

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 108
3379423

BETWEEN	GEMMA HEREWINI PEDERSEN Applicant
AND	SUPER VAPE STORE LIMITED Respondent

Member of Authority:	Simon Greening
Representatives:	Claudia Serra, advocate for the Applicant Miriam O’Hare for the Respondent
Investigation Meeting:	30 January 2026 at Auckland
Submissions received:	On 11 February 2026 by the Applicant On 30 January 2026 by the Respondent
Determination:	26 February 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Gemma Pedersen was employed as a retail assistant by Super Vape Store Limited (SVSL) from 14 October 2024 until she was dismissed on 13 January 2025.

[2] Zack O’Hare is the director of SVSL. Miriam O’Hare assisted SVSL by managing the payroll function.

[3] Ms Pedersen commenced employment on 14 October 2024; however, the Auckland store Ms Pedersen was to work in did not open until 18 November 2024.

[4] Ms Pedersen has brought a number of employment relationship problems to the Authority for determination.

[5] Ms Pedersen says SVSL promised her full training on its systems and legal processes, but SVSL did not deliver on this promise. Ms Pedersen says she was unjustifiably disadvantaged because she did not feel confident enough to use the POS system, and because using the system was a case of “trial and error” it caused Ms Pedersen to experience stress at work.

[6] Ms Pedersen received an email from Ms O’Hare on 13 January 2025:

After reviewing CCTV footage and assessing performance reports, we have concluded that the conditions of your employment have not been met during your three-month probation period. Specifically, key performance indicators such as basket size, basket value, and customer sign-up rate were not achieved.

[7] Ms O’Hare subsequently emailed Ms Pedersen on the same day, noting:

This letter serves as a formal notice that your probation period with Super Vape Store Limited is being terminated, effective today, 13 January 2025.

[8] Ms Pedersen says SVSL unjustifiably dismissed her on 13 January 2025. She seeks compensation pursuant to section 123(1)(c)(i) of the Employment Relations Act 2000 (the Act), lost remuneration for the period 19 January 2025 to 14 February 2025, and costs. Ms Pedersen also initially sought a penalty against SVSL for not providing her wages and time record, however this claim was withdrawn at the investigation meeting.

[9] Ms Pedersen’s individual employment agreement included a probation period clause:

The Employee’s employment will be subject to a probationary period of six months from the commencement of the Employee’s employment. During this time, both the Employer and the Employee may terminate this Agreement by providing one week’s notice, or in the instance of termination by the Employer, payment in lieu thereof.

[10] SVSL says it was justified in its decision to terminate Ms Pedersen’s employment with the company. This is because Ms Pedersen failed to meet her KPIs, her attitude and communication style was not constructive, and Ms Pedersen was not flexible when it came to working rostered shifts.

The Authority's investigation

[11] The statement of problem was lodged by Ms Pedersen on 19 May 2025. Ms O'Hare lodged a statement in reply, on behalf of SVSL, on 21 May 2025.

[12] On 7 August 2025 SVSL notified the Authority that it did not wish to engage in mediation.

[13] On 12 December 2025 a case management conference (CMC) was scheduled. SVSL did not attend the CMC.

[14] Following the CMC, the Authority sent the notice of investigation meeting and directions to the email address for service provided by SVSL in its statement in reply.

[15] On 15 January 2026 the notice of investigation meeting and directions of the Authority were couriered to SVSL's address for service as recorded on the companies register.

[16] SVSL did not comply with the Authority's timetable for lodging witness statements. The Authority granted leave to SVSL to lodge witness statements. The Authority received witness statements in the evening prior to the investigation meeting scheduled the following day.

[17] For the Authority's investigation written witness statements were lodged by Ms Pedersen, Ms Tamra Rehardt, Mr O'Hare, and Ms O'Hare. Ms Rehardt and Mr O'Hare did not participate in the investigation meeting. The Authority directed all witnesses to attend the investigation meeting. The witnesses answered questions from me under oath or affirmation and from Ms Pedersen's representative.

[18] 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

[19] The issues requiring investigation and determination are:

- (a) Was Ms Pedersen unjustifiably disadvantaged by the alleged failure of SVSL to provide training on store systems and legal processes?
- (b) Was Ms Pedersen unjustifiably dismissed by SVSL?

- (c) If any of the personal grievances are established, is Ms Pedersen entitled to compensation under s 123(1)(c)(i) of the Act and/or reimbursement of remuneration under s 128(2) of the Act?
- (d) If any remedy is awarded, should it be reduced under s 124 of the Act for blameworthy conduct by Ms Pedersen which contributed to the circumstances which gave rise to her personal grievance claims?
- (e) Is either party entitled to an award of costs?

