

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 687
3292299

	BETWEEN	LIAM WESTON Applicant
	AND	MCNZ GROUP LIMITED T/A WORKFORCE SOLUTIONS Respondent
Member of Authority:	Eleanor Robinson	
Representatives:	Hayley Johnson, advocate for the Applicant Ellie Stone representing the Respondent	
Investigation Meeting:	13 October 2025 in Auckland	
Submissions and/or further evidence	17 October 2025 from the Applicant and from the Respondent	
Determination:	28 October 2025	

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Liam Weston, claims that he was unjustifiably dismissed on 28 March 2024 by the Respondent, MCNZ Group Limited t/a Workforce Solutions (MCNZ).

[2] MCNZ denies that Mr Weston was unjustifiably dismissed and claims that he breached his employment agreement by failing to request or report leave as required.

The Authority's investigation

[3] This matter came before the Authority in early 2024 and the parties were offered dates for an investigation meeting in that same period. There were various changes in the Respondent's representation which regrettably resulted in significant delay in the matter being set down for an investigation.

[4] The Authority received written and, under oath or affirmation, oral evidence from the Applicant, Mr Weston.

[5] The Authority received written and, under oath or affirmation, oral evidence from the Respondent witness, Ms Stone, General Manager.

[6] Written submissions were received from Ms Johnson for the Applicant and from Ms Stone for the Respondent. Whilst I have not referred to all the submissions made by the parties, I have fully considered them.

[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.

Issue

[8] The issue requiring investigation is whether or not Mr Weston was unjustifiably dismissed by MCNZ.

Background

[9] MCNZ is a labour supply company. It provides staff who work in various industries including construction, logistics, infrastructure, landscaping and demolition. Ms Stone said MCNZ was a new business with approximately 9 employees at the time Mr Weston was employed.

[10] Mr Weston said he was approached by the HR Manager of MCNZ with whom he had previously worked, who asked if he was interested in joining his team at Workforce Solutions. Mr Weston was working as a carpenter on a casual basis at the time, so he accepted the offer. He was emailed an individual employment agreement which he read, signed and returned the (Employment Agreement). The terms of the Employment Agreement included the following clauses:

2 Position and Duties:

The employee is engaged as a Workforce Specialist/Carpenter

4. Hours of work

(b) The Minimum ordinary hours of work are 30 per week Monday to Sunday inclusive. Additional hours may be required to be worked at any time, but such requirement shall only be by agreement between the parties. ...

6 Wages/Remuneration

(a) ... \$ 35 per hour for job carried outside of Auckland

7 Annual Holidays

(b) ... the timing of the taking of annual holidays needs to be approved by the company first.

9 Sick Leave

- (e) The employee shall give notice to an authorised Company representative as soon as possible before the expected start time on the first day of absence, or, where this is not practicable, as soon as possible after the expected start time on the first day of absence.

20 Employment Termination

Except as noted in clause 4 above, no more or no less than four weeks' notice of the termination of employment shall be given by either party ...

26 Policies and Rules:

- (a) The Company shall be entitled to institute policies and rules in relation to its activities and the conduct expected of its employees from time to time, and such policies and rules shall be observed in good faith by the employee. Such rules may be changed upon written notice.

[11] Mr Weston's first day with MCNZ was 17 January 2024. He was located at a construction site in Napier which was owned by MCNZ's client (the Client). The Client was a skilled builder who worked at the Napier site himself and supervised, with the approval of MCNZ, the employees which included two MCNZ employees, Mr Weston and one other.

[12] Mr Weston said he usually travelled down to Napier from Auckland to commence work on a Monday, returning for the weekend on Friday, although some weeks he might work on a Saturday or work longer hours during the week.

[13] Ms Stone said that Mr Weston was a difficult employee and she received complaints by email from the other Workforce employees who had been placed at the Napier site, and from the Client. These complaints were not raised at the time of receipt with Mr Weston.

