

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 808  
3328320

BETWEEN                      SHANIA MORTIMER  
   Applicant  
  
AND                                AUCKLAND STEAM 'N' DRY  
   LIMITED  
   Respondent

Member of Authority:        Rachel Larmer  
  
Representatives:                Richard Anderson, advocate for the Applicant  
   No Appearance by the Respondent  
  
Date of Investigation        5 December 2025 in Auckland  
Meeting:  
  
Date of Determination:       15 December 2025

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment relationship problem**

[1]     The applicant, Shania Mortimer, claimed her former employer, Auckland Steam 'N Dry Limited (the respondent) had unjustifiably dismissed her.

[2]     The respondent denied that. It said Ms Mortimer was dismissed after working three weeks of a trial period, because she was unsuitable for the role. The respondent claimed Ms Mortimer was precluded from pursuing a dismissal grievance because she was dismissed under the trial period provision in her employment agreement.

[3]     Ms Mortimer denied that her employment agreement contained a valid trial period provision, as she said it failed to meet the requirements of s 67A of the Employment Relations Act 2000 (the Act).

**Non-engagement of the respondent**

[4] The respondent lodged a statement in reply (SiR) but otherwise failed to engage in the Authority's investigation of Ms Mortimer's claims. did not attend the case management conference (CMC).

[5] The respondent's sole director Mr Graeme Stephens was given advance notice of the CMC, but he did not answer the Authority's call at the relevant time. Nor did he reply to an email the Authority Officer sent him telling him the CMC had started and he should email the Authority if he wanted to join the CMC late.

[6] The CMC therefore proceeded on 16 September 2025 and the Investigation Meeting (IM) proceeded on 5 December 2025 in the respondent's absence.

**The Authority's investigation**

[7] Following the CMC, a copy of the Directions of the Authority (the DoA) and Notice of Investigation Meeting (NoIM) were served on the respondent on 17 September 2025, to the email address it had used to communicate with the Authority. The DoA recorded that the respondent's non-engagement would not stop the Authority from determining the applicant's unjustified dismissal grievance claim.

[8] The DoA included observations by the Authority that the trial period provision in the unsigned employment agreement that was attached to the statement of problem did not meet the requirements of s 67A of the Act. The Authority also gave the respondent copies of ss 4(1A), 67A and 103A of the Act, so it could easily refer to the legislation that was relevant to the applicant's claim.

[9] The respondent was put on notice that if the applicant was dismissed in reliance on an invalid trial period, then the respondent was going to have to justify her dismissal, as per the justification test in s 103A(2) of the Act.

[10] The Authority recorded in the DoA that would require the respondent to establish it met its good faith obligations in s 4(1A)(c) of the Act regarding providing the applicant with access to relevant information and an opportunity to comment on it before she had been dismissed.

[11] The DoA also noted that the respondent would have to prove that it had complied with each of the four procedural fairness tests in s 103A(3) of the Act. The respondent was also put on notice that its failure to do so would likely result in the applicant being able to establish her dismissal was unjustified.

[12] The Authority pointed out in the DoA that any alleged actions by the applicant that were said to have contributed to the situation that had caused her to be dismissed had to be established on the balance of probabilities, if remedies were to be discounted on the grounds of contribution.

[13] The respondent was directed to provide specific information the Authority had identified as relevant to Ms Mortimer's claims. However, the respondent breached these directions because it failed to provide copies of any of the relevant documents that were set out in the DoA dated 16 September 2025. These included:

- (a) The applicant's wage and time records;
- (b) The applicant's holiday and leave records;
- (c) The applicant's final pay advice;
- (d) The parties' signed employment agreement;
- (e) Any complaint documentation relating to the applicant;
- (f) Disciplinary, performance and other concerns that arose during the employment and any communications the respondent had with the applicant about such matters;
- (g) The applicant's pre-employment representations about her skills, experience and expertise;
- (h) Job interview questions, notes of interview and any associated documents about the representations the applicant made prior to her offer of employment;
- (i) The applicant's induction and training records.

[14] The respondent was due to exchange relevant documents with the applicant by 30 September 2025 and it had to lodge its evidence by 28 October 2025. Notwithstanding repeated reminders from the Authority, the respondent did not comply with these timetable directions.

