IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2025] NZERA 749
3339020

	BETWEEN	TRACEY RICHARDSON (AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF MAKENA HOUSTON) Applicant
	AND	LILY & LOUIS LIMITED First Respondent
	AND	JACQUELINE ANSIN Second Respondent
Member of Authority:	Helen van Druten	
Representatives:	Dave Cain, advocate for the Applicant Jacqueline Ansin for the First and Second Respondents	
Investigation Meeting:	9 July 2025 at Auckland	
Submissions received:	23 October 2025 from the Applicant Up to 24 October 2025 from the Respondents	
Determination:	19 November 2025	

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Lily & Louis Limited (L&L) is a public relations company based in Auckland. Ms Jacqueline Ansin is the sole director of L&L. Ms Makena Houston commenced work on a part-time basis with L&L as a senior publicist after verbal discussions with Ms Ansin. No employment agreement was signed by the parties, though the parties verbally agreed Ms Houston's hours of work and salary.

[2] Ms Houston says that despite repeated requests for her salary to be paid, she never received payment for work undertaken for L&L between 13 May 2024 and 8 July

2024. She further says that she was given false assurances that payment was forthcoming. When this did not occur after nine weeks of work, she had no choice but to resign.

[3] Ms Houston raised personal grievance claims for unjustified dismissal and unjustified disadvantage and further claims unpaid wages and other entitlements. She also claims penalties for breaches of ss 4 and 63 of the Employment Relations Act 2000 (the Act), s 27 of the Holidays Act 2003 and s 4 of the Wages Protection Act 1983 (WPA).

[4] Ms Ansin claims that during their first meeting, Ms Houston asked to be paid by Prezzy card. Ms Ansin agreed to look into it as she says that Ms Houston refused to be paid via direct bank transfer. L&L further claims that it did not pay Ms Houston as it would not be complicit in deceiving Work and Income New Zealand (WINZ). L&L believed that Ms Houston did not declare the income and was receiving a benefit at the time.

Non-publication order

[5] An interim non-publication order was put in place during this investigation as extensive medical information was provided. I am satisfied that there is an appropriate basis on which to make a permanent non-publication order relating to all medical information disclosed by both parties during this investigation. Given the circumstances of this matter, I conclude that there is a significant risk that publication of any medical details would likely lead to increased, significant, and unnecessary distress.

[6] In addition, the consultant accountant for L&L was invited to give evidence. She requested that her name not be published as the matter has taken a toll on her personally, which was evident, and she is not a party to these proceedings. I see no need to name her in this matter. A random generator has been used to refer to the consultant accountant for L&L as Ms MXJ.

[7] I order, pursuant to clause 10 of the second schedule of the Act that all medical information other than as it appears in this determination, and the name of the consultant accountant for L&L be prohibited from publication.

The Authority's investigation

[8] On 16 April 2025, Mr Cain requested the inclusion of Ms Ansin as Second Respondent. Following an application to the Authority this was granted and confirmed in an Authority direction on 29 April 2025.

[9] For the Authority's investigation written witness statements were lodged from Ms Makena Houston as Applicant, Ms Tracey Richardson (as impact witness) and Ms Jacqueline Ansin as Second Respondent and director of L&L.

[10] Soon after, Ms Ansin engaged counsel and despite objections from Mr Cain, an extension to file the amended statement in reply and relevant documents was granted.

[11] The investigation meeting commenced at 10am on 9 July 2025. L&L and Ms Ansin were represented by Jin Park as counsel at that time. Evidence was heard from Ms Houston and Ms Richardson with questions from both the Authority and Mr Park. At approximately 2.05pm, during questions from the Member to Ms Ansin, Mr Park requested that the meeting be adjourned due to Ms Ansin's health. All Ms Houston and Ms Richardson's evidence, and cross examination by Mr Park, was completed at the time of the adjournment.

[12] It was agreed that the meeting would be adjourned until 20 August 2025 subject to medical clearance for Ms Ansin. Authority directions were issued on 11 July 2025 reflecting what was agreed with the parties and next steps in the investigation. The medical information required from Ms Ansin in those directions was not received despite efforts from counsel to obtain the information.