[14] On 14 February 2024 the Client text messaged Ms Stone asking that she send a replacement for Mr Weston. Ms Stone said she attempted to contact Mr Weston by text messages, emails and telephone calls, but Mr Weston ignored the attempts to contact him. When asked if she had invited Mr Weston to meet with her, Ms Stone said he refused to do so.

[15] Mr Weston confirmed that he had not been communicative with MCNZ.

Text messages 17 February 2024

[16] On 17 February 2024 Mr Weston text messaged Ms Stone asking: "how much longer am I contracted for?". He said he had asked because he had found it difficult to find employment prior to being engaged by MCNZ, and he knew he was subject to a probationary period.

[17] Ms Stone responded that he could read his contract, and then told him that the Client did not require him back on the Napier site. There were a number of text messages exchanged between Mr Weston and Ms Stone on 17 February 2024. In one message Ms Stone wrote:

You can read your contract

Client does not want you back
They told me that many times
Please do not go there on Monday
They complained also many times you left early
You were absent at work ...
You were also not compliant with us
Many calls were not answered
Also email sent to you couple of weeks were not answered
Communication error which is a big deal for employee and employer.

[18] Mr Weston responded that he would speak to the Client directly and Ms Stone responded “You work fir (sic) me not him. He deal with me I deal with you”

[19] Ms Stone said she advocated with the Client on behalf of Mr Weston and the Client agreed to let him continue working at the Napier site. Ms Stone text messaged Mr Weston forwarding him messages between her and the Client and stating: “Do your best to impress him. All the best. Communicate well please.”

Absence 18 March 2024

[20] On Monday 18 March 2024 Mr Weston said he his daughter had a doctor’s appointment which he attended with her. He text messaged the Client the night before to inform him about the appointment and that he would travel down to Napier afterwards, ready to commence work on the site the next day, Tuesday 19 March 2024.

[21] Mr Weston did not inform MCNZ of the leave on Tuesday 19 March 2024 .

[22] Ms Stone said the Client telephoned her during the following week and told her that Mr Weston had taken the previous Monday off and also informed him he would not be working the Tuesday after Easter Monday.

Text messages 28 March 2024

[23] Ms Stone text messaged Mr Weston on 28 March 2025:

Hi Liam
Last week you decided to have a day off on Monday
we has it as a day in lieu. You could work 9.50 hours
What was the reason you missed work?

[24] Mr Weston messaged back:

I had appointment with GP in Auckland that Monday, I
will also be absent this upcoming Tuesday as I have
matters in Auckland I have to attend ...

[The Client] is aware, hence the reason I have work late hours
this week What is the hours we receive
for public holiday

[25] Ms Stone responded:

If you decide to have a day off on Tuesday you are not entitled to get that Monday

...

I am replacing you soon as you work for me
You should tell me re your day off not [the Client]
Read your contract again
You failed again in communication

I do not accept that you failed to tell me re last Monday
Also decide to have a longer weekend and using family stuff as a reason.
I have to send you in writ if many times and warn you about your work commitments

[26] Mr Weston accepted when questioned that he had not informed MCNZ that he was intending to take annual leave and confirmed that he was aware he was expected to do so. He had decided to take the Tuesday as annual leave because it was the Easter weekend and taking the Tuesday would lengthen the weekend break.

[27] In response Ms Stone informed him that he would not be paid for Easter Monday if he was taking leave on the following Tuesday. When Mr Weston questioned this on the basis that Easter Monday was a public holiday, Ms Stone responded that she wanted a written explanation for his absence on Monday 18 March 2024.

[28] Mr Weston said he did not believe that Ms Stone was serious when she stated in her text message that she was replacing him. This statement was however repeated in another message in the same message stream in which Ms Stone wrote: “ You work as you like and decide I am replacing you I had enough”.