The respondent also failed to respond to the Authority Officer's repeated attempts to engage it about these proceedings.

[15] On 13 October 2025 the applicant served a copy of her evidence (witness statement and bundle of relevant documents) on the respondent via email to the email address it had previously used to communicate with her and the Authority.

[16] On 14 October 2025 the respondent asked for the applicant's claim to be "paused" as it was facing financial difficulties and Mr Stephens was busy with other matters. The applicant objected to that request and asked for her IM to proceed.

[17] The Authority informed the parties on 17 October 2025 that the IM would be proceeding on 5 December 2025 as scheduled. The respondent was also provided with another copy of the DoA and NoIM.

[18] The respondent was also informed that the matter would be determined based on the evidence presented at the IM on 5 December 2025 and that the IM would proceed regardless of whether the respondent engaged in the Authority's investigation and/or attended the IM.

[19] The Authority reminded the respondent of the IM on 4 December 2025 by emailing another copy of the NoIM to it. The Authority officer also phoned the respondent in another attempt to get it to engage. When their call was not answered, the Authority officer left a message reminding the respondent of the IM the following day.

[20] An in-person IM was held in Auckland. The start of the IM was delayed by 30 minutes to give the respondent extra time to appear, but it failed to do so. The applicant's claims have therefore been determined based on the evidence that is available to the Authority.

[21] The applicant attended with her advocate but Mr Stephens did not attend the IM. The applicant gave evidence under affirmation. She was questioned about her claims, and the limited information the respondent had provided in its statement in reply, by the Authority. Because the respondent failed to lodge any evidence and failed to appear at the IM, Ms Mortimer's evidence was uncontested.

[22] Submissions were presented during the IM, once the applicant had concluded giving her evidence.

**Issues to be determined**

[23] The following issues are to be determined:

- (a) Did the employment agreement contain a valid trial period provision?
- (b) If so, was the applicant's employment ended in compliance with the trial period provision?
- (c) If not, was the applicant's dismissal justified?
- (d) If not, what remedies should she be awarded?
  - (i) What unpaid notice is the applicant owed?
  - (ii) Did the applicant mitigate her loss?
  - (iii) If so, what lost remuneration should be awarded?
  - (iv) What lost benefits should be awarded?
  - (v) What distress compensation should be awarded?
- (e) Should any remedies that may be awarded be reduced on the grounds the applicant contributed to the situation that gave rise to her personal grievance?
- (f) What costs and disbursements should be awarded?

**Relevant background**

[24] Ms Mortimer was employed as an Office Administrator. She had not previously worked in an office environment and she told Mr Stephens that before she was employed. Ms Mortimer started work on 29 July 2024. She was not given any structured training or an induction. She was shown the computer and given some template documents to use as references, but that was it.

[25] The respondent sent Ms Mortimer a letter dated 16 August 2024, after fifteen days of work, that dismissed her. Mr Stephens had not met with Ms Mortimer prior to her receiving the dismissal letter.

[26] On 16 August 2024 the respondent emailed Ms Mortimer a letter dated 15 August 2024 which stated "... it did not make sense to continue with the remainder of the three-month trial." The letter was signed by Mr Stephens, who stated "I can offer you two weeks' working notice in fairness if you like?" No mutual agreement was reached about that proposed notice period.

[27] The dismissal letter cited “Talks with you over the last few weeks regarding performance issues” and said there had not been a satisfactory improvement in customer verbal and written communication, or professionalism and grammar. The dismissal letter also referred to “... the financial income hardship the company is experiencing...”.

[28] Ms Mortimer told the Authority that no such discussions had occurred. She did not know what the dismissal letter had been referring to. Ms Mortimer said her requests to Mr Stephens to be given more time to prove herself were declined.

[29] Ms Mortimer’s employment agreement specified that either party could give four weeks’ written notice of termination. The parties could also mutually agree on a lesser period of notice, but did not occur in this case.

[30] Ms Mortimer’s request for contractual notice resulted in Mr Stephens unilaterally withdrawing the offer of two weeks’ notice and supposedly reducing the notice to one week. However, no evidence was provided that established Ms Mortimer was paid in lieu for any of her contractual notice period. Ms Mortimer was informed by Mr Stephens via email on 19 August 2024 that was to be her last day at work.