[13] On 19 August 2025, the Authority received an application for an indefinite stay of proceedings as medical clearance for Ms Ansin was not obtained. The investigation meeting was again adjourned to allow consideration of the stay application.

[14] Following consideration of the medical and other information provided and feedback from Ms Houston, the stay application was declined. It is unnecessary to detail the reasons and considerations here other than to acknowledge the concerns raised by counsel regarding natural justice. Having considered this along with all relevant material provided by counsel and Mr Cain, Ms Houston's feedback, the issues for

investigation, the general nature of the medical information provided by Ms Ansin and the partially completed investigation, I am satisfied that it was appropriate to continue with the investigation.

[15] A further call was set down with the parties on 26 August 2025. During that call I discussed inviting Ms MXJ as a witness and it was agreed that she would be interviewed by the Authority independently and a written summary of that meeting provided to the parties. I subsequently interviewed Ms MXJ, provided the summary in writing to the parties on 29 September 2025 and the parties were given an opportunity to submit specific written questions to Ms MXJ for her further response. Both parties did so and were provided with her responses on 20 October 2025.

[16] On 2 September 2025, counsel for L&L and Ms Ansin advised by memorandum that they withdrew as counsel and Ms Ansin would be self-represented.

[17] On 12 September 2025, Mr Cain advised that the applicant, Ms Houston, passed away. The Authority again passes on its condolences to Ms Houston's family.

[18] Mr Cain requested that the matter continue with Ms Houston's mother, Ms Richardson, acting as legal personal representative and Mr Cain continued as representative. As permitted by s 18, Schedule 2 of the Act, the investigation does not abate by the death of Ms Houston. By email of 23 September 2025, L&L advised they did not object to Ms Houston's mother continuing as legal personal representative and the matter continued on that basis.

[19] During the investigation meeting on 9 July 2025, all witnesses answered questions under oath or affirmation from me and the parties' representatives. Following receipt of all witness information and completion of my investigation, the representatives also gave written closing submissions.

[20] As permitted by s 174E of 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

[21] The issues identified for investigation and determination were:

(i) Whether unpaid wages and/or statutory entitlements are owed for the period from 13 May 2024 to 12 July 2024, being 108 hours worked and if so, should interest be paid on any amounts owed?

(ii) Whether Ms Houston was unjustifiably dismissed and/or unjustifiably disadvantaged in her employment by the actions of the First Respondent?

(iii) If the actions of the First Respondent were not justified (by disadvantaging and/or dismissing Ms Houston), what remedies should be awarded, considering:

(a) Compensation under s123(1)(c)(i) of the Act; and

(b) Lost wages for the period from 17 July 2024 to 12 September 2024, equivalent to eight weeks' notice (subject to evidence of reasonable endeavours to mitigate her loss).

(iv) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Ms Houston that contributed to the situation giving rise to her grievance?

(v) Whether penalties pursuant to section 4 of the Wages Protection Act 1983, section 27 Holidays Act 2003 and/or Section 63A of the Employment Relations Act 2000 should be awarded.

(vi) Whether either party should contribute to the costs of representation of the other party.

Unpaid wages and other entitlements

[22] Ms Houston said that despite the promises and assurances given by Ms Ansin, she did not receive any payment or compensation of any sort for the hours worked during her employment.

[23] Much of the evidence provided focused on who first suggested payment by Prezzy card. Regardless of who initiated that suggestion, Ms Houston worked hours as agreed with Ms Ansin and did not receive payment for that work.

[24] Ms Houston says that in her email of 15 July 2024, she offered to send an invoice for the hours worked even though she was an employee as she was desperate to be paid for the work she did.

[25] In her letter of 31 July 2024 raising her personal grievance, Ms Houston claimed for unpaid wages and other entitlements for the period from 13 May 2024 to 12 July 2024, being 108 hours worked. She also claimed interest on that amount.

[26] Curiously, on 8 July 2025 (the evening before the investigation meeting) Ms Houston received a payment of $3,663.36 paid into her bank account. Ms Ansin was unable to explain how she arrived at that figure. When Ms MXJ was later shown that amount, she explained that Ms Ansin asked her about the amount to pay Ms Houston. As Ms MXJ did not have any wage or salary information, she assumed Ms Houston was a contractor and replied with:

> Hi Jacqui, based on Makena's prorated rate of $62,500 for 108 hours from 13 May – 12 July, as a contractor you need to pay her $4,579.20. This deducts 20% withholding tax. This then squares everything up for both of you.