[29] In response Mr Weston responded: “I will be paid for public holiday on Easter Monday”. Ms Stone responded that she would authorise payment for Easter Monday provided Mr Weston provided a letter from the GP.

[30] After a few further message exchanges Ms Stone text messaged:

I am giving you, your notice 4 weeks as off today
I have entered docs to dismiss you but I am just giving you a notice today...miss work on Tuesday then you do not have to come back

[31] Mr Weston asked when his final day would be and Ms Stone responded that she had sent him an email. In subsequent text messages Mr Weston said he did not receive an email and asked several times for confirmation of his final day. In her responses Ms Stone repeated that she had sent an email, but Mr Weston said he did not receive any email with his final date in it.

[32] Mr Weston said he was working on the Napier site during the text message exchanges on 28 March 2024, so at the completion of his workday, which he understood to be his last working day with MCNZ, he explained what had happened to the Client. The Client then told him he could continue working directly for him at the Napier site.

Subsequent emails

[33] On 30 March 2024 Mr Weston emailed Ms Stone. He stated:

I require an immediate response to my request for my 8% holiday entitlement. As you did not allow me the opportunity to complete the 4 weeks' notice period that you had given me.

I am more than happy to complete this period stated 4 weeks by you.

If for any reason you Ellie MCNZ have decided not to allow me that opportunity, there are no legal grounds to withhold the entitlement from me....

All I want is what I am entitled to end our employment agreement as soon as possible.'

[34] Ms Stone sent an email to Mr Weston at 9.14 a.m. on 1 April 2024. In the email Ms Stone stated that the issues were Mr Weston's absences which had not been either requested or authorised. Ms Stone wrote: "you are employed and paid by us, and it is part of the requirements that you follow the reporting procedures in a timely manner."

[35] Mr Weston responded by email:

As stated by you in previous messages, I have not resigned, you fired me on unfair grounds on Thursday 28th of March. To my knowledge that was my last day employed by you.

[36] Ms Stone emailed in response that Mr Weston was wrong and he should read her email carefully, that if he brought the GP appointment evidence and attended: "work tomorrow as you have applied for leave in advance then you are good to go." Ms Stone added a P.S. to the email which stated:

I am willing to give you the last chance for your employment based on two conditions,
1/ provide me evidence of your doctor app I do not need a medical cert, need evidence you had the appointment

2/ you need to attend work tomorrow as you failed to request a leave, too late for me to find someone else therefore you need to work tomorrow,

[37] Ms Stone followed up the email by a text message stating that based on Mr Weston's emails, 'he could not fulfil the conditions and was resigning'.

[38] Mr Weston responded that he was not resigning, but Ms Stone had dismissed him and he required his final pay and holiday entitlement.

[39] On 4 April 2024 Ms Stone emailed Mr Weston:

We are in agreement regarding the unsuitability of maintaining the working relationship, ...

Some parts of your email seem unclear, and we both should acknowledge that it is best to not be working together.

You were absent without explanation and in breach of your contract. Attempts to resolve were rebuffed by you and you have elected to leave

In the spirit of contributing to your peace I will implement the following with your approval.

- Final day with MNZ Group is agreed to be the 28th March 2024.
- Your full holiday pay will be paid to you in this week's Payroll cycle.
- Final payslip and payment will be deposited into your nominated account on Friday 4th April 2024
- Acceptance of this payment is considered "Full and Final settlement of the employment (and related disputes) between yourself and MCNZ Group Limited, including the date of agreed parting (28/03/24).

Payroll processes tonight so I require your acceptance before Close of Business today (04/04/254). In lieu of meeting to sign documents, and in order to process this by the date agreed, I agree to a reply from you of "*I accept*" in this email thread.

[40] Mr Weston responded "I need my final payout completed, but I do not agree with the termination of my employment on unfair grounds."

[41] In further emails Ms Stone stated that she was not terminating Mr Weston's employment, and was prepared to meet for mediation, however Mr Weston said he did not want to consider resuming working for MCNZ because he no longer had any trust in Ms Stone and MCNZ.