[31] Ms Mortimer said that no performance issues or other concerns about her work were raised with her during the short period she was employed. She had not received any warnings, been subject to a performance appraisal or been counselled about performance related matters while employed. Mr Stephens did not meet with Ms Mortimer or discuss any issues with her before she was dismissed.

[32] On 19 August 2024 Ms Mortimer was told she was not permitted to work out her notice period because a complaint had been made against her, to the effect that she had allegedly made some unidentified person “uncomfortable”. This information was passed on to Ms Mortimer verbally. She was not given a copy of the alleged complaint, any information about it or an opportunity to respond to it. Ms Mortimer could not think of anything that had occurred while she was at work on 19 August 2024 that may have made anyone uncomfortable.

[33] Ms Mortimer told the Authority she had worked on 19 August 2025 without incident and she had not discussed her dismissal with other staff in the workplace. She did however ask Mr Stephens to let her work out her four weeks’ contractual notice period or for her to be paid

in lieu of being given the required contractual notice. Mr Stephens did not engage with her about that.

[34] Based on the available evidence, the Authority considered that the respondent's unilateral decision to end the employment on 19 August 2024 was likely a reaction to Ms Mortimer's attempts to get it to comply with its contractual notice obligations.

[35] The respondent unilaterally reduced Ms Mortimer's notice period to one week, but there was no evidence produced that she had been paid correctly for her contractual notice period.

[36] The respondent failed to respond to Ms Mortimer's request on 29 August 2025 to be provided with a copy of her wage and time records, and holiday and leave records. It also failed to engage with her requests to be paid for the correct notice period.

### **Did the applicant's employment agreement contain a valid trial period provision?**

#### *Relevant law*

[37] Section 67A of the Act provides that an employment agreement may contain a trial period provision for a specified period up to 90-days, starting at the beginning of the employee's employment, that allows the employer to dismiss the employee without the employee being able to pursue a dismissal grievance claim.

[38] Section 67B(2) of the Act states that if the employer terminates an employee's employment in accordance with a valid trial period provision in their employment agreement, then the employee cannot bring a personal grievance claim or legal proceedings in respect of their dismissal.

#### *Ms Mortimer's trial period provision*

[39] The trial period provision in Ms Mortimer's employment agreement stated:

The Employer and Employee agree that the Employee's employment is subject to a trial period of 90-days commencing on the first day of employment, meaning the day the Employee actually starts work.

During the trial period of three months, the employee can be dismissed without warnings for serious performance issues, these three months may be increased by way of written notice from the employer if not satisfied, to the employee.

[40] This trial period did not meet the requirements of s 67A of the Act, because it failed to state that if the employee was dismissed during the trial period they could not bring a personal grievance or other legal proceedings in respect of their dismissal. The reference to 90-days and then to three months was also potentially confusing as a trial period can only last for up to 90-days. It cannot be extended by the employer giving the employee notice of that.

[41] Accordingly, because the trial period was invalid the respondent cannot rely on it to prevent Ms Mortimer from pursuing a personal grievance claim regarding her dismissal. That meant the respondent was required to justify Ms Mortimer's dismissal.

### **Discrepancy in IRD records**

[42] The Authority noted there was an unexplained discrepancy between the three payslips the respondent provided to Ms Mortimer and the information it passed to Inland Revenue (IRD) about her earnings while employed.

[43] The three payments Ms Mortimer received as per her payslips total \$3,108.23 (being \$793.16 on 8/8/24; \$731.45 on 15/8/24; and \$1,583.62 on 22/8/24). The payslips did not record what days or hours of work these payments related to. They also failed to record any KiwiSaver contributions, holiday pay or pay in lieu of notice. The amounts paid were not stated to be net, although they presumably were net.

[44] A printout Ms Mortimer provided from IRD of all earnings from the respondent recorded that she had been paid a total of \$4,129.06 in August 2024.

### **Failure to produce employment documentation upon request**

[45] The respondent failed to provided Ms Mortimer with her wage and time records or holiday and leave records when she requested them. The respondent also failed to comply with the Authority's directions to provide this employment documentation.

[46] The respondent's failure to produce Ms Mortimer's wage and time records on request breached s 130 of the Act. The respondent's failure to produce Ms Mortimer's holiday and leave records on request breached s 81 of the Holidays Act 2003 (the HA03).