[27] As Ms MXJ noted during her evidence, the amount paid on 8 July 2025 was most likely because Ms Ansin had erroneously deducted another 20 percent for tax off the already net figure.

[28] Calculating the wages owed for the nine-week period from 13 May 2024 to 12 July 2024 at $62,500 (prorated for 12 hours per week) this equates to $3,245.20 gross. Ms Houston was also owed her annual leave entitlement, meaning a total of $3,504.82 gross was owed to Ms Houston as unpaid wages and other leave entitlements.

[29] The discrepancy between what Ms MXJ calculated and Ms Houston's calculation is in Ms Ansin's favour. Given that Ms MXJ only had the information Ms Ansin provided her, I prefer Ms Houston's calculation of unpaid wages owing. Additionally, Ms Houston considered herself an employee and has made her claims on that basis.

[30] As slightly more than this amount (with appropriate tax deducted) was paid into Ms Houston's bank account on 8 July 2025, I do not consider that any further wages or leave entitlements are owed by L&L to Ms Houston.

Interest on unpaid monies

[31] However, Ms Houston has claimed interest on the amount owed. It took almost 12 months for the wages owing to be paid and Ms Houston has not had the benefit or use of that money in that time. An award of interest on that money is appropriate. As Ms Houston's salary was to be paid monthly on the 22nd of each month (according to the unsigned employment agreement), I take 22 July 2024 as a starting point for the interest calculation.

[32] L&L are ordered to pay $172.36 as interest on $3,245.20 from 22 July 2024 to 8 July 2025. Interest is calculated in accordance with the Interest on Money Claims Act 2016 which provides for the payment of interest on outstanding money at a rate set out in the Civil Debt Calculator tool. Interest is ordered on the gross amount as the 22 July 2024 date does not account for the proportional salary due dates on 22 May and 22 June 2024.

Unjustified dismissal

The parties account of events

[33] There were a significant number of inconsistencies in the parties recollection of events.

[34] In her witness statement, Ms Ansin said that Ms Houston:

(a) approached her in May 2024 looking for work;
(b) asked to be paid by Prezzy card instead of bank transfer and was insistent on this method;
(c) planned to relocate overseas in September;
(d) filled out the forms to start work; and
(e) resigned on 17 July 2024 citing the ongoing payment issues.

[35] Ms Ansin further stated that she:

(a) agreed to provide work until Ms Houston relocated;
(b) arranged for Ms MXJ to onboard Ms Houston;
(c) consulted with Ms MXJ at least twice about the Prezzy card arrangement;
(d) denies that L&L failed to pay Ms Houston's wages when due;

(e) genuinely wanted to pay Ms Houston but was in an "impossible position". Payment by Prezzy card could make her an accessory to benefit fraud as she could not make payments in that way without potentially breaking the law as Ms Houston was receiving WINZ payments; and

(f) provided an employment contract on 15 July 2024 to clarify the terms of her employment.

[36] Ms MXJ denies that Ms Ansin ever had a conversation with her about Prezzy cards or onboarding for Ms Houston.

[37] Ms Houston denied that she insisted on payment by Prezzy card. She says that she later agreed to payment by Prezzy card or invoice as a way to get paid.

[38] Ms Houston further claims that she had every intention of continuing to work at least until mid-September 2024 but that the "excuses, lies and false promises" by Ms Ansin led to her to have no choice but to resign until she received payment.

[39] I agree with Ms Ansin that Ms Houston resigned on 17 July 2024. Ms Ansin's email was a brisk "please return your laptop immediately. Asking for a prezzie card and not a salary payment is illegal and will report to the IRD tomorrow".

