his employment was terminated on 10 March 2023 Mr Do said he worked as a self-employed contractor sometime in April 2023.

[38] Mr Do did not give direct evidence of his earnings or any loss and he did not make any submissions about his claim for lost wages under the Act. Accordingly, there was insufficient evidence to conclude Mr Do suffered lost remuneration because of his personal grievance in accordance with the Act.³ Taking these circumstances into account, no award of lost wages is made in Mr Do's favour.

Compensation for hurt and humiliation

[39] As a result of his constructive dismissal Mr Do claimed he suffered emotionally as a result of the constant pressure to resign while in a hostile work environment. He also said he experienced sleepless nights, loss of appetite, and a general sense of hopelessness. Mr Do also said he felt withdrawn and irritable which affected his relationship with family and friends.

[40] In response, Urbanstra submitted Mr Do had not provided sufficient independent evidence in relation to his claims for hurt and humiliation.

[41] Although I accept Mr Do did suffer some form of distress because of Urbanstra's actions, his experiences were not completely outside of the reasonable financial and emotional impacts normally experienced by a person in his situation. Considering Mr Do's evidence of distress and the range of awards in similar cases, the sum of \$5,000 was an appropriate award of compensation.

³ Employment Relations Act 2000, s 128(1)(b).

[42] There is also no evidence to show Mr Do contributed to the situation giving rise to his grievance in a way that might require a reduction of his remedies. Since there was no fault or wrongdoing on his part, there were no grounds to reduce the amount of remedies he should receive.

Breach of employment agreement

Reimbursement of expenses

[43] Mr Do claimed he was owed \$1,884.79 in expenses he incurred while carrying out his work for Urbanstra. In support of his claim, he constructed a report explaining his claims for fuel costs and other vehicle expenses.

[44] Urbanstra disputed Mr Do's expenses claim which it said was surprised about, given the claim was raised after his employment and without any invoice evidence or record of an issue being previously raised.

[45] It was difficult to assess Mr Do's expense claims given his spreadsheet evidence referred to various expenses, GST numbers and receipts. Although I accept, he incurred expenses and was reimbursed on occasion, there was little supporting evidence or copies of receipts or bank records to show the expenses he was claiming.

[46] Mr Do's expense claims against Urbanstra were not appropriately proven and there was no evidence the company had breached its expense obligations under Mr Do's employment agreement.

Disagreement in respect of Mr Do's salary

[47] Mr Do claimed Urbanstra breached the terms of his employment agreement when it paid him \$70,000 as part of his annual salary. Prior to his employment starting with Urbanstra, Mr Do claimed he was offered (and accepted) a salary of \$75,000. He explained the amount was reduced when later he received an employment agreement confirming a salary of \$72,000. However, upon receiving his payslip, he realised he was paid \$70,000 which was a further reduction.

[48] Urbanstra accepted that the employment agreement confirmed his salary of \$72,000 and Mr Do was only paid \$70,000. In making this admission, Urbanstra invited the Authority to award lost earnings based on the difference of \$2,000.00 per annum for the period the applicant was employed.

[49] Considering the views of the parties, I accept Mr Do is entitled to his agreed amount of salary equalling \$72,000. Mr Do was employed by Urbanstra from 1 February 2022 to 10 March 2023. Mr Do is owed \$2,192.30 gross by Urbanstra. Accordingly, Urbanstra is ordered to pay Mr Do \$2,192.30 gross.

[50] By not paying Mr Do at his contractual rate, Urbanstra has made unlawful deductions from Mr Do's wages in breach of the Wages Protection Act⁴ and as such has breached employment standards.⁵

Should a penalty be imposed under s134 of the Act?

[51] Mr Do claimed that a penalty for breach of the employment agreement under s134 of the Act should be imposed against Urbanstra, because its breach of the employment agreement was serious. In response, Urbanstra opposed an order for the imposition of a penalty on the basis that:

- (a) Mr Do did not raise the issue about his salary during his employment: and
- (b) The established breach could not be seen as serious enough to warrant a penalty against Urbanstra.

[52] Taking into account the views of both parties, I accept Urbanstra's breach of the employment agreement was not sufficiently serious to warrant a penalty be imposed under s 134 of the Act. The Authority orders against Urbanstra to pay arrears to Mr Do was sufficient to address Mr Do's salary change claim. Accordingly, no penalty order is made against Urbanstra.

Mr Do's arrears claim for unpaid overtime work

[53] Mr Do claimed he worked many hours over and above his usual hours of work and was owed \$16,440 in unpaid overtime wages. In support of his claims, Mr Do provided a spreadsheet explaining the days where he worked over and above his normal hours of work.

[54] Urbanstra disputed Mr Do's overtime claims stating that Mr Do's employment agreement did not provide for payment of overtime. It also noted Mr Do's claim for overtime was only ever raised after his resignation on 10 March 2023. In his evidence,

⁴ Wages Protection Act 1983, s4.

⁵ Employment Relations Act, s5.

Mr Lee also acknowledged Mr Do's overtime work and awarded him a paid one-week holiday as recognition of his work.