**Calculation of wages for hours worked**

[47] Ms Mortimer's employment agreement recorded that she was employed for 40 hours per week at the rate of \$24.00 per hour. Therefore her daily pay was \$192.00 and her weekly pay was \$960.00 gross.

[48] Because the respondent failed to produce Ms Mortimer's employment documentation on request, the Authority has applied her contractual pay rate to the days she worked to determine what she should have been paid for the hours she had worked.

[49] Ms Mortimer worked for 16 days at the rate of \$192.00 per day, so should have been paid total earnings of \$3,072.00 gross for the hours she had working during the course of her employment.

**Unpaid notice**

[50] Ms Mortimer was contractually entitled to four weeks' notice but only received one day of actual notice, as she was informed of her dismissal on 16 August 2024, but had only worked on 19 August 2024 before the respondent ended the employment relationship that day.

[51] Ms Mortimer should have been paid \$3,648.00 in lieu of notice, being \$3,840.00 as four weeks' notice less \$192.00 for the one day of notice she worked on 19 August 2024.

[52] The respondent is ordered to pay Ms Mortimer wage arrears of \$3,648.00 as notice pay arrears.

**KiwiSaver arrears**

[53] Because Ms Mortimer was a KiwiSaver member, the respondent should have remitted her individual contributions and its compulsory employer KiwiSaver contributions to IRD, for it to pass on to her KiwiSaver provider. However, that did not occur. No KiwiSaver contributions were sent to IRD on Ms Mortimer's behalf.

[54] Ms Mortimer's compulsory individual contribution (CIC) was to be deducted at the rate of three per cent from her total gross earnings. Because Ms Mortimer's employment agreement did not contain a total remuneration clause, the respondent was required to pay the Compulsory Employer Contribution (CEC) at the rate of three per cent on top of her total gross earnings.

[55] The respondent is ordered to pay Ms Mortimer wage arrears for its outstanding CEC of \$201.60, being three per cent of her gross earnings of \$6,700.00 up to the date of termination (had she been paid correctly). The respondent is also ordered to pay Ms Mortimer wage arrears for her outstanding CIC of \$201.60, being three per cent of her gross earnings of \$6,720.00 up to the date of termination (had she been paid correctly).

[56] Accordingly, the respondent is ordered to remit total KiwiSaver arrears of \$403.20 to IRD for the benefit to Ms Mortimer's KiwiSaver account, which accounts for her CIC and the respondent's CEC.

### **Unpaid holiday pay**

[57] Ms Mortimer should have been paid \$6,921.60 up to the date of termination had she been paid correctly. That consisted of \$3,072.00 for hours worked; \$3,648.00 for notice pay arrears; and \$201.60 as the CEC KiwiSaver arrears.

[58] Ms Mortimer was entitled to be paid eight per cent of her total gross earnings as annual holiday pay when her employment ended. That did not occur.

[59] Accordingly, the respondent is ordered to pay Ms Mortimer wage arrears of \$570.34 being:

- (a) \$553.73 for unpaid holiday pay; and
- (b) \$16.61 as the respondent's CEC on her holiday pay arrears (being \$553.73 x 3%).

### **Summary of wage arrears Ms Mortimer is owed**

[60] Ms Mortimer was paid \$3,072 net which is approximately \$3,800.00 gross. However, she should have been paid \$7,491.94 gross, consisting of :

- (a) \$3,072.00 for hours worked;
- (b) \$3,648.00 pay in lieu of notice;
- (c) \$201.60 as the CEC to KiwiSaver;
- (d) \$570.34 as holiday pay plus the CEC on the holiday pay payment.

[61] Ms Mortimer is owed wage arrears of \$3,691.94, being the \$7,491.94 she should have been paid less the \$3,800.00 gross wages she actually received.

[62] The respondent is ordered to pay Ms Mortimer wage arrears of \$3,691.94 gross, which includes the respondent's KiwiSaver CEC of three per cent.

### **Interest on wage arrears**

[63] Ms Mortimer should have been paid all of the money she was owed by 22 August 2024 at the latest, as that was the pay period following the end of her employment.

[64] The respondent has had the benefit of using \$3,691.94 gross of Ms Mortimer's wages since 22 August 2024. It was therefore appropriate for the respondent to pay her interest to reflect that she has been deprived of the use of her own money.