Relevant legal principles

[40] L&L claims that Ms Houston was not dismissed, she chose to resign. That is, *prima facie,* correct. However, where the employer's behaviour or other actions places the employee in a position where they feel they have no choice but to resign, this is held in law to be as much a dismissal as if an employer had actually dismissed the employee. Importantly, each situation must be considered on its own facts and the employer's behaviour or actions must go beyond the inconsiderate to "dismissive or repudiatory conduct".[1]

[41] The decision in *Wellington Clerical IUOW v Greenwich* provided that a breach of employer duty leading an employee to resign was an example of constructive dismissal.[2] Since that decision, case law has further clarified what is also required for a

[1] *Wellington Clerical IUOW v Greenwich* [1983] ERNZ Sel Cas 95; [1983]ACJ 965 (Arb Ct).
[2] Above at n 1.

resignation to amount to a constructive dismissal. There must be a causal link between the employer's conduct and the employee's resignation[3] and the resignation must have been a reasonably foreseeable response to the employer's conduct.[4]

Was there a breach of duty by L&L?

[42] As required by the WPA,[5] L&L had a duty to pay Ms Houston for work undertaken. It breached this duty as Ms Houston was not paid until 12 months after those wages became due. Even in the absence of an employment agreement, L&L's actions breached the fundamental terms on which the employment relationship was based. Ms Houston evidently intended the relationship to continue as the employment agreement presented to Ms Houston on 15 July 2024 embodied the same terms and conditions agreed at the commencement of employment.

Was there a causal link and was Ms Houston's resignation reasonably foreseeable?

[43] In Ms Houston's circumstances, evidence provided showed that Ms Houston asked Ms Ansin about payment and continued working. There was a direct link between Ms Houston's attempts to receive payment in some form (whether by wages, Prezzy card or invoice), L&L's ongoing failure to pay and Ms Houston's resignation. The breach of duty was sufficiently serious to make it reasonably foreseeable that Ms Houston would not continue and would resign if she was not getting paid.

[44] Having established the breach of duty I must consider whether L&L's behaviour went beyond the inconsiderate to the threshold of conduct required.

[45] As evidenced by emails, texts and evidence provided by Ms MXJ, Ms Ansin's conduct was more than inconsiderate and cannot be explained as the actions of a forgetful manager. Ms Ansin's conduct was actively misleading. Her responses to Ms Houston's queries were dismissive and contained actively false, written assurances that she and Ms MXJ were actively sorting out payment for Ms Houston with Ms MXJ. In reality Ms MXJ knew nothing about Ms Houston's pay. This included one text message from Ms Ansin that read "I sent everything through to [MXJ]. I mentioned that she was away for 2 weeks and wanted to sort before she flew. She has everything". Ms MXJ

[3] *Z v Y Ltd and A* [1993] 2 ERNZ 469 (EmpC).
[4] *Weston v Advkit Para Legal Services Limited*[2010] EmpC 140.
[5] Wages Protection Act 1983, s 4.

was away from 8 June 2024 and confirmed she did not receive any documentation for Ms Houston.

[46] L&L failed to provide any employment agreement, despite requests to "sort my work contract" from Ms Houston.

[47] Given Ms Ansin's misleading conduct during Ms Houston's employment, I agree with Ms Houston that she was put in a position where she had no choice but to resign. It was not disputed that she worked the required hours and she had received no payment for any of the hours worked.

[48] I consider such conduct met the threshold for a constructive dismissal and find that Ms Houston was constructively dismissed from her employment by the actions of her employer.

Were the actions of L&L justified?

[49] For a personal grievance under s 103A of the Act to be established, the conduct of the employer leading to the dismissal must also be unjustified.

[50] Ms Ansin submitted throughout the investigation and in her final submission that she did not pay Ms Houston as Ms Houston insisted on payment by Prezzy card. Ms Ansin further submitted that as Ms Houston was receiving WINZ payment at the time, this amounted to potential fraud and therefore Ms Ansin was justified in withholding wage payments.

[51] In his submissions, Mr Cain proposed that even if Ms Houston did suggest payment by Prezzy card, which she denies, that the Prezzy card is an "open loop" card[6] and therefore meets the requirements to pay in money required by the WPA.[7] He submits that while unusual it is not illegal. I am not sure I agree with that approach but if PAYE was deducted and Ms Ansin paid the net amount by Prezzy card then at least it would have indicated a willingness by L&L to resolve the payment issue.