[42] Mr Weston engaged Sacked Kiwi which raised a personal grievance with MCNZ on his behalf on 9 April 2024. The parties attended mediation but this did not resolve the matter.

Was Mr Weston unjustifiably dismissed by MCNZ?

[43] The decision to dismiss Mr Weston must be a justifiable decision in accordance with the Test of Justification as set out in s 103A of the Employment Relations Act 2000 (the Act) which states:

S103A Test of Justification

- (1) For the purposes of section 103(1) (a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by applying the test in subsection (2).
- (2) The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.

[44] The Test of Justification requires that the employer acted in a manner that was substantively and procedurally fair. MCNZ must therefore establish that the dismissal was a decision that a fair and reasonable employer could have made in all the circumstances at the relevant time.

[45] Ms Stone claimed that there had been disciplinary issues arising from Mr Weston's performance, however there had been no disciplinary process followed in relation to them. The allegations made by the Client that Mr Weston was not performing diligently and/or was causing issues with the other employees on site at Napier not were raised with Mr Weston until in the text message on 17 February 2024.

[46] The allegations made against Mr Weston were never formalised in a disciplinary process. As a result Mr Weston was deprived of an opportunity to respond to them and to have his explanation genuinely considered by his employer. Nor was Mr Weston informed by MCNZ that his performance was not acceptable, or that failing improvement, his continued employment could be in jeopardy.

[47] Mr Weston had not informed MCNZ about the leave on 18 March 2024 or that he intended taking leave on Tuesday 2 April 2024. I find that Mr Weston did not adhere to the terms of the Employment Agreement by not informing MCNZ that he required leave although he knew that pursuant to clause 7(b) of the Employment Agreement, leave needed to be approved by MCNZ before it was taken.

[48] However MCNZ did not address this as a performance issue and commence a disciplinary process as a fair and reasonable employer would have been expected to do.

[49] Instead what did happen was that in the text messages sent to Mr Weston on 28 March 2024 Ms Stone raised the absence issue and she informed him "I am replacing you soon ..." and "I am giving you your notice 4 weeks as off (sic) today".

[50] I find that these statements effectively constituted a 'sending away' as defined by Williamson J in *Wellington Clerical IUOW v Greenwich* as: "... the termination of employment at the initiative of the employer".¹

[51] I accept that in subsequent text messages and emails Ms Stone invited Mr Weston to meet with her and submits that her intention was to remove Mr Weston from the Napier site to work in Auckland, however I find that the text message on 28 March 2024 which stated "I am giving you, your notice 4 weeks as off today" is unequivocal and therefore any subsequent statement occurs after the dismissal had taken place.

[52] Whilst I accept that MCNZ was a small employer and as such lacked the resources normally available to a larger employer when dealing with disciplinary matters, I consider that there were major rather than minor flaws in the procedure adopted by it in terminating Ms

¹ *Wellington Clerical IUOW v Greenwich*¹ (1983) ERNZ Sel Cas 95.

Weston's employment which cannot be explained merely by the fact that MCNZ was a smaller employer.

[53] I find that in dismissing Mr Weston, MCNZ followed no process. It has failed to demonstrate that its actions and how it acted in the lead up to Mr Weston's dismissal were what a fair and reasonable employer could have done in the circumstances at the time of Mr Weston's dismissal. Accordingly I find no substantive or procedural justification for the dismissal.

[54] I determine that Mr Weston was unjustifiably dismissed by MCNZ.

Did Mr Weston breach the non-solicitation clause of the Employment Agreement?

[55] Towards the conclusion of the investigation meeting Ms Stone referred to a counterclaim for a breach of contract arising from the non-solicitation clause in the Employment Agreement.

[56] There is no counterclaim before the Authority and this determination does not therefore address it.

Remedies

[57] Mr Weston has been unjustifiably dismissed and he is entitled to remedies.