[65] Interest is to be calculated using the Civil Debt Interest Calculator on the Ministry of Justice website. Interest is to run on the amount of \$3,691.94 from 22 August 2024 until it has been paid in full.

[66] The respondent is ordered to pay interest of \$245.86 from 22 August 2024 up the date of this determination. Ongoing interest continues to accrue on any amount outstanding from 16 December 2025 (being the day after the date of this determination) until the wage arrears and interest awarded have been paid in full to Ms Mortimer.

[67] Accordingly, the respondent is ordered to pay Ms Mortimer \$3,937.80 gross, being \$3,691.94 plus interest of \$245.86 to the date of this determination.

### **Was the applicant's dismissal justified?**

#### *Justification test*

[68] The justification test in s 103A(2) of the Employment Relations Act 2000 (the Act) requires the Authority to objectively assess "the employer's actions, and how the employer acted", to determine whether it was what a fair and reasonable employer could have done in all the circumstances.

[69] This assessment is to occur at the time Ms Mortimer was dismissed, so it is based on the information that was available to the respondent as at 16 August 2024, which is the date it made the decision to dismiss her.

[70] The Authority is not permitted to substitute its own subjective view for that of the employer, rather it is assessing what options within a range of possible responses could be open to a fair and reasonable employer in all the circumstances.

#### *Good faith obligations*

[71] Section 4(1A)(c)(i) of the Act requires an employer that is proposing to make a decision that could adversely affect an employee's employment, to provide the employee with access to information and an opportunity to comment on it.

[72] That did not occur. Ms Mortimer was not given any information, so she was not aware of what the respondent was concerned about that had put her ongoing employment in jeopardy. Ms Mortimer therefore had no ability to respond to the information that was influencing the respondent's decision making before she was dismissed.

[73] The respondent failed to comply with its good faith obligations to Ms Mortimer.

#### *Procedural fairness tests*

[74] Ms Mortimer's dismissal came 'out of the blue'. The respondent failed comply with any of the four procedural fairness tests in s 103A(3) of the Act, which set out minimum standards of procedural fairness that need to be observed by an employer in order to justify an employee's dismissal.

[75] The respondent failed to sufficiently investigate the concerns it had about Ms Mortimer, in breach of s 103A(3)(a) of the Act. It failed to raise its concerns with her, in breach of s 103A(3)(b) of the Act. The respondent failed to give Ms Mortimer any opportunity to respond to the matters of concern, so it therefore failed to consider her responses to any concerns before it dismissed her, which breached ss 103A(3)(c) and (d) of the Act.

[76] These process failures by the respondent were not minor and did result in significant unfairness to Ms Mortimer, so s 103A(5) of the Act did not preclude the Authority from finding that Ms Mortimer's dismissal was unjustified.

*Substantive justification*

[77] The respondent's breaches of good faith and minimum procedural fairness obligations fundamentally undermined its ability to justify Ms Mortimer's dismissal.

[78] Although the respondent told Ms Mortimer she had been dismissed because it considered she was unsuitable for the role, it failed to provide the Authority with any evidence to support that view.

[79] A fair and reasonable employer is expected to train and support a non-performing employee to etc the required performance standards before dismissing them, particularly if the employee had only been employed for fifteen days.

[80] The respondent failed to provide any induction or training to Ms Mortimer, despite knowing it was her first office-based job. She was not given any feedback, constructive criticism or guidance to support her to meet the requirements of her new job.

[81] There was no suggestion Ms Mortimer had engaged in serious misconduct. Ms Mortimer had only been in the role for three weeks, so a fair and reasonable employer would be expected to help her as a very new employee with the necessary training, feedback and time to improve to the required standard before electing to dismiss her for poor performance.

[82] There was no evidence of any training or other support being given to Ms Mortimer to assist her to meet the requirements of her new role. Nor was there any evidence of a performance plan being put in place or of a graduated warning process being adopted prior to her dismissal. Ms Mortimer had not been reprimanded, counselled or warned before she was dismissed.

[83] The respondent attached a text message to its statement in reply that suggested Ms Mortimer was taking too long to train to do her role. However, there was no process put in place to address that concern. The absence of a training or performance plan meant Ms Mortimer was deprived of an opportunity to meet the required performance standards before she was dismissed.