[52] As it relates to this matter, had Ms Houston requested this form of payment and Ms Ansin been unsure of the legality, she could have sought advice on this matter and

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[6] As defined in *Epay New Zealand Limited BD Ezi-Pay Limiteed and Ors* [2012] NZCC 13.
[7] Wages Protection Act 1983, s 7.

advised Ms Houston accordingly. Ms Ansin advised that she spoke with WINZ to say that she would not pay Ms Houston directly and had documentation to show that Ms Houston was claiming a benefit from WINZ and earnings from L&L. Even if Ms Houston was doing so, it is for WINZ to investigate benefit eligibility and that fact does not allow an employer to withhold wages due.

[53] Ms Houston says that Ms Ansin had paid others like this in the past. An email from Ms Ansin to Ms Houston on 16 July 2024 stated "A prezzie card is fine short term but suspect it may be [illegal] for a long term….we will try and make the prezzie card happen if we can…"

[54] There was no evidence provided to suggest that Ms Houston was not working the required hours verbally agreed with Ms Ansin during her employment.

[55] With no evidence of wages payment in any form, a failure to actively seek to resolve the Prezzy card issue, and reliance on an unsubstantiated claim of potential fraud as a reason not to pay an employee, I find that L&L's actions were not the actions of a fair and reasonable employer and did not meet the test of justification required by s 103A of the Act.

[56] Having considered the above, Ms Houston is successful in her personal grievance claim for unjustified dismissal under s 103(1)(a) of the Act.

Unjustified disadvantage

[57] In line with the reasoning above, I also accept that Ms Houston was unjustifiably disadvantaged by L&L's failure to pay her agreed hours worked and is successful in her claim under s 103(1)(b) of the Act. She did not have use of the money she earned and was disadvantaged having to leave a position that suited her situation at that time.

Remedies

[58] Ms Houston has established personal grievances for unjustified dismissal and unjustified disadvantage. She is entitled to a consideration of the remedies sought. She sought a compensatory award under s 123(1)(c)(i) of the Act and eight weeks of lost wages.

[59] I have determined the compensatory award for both the dismissal and disadvantage grievances as an overall compensatory award.

Compensation for humiliation, loss of dignity and injury to feelings

[60] Ms Houston was not well while giving evidence during the investigation meeting and her subsequent passing has made this investigation most challenging. However, I must put that aside and consider the impact of the circumstances on Ms Houston objectively as it occurred at that time in July 2024 and the evidence she provided.

[61] Ms Houston submits that the positive earlier working relationship she had with Ms Ansin made her feel even more betrayed, hurt and upset when she was not paid what she was entitled to receive in her 2024 employment.

[62] In her evidence, Ms Houston explained that the experience had such a detrimental effect on her wellbeing both physically, financially and mentally and her confidence that she decided not to return to the PR and communication sector.

[63] Ms Richardson, as impact witness, described the drastic change in Ms Houston's mood and behaviour to the extent that she needed psychological support. During my questioning of them both, the emotional toll and impact on both Ms Richardson and Ms Houston was apparent.

[64] Ms Ansin was aware that Ms Houston was facing significant health challenges and was more vulnerable than others at the time of her employment. This made the impact on Ms Houston more impactful than most and is relevant to the extent that Ms Ansin was aware of that vulnerability.

[65] The effect on Ms Houston, and Ms Ansin's knowledge of that impact, was demonstrated in an email from Ms Houston to Ms Ansin on 18 July 2024 where Ms Houston stated:

> "…I cannot work without payment…if you can please honour our agreement and you finalise my wages or pay an invoice from me…I feel like I have no choice but to cease working for you as I cannot trust your word anymore….I would appreciate this matter be solved urgently as I am very stressed and sickened by the week on week, continual stalling of this matter. Not to mention my own unpaid bills that are weighing on me"

[66] I consider that the loss of confidence, distress and injury to feelings was exacerbated by Ms Houston's medical condition and Ms Ansin's knowledge of that vulnerability was an aggravating factor so a compensatory award should be significant. Having referred to similar cases where wages were not paid and where the vulnerability of the individual was known by the employer, I consider an award of $12,000 as compensation for both grievances to be appropriate.[8]

Lost wages

[67] Ms Houston intended to work until mid-September 2024 and was upfront about that timeframe. Had the employment continued she would have been paid to at least mid-September therefore I consider that the eight weeks sought as lost wages plus holiday pay is appropriate.