Was Ms Pedersen unjustifiably disadvantaged by the alleged failure of SVSL to provide training on store systems and legal processes?

[20] A personal grievance for unjustified disadvantage is a claim that an employee's employment, or one or more conditions of the employee's employment, is or are affected to the employee's disadvantage by some unjustifiable action by the employer.¹

[21] The Authority is required to consider the actual effect of the employer's decision by focusing on what has occurred and then assessing the impact on the employee's employment.²

[22] SVSL's position is that it provided training on store systems and relevant legal processes to Ms Pedersen. Ms Rehardt worked as an Area Manager for SVSL during the period Ms Pedersen was employed by the company. Ms Rehardt is based in Australia but was in New Zealand for one week, between 9 October and 16 October 2024, to assist with setting up the store and provide staff training.

[23] Ms O'Hare says the company went "over and above" in terms of providing training and support for Ms Pedersen. This is because training of staff normally occurs over a two-day period. Ms O'Hare says that Ms Pedersen was provided on-site training facilitated by Ms Rehardt between 11 and 16 October 2024.

[24] Ms Pedersen accepts that there were two training sessions with Ms Rehardt which took place in a café. These training sessions involved reviewing product guidelines, discussing product categories and basic sales training. However, Ms Pedersen says this training was not sufficient because the point of sales system had not been set-up.

¹ Employment Relations Act 2000, s 103(1)(b).

² *Wiles v The Vice-Chancellor of the University of Auckland* [2024] NZEmpC 123 at [98].

[25] Ms Pedersen said that Ms Rehardt used her laptop to demonstrate how the POS system worked.

[26] Ms O'Hare points to six training shifts between 23 October 2024 and 19 December 2024 where she says Ms Pedersen received additional training.

[27] In addition, Ms O'Hare said SVSL used WhatsApp to provide staff training by arranging calls and video conferencing meetings because Ms Rehardt was based in Australia.

[28] Ms Pedersen was unjustifiably disadvantaged by the failure of SVSL to provide training on the POS systems and legal processes for the following reasons:

(a) Ms Pedersen had to learn to use the POS system on a "trial and error" basis which negatively impacted on her ability to perform her duties.

(b) SVSL's decision to terminate Ms Pedersen's employment was based on its opinion that Ms Pedersen was not meeting the KPIs that had been set. Ms O'Hare sent a further WhatsApp message to Ms Pedersen, the day after SVSL had terminated the employment relationship. Ms O'Hare wrote:

You are currently in your probation period, and we will not be continuing your employment based on your extremely low KPIs. You have had training with Tam and online with Emily. Your 1 weeks' notice and entitlements will be paid on the 21st of Jan 2025.

(c) SVSL recognised the need for additional training. Although some training was provided, SVSL did not provide full training to Ms Pedersen. On 21 November 2024, Ms O'Hare sent a message on WhatsApp to the staff based in the Auckland store:

When the products arrive, we will also send Lewis over for a grand opening and full sales training for a week with you both.

(d) Immediately following the dismissal, on 14 January 2025, Ms Pedersen sent a WhatsApp message to Ms O'Hare raising her concern that SVSL had not provided full training:

We haven't received the proper training that we've been waiting for since last year. The store has only been opened to the public for almost 2 months. I believe this is a unfair dismissal.

- (e) The lack of proper training provided by SVSL caused disadvantage to Ms Pedersen because it meant she was unable to confidently do her job which caused her to experience stress and ultimately led to SVSL terminating her employment on the basis of poor performance.

[29] Ms Pedersen has established a personal grievance on the ground she was unjustifiably disadvantaged by SVSL not providing her with adequate training to do her job.

Was Ms Pedersen unjustifiably dismissed by SVSL?

[30] The legal test for determining whether a dismissal is justified, 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 occurred.³

[31] The Authority must also have regard to the resources available to the employer when considering the employer's actions in context.⁴

[32] SVSL unjustifiably dismissed Ms Pedersen for the following reasons:

- (a) Ms O'Hare understood that Ms Pedersen's probationary period was three months in length. However, Ms O'Hare accepted the individual employment agreement recorded a six-month probation period.
- (b) The decision to terminate Ms Pedersen's employment was partly due to Ms O'Hare's misunderstanding that the probation period had come to an end.
- (c) The employment relationship commenced on 14 October 2024 and therefore the probationary period at least ran to 14 April 2025.
- (d) An employer may dismiss an employee for poor performance.⁵ However, an employer's decision to dismiss an employee for poor performance is subject to whether the decision and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the relevant time.⁶

³ Employment Relations Act 2000, s 103A(2).

⁴ *E TU Incorporated v Singh* [2024] NZEmpC 84 at [49].