[84] The absence of a valid trial period provision meant Ms Mortimer was a permanent fulltime employee. It was up to the respondent to ensure it had a valid trial period provision and that it had terminated Ms Mortimer's employment in accordance with the applicable

contractual requirements, if it wanted to be able to assess her suitability for the role and dismiss her without facing a dismissal grievance if it assessed her to be unsuitable. However, the respondent failed to do that.

*Outcome*

[85] The respondent failed to provide any evidence to justify its dismissal of Ms Mortimer, so it was unable to establish her dismissal was justified. Accordingly, Ms Mortimer's unjustified dismissal grievance succeeded.

**What remedies should be awarded?**

*Did Ms Mortimer mitigate her loss?*

[86] Ms Mortimer told the Authority she immediately started applying for jobs. She said she applied for in excess of 60 jobs before she obtained contract work as a cleaner on 20 December 2024.

[87] Ms Mortimer has appropriately mitigated her loss, so she is entitled to an award of lost remuneration.

*What lost remuneration should be awarded?*

[88] Ms Mortimer was without income from 20 August 2024 to 20 December 2024, a period of 17 weeks and three days. She is entitled to an award of lost remuneration for that period, less the four weeks' contractual notice period she has been awarded. That meant Ms Mortimer was entitled to recover lost remuneration for 13 weeks and three days (being 17 weeks and three days she was out of work less her four weeks' notice period).

[89] Pursuant to s 128(3) of the Act, the respondent is ordered to pay Ms Mortimer \$13,056.00 gross, being \$12,480.00 for 13 weeks x \$960 per week plus \$576.00 for three days, being \$192.00 x 3 days x \$24.00 per hour for 8 hours a day.

*What distress compensation should be awarded?*

[90] Ms Mortimer' gave evidence about the adverse impact her unjustified dismissal had on her and her immediate family.

[91] Ms Mortimer could not afford to continue sending her daughter to kindergarten. She had to sell her possessions to cover household expenses. She also had to ask extended family

members to help purchase items her daughter needed which she could not afford. She also could not afford to participate in extended family activities.

[92] Ms Mortimer's dismissal put a huge strain on her marriage and her mental health suffered to the extent she required medication. Ms Mortimer told the Authority she had found it particularly hurtful that she had sent Mr Stephens a copy of her contractual notice and asked to be paid in accordance with that but he had ignored her. The respondent's failure to pay Ms Mortimer correctly left her without any income at a time when she and her family faced serious financial difficulties.

[93] The respondent is ordered to pay Ms Mortimer \$10,000.00 under s 123(1)(c)(i) of the Act to compensate her for the humiliation, loss of dignity and injury to feelings her unjustified dismissal caused her.

**Should remedies be reduced on the grounds the applicant contributed to the situation that gave rise to her personal grievance?**

[94] Having determined that Ms Mortimer had a valid personal grievance claim, section 124 of the Act required the Authority to assess the extent to which her actions contributed to the situation that gave rise to her dismissal and to reduce remedies accordingly.

[95] Contribution denotes blameworthy conduct that has been proven on the balance of probabilities. The respondent's failure to engage in the Authority's investigation process meant no such evidence was available. Accordingly Ms Mortimer's remedies are not to be reduced under s 124 of the Act.

**Breaches of employment standards have occurred**

[96] Given Mr Stephen's indication that the respondent was in financial difficulty, and his lack of engagement with Ms Mortimer's advocate and the Authority, it was prudent to ensure Ms Mortimer was able to recover from Mr Stephens personally any wage arrears and other money the respondent was unable to pay her. That has therefore been addressed in this determination.

*Breach of employment standards*

[97] The failure to pay Ms Mortimer her correct wages, notice pay and holiday pay when her employment ended was a breach of employment standards.

[98] The respondent's following breaches were also breaches of "employment standards" as defined by s 5 of the Act:

- (a) Breach of s 130 of the Act;
- (b) Breach of s 81 of the HA03;
- (c) Breach of holiday pay payment obligations under the HA03;
- (d) Breach of the obligation under WPA to pay the employee on time and without deduction.

**Leave to pursue Mr Stephens personally to the extent the respondent cannot pay Ms Mortimer**

[99] Mr Stephens, as the respondent's sole director, was a person involved in the breaches of employment standards that have occurred, defined by s 142W of the Act.