Contributory conduct

[68] I am satisfied that no deduction to remedies is made for contribution under s 124 of the Act. The action of her employer's failure to pay wages was not of Ms Houston's doing and she took steps to advise her employer of her non-payment.

Provision of an employment agreement

[69] The Act is very clear that any individual employment agreement of an employee must be in writing and must include specific details, ostensibly to prevent these types of misunderstandings occurring. A written agreement between the employer and employee provides clarity and agreement on the fundamental terms and conditions of employment from the start. This in turn reduces the likelihood of disputes, provides the parties with wording to rely upon for any enforcement, formalises the intention of both parties to enter into an employment relationship and provides a statutory basis for their mutual good faith obligations. An employer who fails to comply with this section is liable to a penalty imposed by the Authority. [9]

[70] On 13 May 2024, Ms Houston was employed as a part time salaried senior publicist by L&L. She was employed by L&L previously working with Ms Ansin and

[8] *Si v Shineton Trading Limited* [2019] NZERA 424.
[9] Employment Relations Act 2000, s 65.

enjoyed it. When Ms Ansin reached out in December 2023 with an opportunity, she was interested.

[71] After various calls and emails, both parties met at Ms Ansin's home. They discussed that Ms Houston was intending to return to Australia in September 2024 and Ms Houston was offered the position on that understanding. While there was some discrepancy about the salary rate earlier discussed, Ms Houston verbally accepted $62,500 so I consider that the agreed salary rate. Both parties indicated that the basic terms and conditions of employment were agreed verbally at that 13 May 2024 meeting with an immediate start. Ms Houston was given a laptop at that meeting.

[72] When L&L presented Ms Houston with a backdated employment agreement on 15 July 2024, Ms Houston refused to sign it on the basis that if she did, it would "render it void". She gave evidence that she also wanted her work to date to be paid before signing a revised employment agreement or doing further work. The proposed employment agreement was backdated to 13 May 2024 and had an eight-week notice period that Ms Houston was not willing to agree to.

[73] There was no explanation provided by L&L for breaching this section of the Act and the failure to provide an employment agreement at, or near, the commencement of employment.

[74] It falls on the Authority to determine the quantum of any penalty imposed for a breach of the Act. The penalty claim must also be raised in accordance with s 135 of the Act. I am satisfied that the penalty claim was raised within the personal grievance letter sent to L&L on 30 July 2024 and the statement of problem on 30 November 2024, so meeting the requirements of s 135 of the Act.

[75] As an important and fundamental aspect of the Act, a penalty is warranted.

Good faith

[76] Parties in employment relationships must be active and constructive in maintaining a productive employment relationship.[10]

[10] Employment Relations Act 2000, s 4(1)(A).

[77] As outlined in *Gubb Design Ltd v Biddle*:

> An important object of the Act is recognising that employment relationships must be built not only on the implied mutual obligations of trust and confidence, but also on the legislative requirement of good faith behaviour. Mr Biddle's actions undermine these pillars of trust and confidence and good faith. He has shown no remorse and neither has he attempted to mitigate the impact his actions have had on his employer.[11]

[78] In that determination, a penalty of $8,000 was awarded against Mr Biddle. Similar facts existed in these circumstances. I saw no evidence of remorse by Ms Ansin. Based on the email from Ms MXJ to Ms Ansin on 21 July 2024, Ms Ansin knew that she had not paid Ms Houston and knew the amount owed. Despite the personal grievance letter and lodgement of the matter with the Authority, Ms Ansin did not make any attempt to pay the amount owed to Ms Houston until the day before the investigation meeting. As already noted, this was a deliberate and conscious decision made by Ms Ansin and the same pattern of conduct delaying payment that occurred with another employee in 2021.

[79] Multiple examples of those assurances were provided even after the employment relationship ended. This included an email on 19 July 2024 where Ms Ansin followed up on a phone call with "[MXJ] and I were just working out how to make prezzie card work or just doing salary. You are set up now". Ms MXJ confirmed in her evidence that she knew nothing about the prezzie card and nothing was set up as she had not received pay details for Ms Houston.