⁵ *Yan v Commissioner of Inland Revenue* [2015] NZEmpC 36 at [33].

⁶ Above n 5 at [5].

(e) SVSL did not raise performance concerns with Ms Pedersen and give her an opportunity to improve or put Ms Pedersen on notice that if her performance did not improve then she might face dismissal.

(f) SVSL terminated Ms Pedersen's employment by sending her a WhatsApp message in the first instance and then followed up with an email. SVSL did not follow the fair process requirements set out in the Act.⁷

Remedies

[33] Ms Pedersen has established personal grievances for unjustified disadvantage and unjustified dismissal. She is entitled to a consideration of the remedies sought.

Compensation for humiliation, loss of dignity and injury to feelings

[34] An award of compensation is for the impact on the employee of the personal grievance and not intended as a punitive action to signal disapproval of the employer's conduct.⁸ In considering an award of compensation, the assessment required is the nature and extent of harm caused to the employee by the employer's breach.⁹

[35] I listened carefully to Ms Pedersen's evidence at the investigation meeting. Ms Pedersen had previously been employed in the retail industry before working for SVSL. Ms Pedersen says that she loved her job. She always understood that full training would be provided, and this was important to her because she wanted to be able to do her job well for the company.

[36] The WhatsApp message she received from SVSL, terminating her employment effective immediately, came out of the blue. Ms Pederson became upset during the investigation meeting as she described her "bad mental state" following the loss of her job. She described feeling "used" by SVSL because she was involved in setting up the store from day one. Ms Pedersen had built rapport with customers and enjoyed her job. It came as a shock to her when she was dismissed without warning or any form of process being undertaken by SVSL.

⁷ Above n 3.

⁸ *Paykel Ltd v Ahlfield* [1993] 1 ERNZ 344 at [342].

⁹ *Pyne v Invacare New Zealand Limited* [2023] NZEmpC 179 at [41].

[37] Taking all of these factors into account, an award of compensation under s 123(1)(c)(i) of the Act is appropriate in this case:

(a) \$2,000 for the disadvantage claim arising from the failure of SVSL to provide adequate training; and

(b) \$11,000 for the dismissal claim.

Reimbursement of lost wages

[38] The Authority must order the employer to pay the lesser of a sum equal to that lost remuneration or to three months' ordinary time remuneration, subject to contribution and the discretionary power in s 128(3) of the Act to order an employer to pay a greater sum.¹⁰

[39] Ms Pedersen claims \$2,917.48 (gross) pursuant to s 128 of the Act. Ms Pedersen was paid up to 19 January 2025 and commenced employment with a new employer on 14 February 2025. The steps Ms Pedersen took in the period between the loss of job and securing new employment were reasonable, therefore she is entitled to recover her losses for that period which amount to \$2,917.48.¹¹

Contribution

[40] The Authority must consider whether there ought to be a reduction in the remedies that would otherwise have been awarded to the employee.¹² This in turn requires an assessment of the extent to which the actions of the employee contributed towards the situation that gave rise to the personal grievance and whether those actions require a reduction in remedies.¹³

[41] There must be a causal connection between the employee's conduct and the situation which gave rise to the dismissal.¹⁴

[42] The onus is on the employer to establish performance concerns were properly brought to the attention of the employee and an opportunity provided to address these

¹⁰ Above n 7 at [28].

¹¹ *Maddigan v Director-General of Conservation* [2019] NZEmpC 190 at [64].

¹² Employment Relations Act 2000, s 124.

¹³ Above n 7 at [39].

¹⁴ *Salt v Fell* [2008] NZCA 128 at [78].

performance concerns before a reduction in remedies under s 124 would be contemplated.¹⁵

[43] SVSL did not follow any sort of process in addressing the performance concerns it had concerning Ms Pedersen. Accordingly, no reduction in remedies is made under s 124 of the Act.

Orders

[44] Within 28 days of the date of this determination SVSL is ordered:

- (a) To pay Ms Pedersen the sum of \$2,000 as compensation pursuant to section 123(1)(c)(i) of the Act for the personal grievance claim based on unjustified disadvantage; and
- (b) To pay Ms Pedersen the sum of \$11,000 as compensation pursuant to section 123(1)(c)(i) of the Act for the personal grievance claim based on unjustified dismissal; and
- (c) To pay Ms Pedersen the sum of \$2,917.48 (gross) for lost remuneration arising from her dismissal.

Costs

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

[46] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Ms Pedersen 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, SVSL 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.

¹⁵ *Paykel v Ahlfeld* [1993] 1 ERNZ 334 (EmpC).

[47] 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.¹⁶

Simon Greening
Member of the Employment Relations Authority

¹⁶ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.