[100] Mr Stephens personally aided and abetted the respondent's breaches. He was asked to have the respondent produced Ms Mortimer's employment documentation but failed to do so. Mr Stephens knew the terms of Ms Mortimer's employment but failed to take steps to ensure the respondent paid her correctly. Mr Stephens deliberately failed to ensure the respondent paid Mr Mortimer her contractual notice, despite that being raised with him.

[101] The Authority grants Ms Mortimer leave under s 142Y of the Act to leave to pursue Mr Stephens personally to pay any wage arrears and other money she has been awarded in this determination, to the extent the respondent was unable to pay her.

[102] With 28 days of the date of this determination, Mr Stephens must:

- (a) EITHER take the necessary steps, in his capacity as the sole director, to ensure the respondent paid Ms Mortimer all of the wage arrears and other money she is owed;
- (b) OR he must inform her in writing that the respondent cannot pay, and he must personally pay her the wage arrears and other money, to the extent that the respondent has defaulted on paying her.

### **What costs and disbursements should be awarded?**

[103] The applicant, as the successful party, is entitled to a contribution towards her actual legal costs and to have her filing fee reimbursed.

[104] The Authority was told that there have not been any “without prejudice expect as to costs” settlement offers, so costs could be awarded based on the notional daily tariff.

[105] Ms Mortimer’s advocate was working on a ‘no win no fee basis’, whereby she has to pay 30 per cent of the money she is awarded by the Authority. Her actual legal costs have therefore exceeded \$4,500.00, which is the current notional daily tariff for a one-day investigation meeting.

[106] The notional starting tariff of \$4,500.00 had to be reduced to \$2,250.00 to reflect that this investigation meeting only involved half a day. There were no other reasons put forward by the parties to adjust the notional starting tariff, and the Authority was not aware of any other factors that warranted adjusting the notional starting tariff.

[107] Accordingly, within 28 days of the date of this determination, the respondent is ordered to pay Ms Mortimer \$2,321.56, being a contribution of \$2,250.00 towards her actual legal costs plus \$71.56 to reimburse her filing fee.

### **Orders**

[108] Within 28 days of the date of this determination, the respondent is ordered to pay Ms Mortimer \$30,087.30 gross, consisting of:

- (a) \$3,691.94 wage arrears.
- (b) \$245.86 interest on her wage arrears up to the date of this determination.
- (c) \$13,056.00 actual lost remuneration under s 128(3) of the Act up to 20 December 2024, being the date she obtained alternative work.
- (d) \$201.60 as the respondent’s CEC on her award of lost remuneration, which is to be paid to IRD, for it to pass on to her KiwiSaver provider.
- (e) \$570.34, being \$553.73 holiday pay arrears plus \$16.61 as the respondent’s CEC on that amount.
- (f) \$10,000.00 distress compensation under s 123(1)(c)(i) of the Act.

(g) \$2,250.00 towards her actual legal costs.

(h) \$71.56 to reimburse her filing fee.

[109] The respondent is ordered to pay ongoing interest on any of the amount of \$3,937.80 (being \$3,691.94 gross wage arrears plus interest of \$245.86 up to 15 December 2025) that is still owing from 16 December 2025, being the date after this determination was issued to the parties, until that amount has been paid to Ms Mortimer in full.

[110] Within 28 days of the date of this determination, Mr Stephens in his capacity as the respondent's sole director is ordered to take the necessary steps to ensure the respondent pays Ms Mortimer the wage arrears and other money she has been awarded in this determination.

[111] If the respondent is unable to pay Ms Mortimer the full amount she is owed, then Mr Stephens must advise Ms Mortimer of that in writing, and he must explain why the respondent is unable to pay her. In which case, within 28 days of the date of this determination Mr Stephens must personally pay Ms Mortimer any wage arrears and other money the respondent was unable to pay her.

[112] Within 28 days of the date of this determination, Mr Stephens must take the necessary steps to:

- (a) Inform IRD of the inaccuracies in the pay information the respondent sent it about Ms Mortimer's earnings;
- (b) Provide IRD with the correct information and a copy of this determination;
- (c) Remit the correct KiwiSaver contributions both for Ms Mortimer's CIC and the respondent's CEC to IRD to pass on to her KiwiSaver provider.