[80] Given Ms Ansin's misleading emails and assurances that money was forthcoming and she was waiting for Ms MXJ, I consider that her conduct breached the duty of good faith required by s 4 of the Act. Her actions were deliberate, repeated and consciously intended to mislead.

[81] Consideration of a penalty for this breach is outlined later in this determination.

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[11] *Gubb Design Ltd v Biddle* [2022] NZERA 335 at 26.

Consideration of penalties

[82] The maximum penalty against a company for any breach is $20,000.[12] It falls on the Authority to determine the quantum of any penalty imposed for a breach of the Act. The penalty claim must also be raised in accordance with s 135 of the Act.

[83] Considering whether a penalty is warranted and, if so, at what level, I must consider the factors set out in s 133A of the Act, as well as the approach set out in *Borsboom v Preet PVT Limited and Warrington Discount Tobacco Limited*.[13] These principles have been elaborated on and followed in other case law since that decision.[14]

[84] This determination has established that L&L breached:

(a) the requirement to provide a written employment agreement and the requisite obligations under s 63A of the Act. Specific provision of a penalty for a s 65 breach of the Act emphasises the importance of providing a written employment agreement;
(b) s 4 of the WPA by failing to pay wages to Ms Houston when due;
(c) s 27 of the Holidays Act 2003 by failing to pay Ms Houston her final pay upon termination of employment on 12 July 2024; and
(d) the duty of good faith outlined in s 4 of the Act.

[85] Having regard to an appropriate penalty for these breaches of the employment agreement, I have had particular regard to the following:

(a) The object of the Act is to build productive employment relationships. The parties worked together before and came into the relationship with a positive working history. Ms Ansin reached out to Ms Houston initially because of that earlier productive employment relationship.
(b) As indicated by emails to Ms MXJ and Ms Houston and the 8 July 2025 payment, L&L and Ms Ansin knew that money was owed to Ms Houston. Had L&L acted in good faith, at minimum the money owed would have

[12] Employment Relations Act 2000, s 135.
[13] *Borsboom v Preet PVT Limited and Warrington Discount Tobacco Limited* [2016] NZEmpC 143.
[14] Nicholson v Ford *Labour Inspector v Daleson Investment Ltd* [2019].

been paid with Ms Houston's final pay or at the time it was raised as an employment relationship problem by letter on 31 July 2024.

(c) Until 8 July 2024, L&L made no attempt to pay by instalment or pay compensation, restitution or mitigate the effects of the breach for Ms Houston.

(d) Based on the evidence provided, I do not accept Ms Ansin's justification for non-payment was because there was "potential fraud with WINZ" or because Ms Houston had asked for payment by Prezzy card. Even if this was the case, this is not justification for non-payment of wages.

(e) Ms Ansin had medical issues at the time Ms Houston was interviewed and employed. I considered whether these combined with her workload may have impacted on her sufficiently that she was unable to communicate effectively with Ms MXJ or Ms Houston. The medical information provided to me was general in nature and Ms MXJ indicated that Ms Ansin was regularly communicating with her. I concluded that this was not a relevant factor impacting L&L's ability to meet its statutory obligations.

(f) Relevant to the duty of good faith, I considered if Ms Ansin had a genuinely mistaken belief that she was unable to pay Ms Houston because of WINZ payments and potential fraud. I reject that explanation as, by Ms Ansin's own statement, Ms Houston had provided her bank payment details on the first day of employment. At any time, Ms Ansin was able to pay Ms Houston through usual payroll channels and direct bank payment.

(g) Ms Houston was managing life-threatening medical issues at the time and Ms Ansin was aware of those issues. Without detailing these, the nature of those issues placed Ms Houston in a vulnerable position as an employee seeking to recover monies owed.

(h) There was an inherent inequality of power in the relationship and this was particularly relevant given the nature of Ms Ansin's work in public relations and her influence with media in that space. Ms Ansin demonstrated her willingness to exercise that power in a text of 29 April 2025 and a pointed email of 15 May 2025 advising she would advise the newspapers about "the serious misconduct of [Ms Houston]".

(i) A factually similar claim was lodged with the Authority by an ex-employee of L&L in July 2021. According to Authority records, the

parties in that matter agreed that the ex-employee's final pay was owed in March 2021 but it remained unpaid by L&L until the day prior to the investigation meeting set down for 8 March 2022. Similarly, Ms Houston's outstanding wages owed were also paid the day prior to the investigation meeting.