[55] I accept Mr Do's employment agreement did not specify payments for overtime and this was likely because he was paid a salary. There was insufficient evidence to show Mr Do had previously raised the issue of overtime with Urbanstra. Although it was clear Mr Do had worked over his usual hours it appeared this was addressed by Urbanstra through the provision of a week's leave. Mr Do did not appear to protest the week's leave or raise any further issues about overtime payments.

[56] It should be noted also that Mr Do was also given eight weeks paid leave towards the end of his employment and was paid his full salary during times when full-time work was not available to Urbanstra.

[57] Taking the above points into account, no determination is made in Mr Do's favour in respect of overtime payments.

[58] *Can Mr Do recover any outstanding wage arrears ordered against Urbanstra, directly against Mr Lee under s142Y of the Act?*

[59] Mr Do has applied to recover any outstanding wage arrears ordered against Urbanstra, directly against Mr Lee under s142Y of the Act, as he was aware Urbanstra was in financial difficulty and may be unable to pay any money owing. Mr Do submitted that Mr Lee is a person involved in a breach of employment standards. He sought a declaration to this effect, plus penalties against Mr Lee personally, and an order that Mr Lee be made personally liable to pay any amounts awarded to Mr Do in the event of default by Urbanstra.

[60] The respondents submit that Mr Do has filed his application seeking leave to recover any wage arrears from Mr Lee under the wrong section of the Act, and that he should have made an application to join Mr Lee as a controlling third party under s103B of the Act.

[61] I find that as Mr Lee was a general manager of Urbanstra, Mr Do's application is correctly made under s142Y of the Act. An application under s 103B is not appropriate on the facts of this case.

Is Mr Lee a person involved in a breach of employment standards?

[62] For Mr Lee to be found to be a person involved in a breach of employment standards under s 142W of the Act, there must be:

- (a) A breach of employment standards as defined in s 5 of the Act;
- (b) A qualifying person, person occupying a position in the entity if the person is in a position to exercise significant influence over the management or administration of the entity; and
- (c) A qualifying action, that is, the person must have aided, abetted, or procured the breach, or otherwise as set out in s 142W(1) of the Act.

[63] Mr Do submitted that Mr Lee was either directly involved in or must have had knowledge of the employment standards breached by Urbanstra, and that he should be made liable for any arrears of minimum entitlements that are not paid by Urbanstra.

[64] Urbanstra has accepted that it did not pay Mr Do his correct hourly rate and in doing so Urbanstra has made unlawful deductions from Mr Do's wages⁶ and was in breach of minimum standards.⁷ As such, I ordered to Urbanstra pay Mr Do \$2,192.30 gross. in wage arrears (see paragraph [49] above).

[65] Mr Lee's involvement in the breaches is now to be considered. Although Mr Lee was not a director of Urbanstra, he was the person who negotiated Mr Do's employment terms and exercised significant influence over the management of Urbanstra.⁸ The evidence showed he had at least aided, abetted, counselled or procured the underpayment of the wages provided for in the employment agreement. I am satisfied Mr Lee is a person involved in a breach of employment standards under s 142W of the Act.

Should Mr Do be granted leave to recover arrears of wages from Mr Lee personally?

[66] Mr Lee is a person involved in the breach within the meaning of s 142W of the Act and the grounds for granting leave to Mr Do are made out under s 142Y of the Act. Mr Do has also requested that orders be made to the effect that Mr Lee be made personally liable for any default in the payment of wages or other monies payable to him by Urbanstra, as he was aware Urbanstra was in financial difficulty.

⁶ Wages Protection Act 1983, s4.

⁷ Employment Relations Act, s5.

⁸ Employment Relations Act, s142W(3)(e).

[67] As I am satisfied Mr Lee is a person involved in the breach for the purposes of s 142W of the Act, I grant Mr Do leave to recover from Mr Lee for payment, under s 142Y of the Act, to the extent Urbanstra defaults in payment of the amounts subject of the order made in this determination for wages arrears.

Should a penalty be imposed against Mr Lee under s142X of the Act?

[68] Mr Do has applied for a penalty under s 142(X) of the Act. An application for a penalty against a person involved in a breach may only be made by a Labour Inspector. As such, I decline Mr Do's application for a penalty.

Summary of orders

[69] Urbanstra Limited is ordered, within 28 days of the date of this determination, to make payment to Mr Do:

- (a) \$5,000.00 as compensation for hurt humiliation and injury to feelings;⁹ and
- (b) \$2,192.30 (gross) wage arrears for unpaid salary: and
- (c) In the event Urbanstra is unable to pay the ordered wage arrears of \$2,192.30 (gross), leave is granted for Mr Do to recover the amount from Mr Lee.

Costs

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

[71] If they are not able to do so and an Authority determination on costs is needed Mr Do may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum the respondents would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

⁹ Employment Relations Act, ss 123(1)(c).

[72] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless circumstances or factors required an upward or downward adjustment of that tariff.¹⁰

Andrew Gane
Member of the Employment Relations Authority

¹⁰ See www.era.govt.nz/determinations/awarding-costs-remedies.