Lost Wages

[58] Mr Weston immediately obtained alternative employment with the Client and remained working at the Napier site from the date of his dismissal and there is no claim for lost remuneration as a result of the dismissal.

Unpaid wages

[59] Pursuant to clause 20 of the Employment Agreement Mr Weston was entitled to receive four weeks' notice of the termination of employment.

[60] Ms Stone informed Mr Weston in the text message on 28 March 2024 that his employment was terminated with immediate effect and he did not work the contractual four weeks' notice period. He was not paid in lieu of the notice period.

[61] I order MCNZ to pay Mr Weston the sum of \$4,200.00 (calculated as 30 hours x \$35 per hour x 4 weeks) in respect of the unpaid contractual notice period.

Interest

[62] The Authority may order interest to be paid in any matter involving the recovery of any money pursuant to clause 11 of Schedule 2 to the Act.

[63] The purpose of interest is to reimburse someone for the loss of use of monies to which there is established entitlement as is the case with Mr Weston. I consider it appropriate therefore to award Mr Weston interest on the contractual notice period.

[64] I order MCNZ to calculate and pay interest on the unpaid notice period to Mr Weston within 28 days of the date of this determination on the sums for which payment has been ordered from the dates when they were agreed to be paid until they were, or are, paid in full.

[65] Interest is payable in accordance with Schedule 2 of the Interest on Money Claims Act 2016.

Compensation

[66] Mr Weston gave evidence that the sudden nature of his dismissal caused him stress and significant distress, especially in circumstances in which he was informed by text message that there were performance concerns raised about him by the Client to which he was given no opportunity to comment on or refute.

[67] Considering the range of awards in cases of this kind I consider an award of compensation of \$18,000.00 to be appropriate.

[68] MCNZ is ordered to pay Mr Weston the sum of \$18,000.00 for humiliation, loss of dignity and injury to feelings, pursuant to s 123(1) (c) (i) of the Act.

Contribution

[69] I am required under s. 124 of the Act to consider the issue of any contribution that may influence the remedies awarded.

[70] MCNZ was Mr Weston's employer but he confirmed he failed to communicate with it even following Ms Stone's text message on 17 February 2024. when she had reminded him of the need to communicate.

[71] Whilst I accept that there was may have been some blurring of the lines of communication due to the tacit approval by MCNZ of the Client as the supervisor on the Napier site, Ms Stone had reminded Mr Weston is the text message sent on 17 February 2024 that he worked for her, not the Client.

[72] Mr Weston accepted that he did not communicate with MCNZ. In particular he failed to communicate in a timely manner about his absence on Monday 18 March 2024 and MCNZ was only aware of the absence when the Client informed Ms Stone of it.

[73] When Ms Stone queried this, Mr Weston informed her that he intended taking the Tuesday following Easter Monday as leave. Mr Weston did not ask MCNZ for approval as he was required to do by clause 7(b) of the Employment Agreement.

[74] Had Mr Weston communicated as requested to do with MCNZ, the text message exchange on 28 March 2024 may not have resulted in the dismissal outcome.

[75] I find that Mr Weston contributed to the situation which led to his dismissal and reduce the remedy ordered by way of compensation by 10% to \$16,200.00.

Orders

[76] I have ordered that MCNZ to pay to Mr Weston the following sums:

- **\$16,200.00 as compensation pursuant to s 123(1)(c)(i) of the Act.**
- **\$4,200.00 gross (calculated as 30 hours x \$35 per hour x 4 weeks) in respect of the unpaid contractual notice period.**
- **Interest is ordered to be paid on the sum awarded in respect of the unpaid contractual notice period**

All payments are to be made within 28 days of the date of this determination

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

[78] If they are not able to do so and an Authority determination on costs is needed Mr Weston 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 MCNZ 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.

[79] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[80] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.²

Eleanor Robinson
Member of the Employment Relations Authority

² *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].