[86] A strong deterrent is necessary to prevent further overt and similar breaches by L&L and Ms Ansin. When both parties know that wages are owed to an employee it should not be necessary for an employee to file with the Authority and wait until that matter is heard before the employer pays wages due.

[87] The award of a global penalty was considered because L&L's decision not to pay wages due to Ms Houston resulted in multiple breaches from the same action. I was dissuaded from doing so because the breaches vary in level of seriousness and at least two of those breaches involved a blatant and conscious disregard for the rights of Ms Houston.

[88] Considered individually and reviewing comparable Authority awards for relevant penalties for each of these types of breaches I award the following penalties:

(a) $1,000 for the failure to provide a written employment agreement and the requisite obligations under s 63A of the Act;
(b) failing to pay wages to Ms Houston when due is a fundamental breach of s 4 WPA however I am conscious to avoid double remedies. I award a penalty of $1,000 for the failure to pay wages due as required. Any further penalty for the intention behind that failure to pay is addressed within the good faith breach.
(c) No further penalty is awarded for the breach of s 27 of the Holidays Act 2003 as this is covered in the s 4 WPA breach identified above and inextricably linked to the failure to pay wages.

Penalty for breach of good faith

[89] Based on existing case law, the threshold for a penalty to be awarded is high. Under s 4A of the Act, a party is liable for a penalty if the failure to comply with the duty of good faith "was deliberate, serious and sustained; or…intended to…undermine an individual employment agreement; or undermine an employment relationship..."

[90] I have considered the relevant factors set out at s 133A of the Act and looked at the range of penalties awarded in similar cases.

[91] I award a penalty of $7,000 under s 4A of the Act for a breach of good faith in the employment relationship.

Liability of Second Respondent

[92] Ms Ansin is the sole director of L&L. I am satisfied that she met the requirements of ss 142W and 142Y of the Act as a person involved in the breaches of employment standards by L&L and is appropriately included as a Second Respondent.

[93] In her witness statement, Ms Ansin confirmed that she is the sole director and CEO of L&L and is responsible for all aspects of the business, including hiring decisions, payroll management and ensuring compliance with employment and tax obligations.

[94] Ms MXJ said that Ms Ansin "was Lily & Louis". I am satisfied that Ms Ansin's involvement in the day-to-day management of L&L also included negotiating the employment agreements, determining pay rates, instructing Ms MXJ and making decisions about project and work allocation.

[95] As Second Respondent, if L&L does not pay the wage arrears owed or penalties awarded to the estate of Ms Houston, Ms Ansin will be personally liable.

Summary of orders

[96] I order that Lily & Louis Limited and Ms Ansin are to securely destroy all medical information relating to Ms Houston.

[97] Within 21 days of the date of determination Lily & Louis Limited is to make payment of $19,287.77 to the estate of Ms Houston and $5,000 to the Crown as follows:

(a) $3,115.41 as lost wages under s 123(1)(b) of the Act in an amount equivalent to 8 weeks ordinary time remuneration plus eight percent

holiday pay (being $360.58 gross per week for eight weeks plus $230.77 as eight percent holiday pay);

(b) compensation under s 123(1)(c)(i) of the Act in the amount of $12,000;

(c) a penalty of $1,000 for the breach under s 63A of the Act failing to provide a valid employment agreement with 75 percent to be paid to the Crown and 25 percent to Ms Tracey Richardson as the personal representative of the estate of Ms Houston;

(d) a penalty of $1,000 for breach of s 4 of the Wages Protection Act 1983 for failing to pay wages when due to the employee with 75 percent to be paid to the Crown and 25 percent to Ms Tracey Richardson as the personal representative of the estate of Ms Houston;

(e) a penalty for breach of good faith in the employment relationship of $7,000 with half to be paid to the Crown and half to Ms Tracey Richardson as the personal representative of the estate of Ms Houston; and

(f) $172.36 as interest on the wages owed to Ms Houston on 22 July 2024 until payment on 8 July 2025.

Costs

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

[99] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Ms Richardson 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, L&L 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.

[100] 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.[15]

Helen van Druten
Member of the Employment Relations Authority

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