IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2026] NZERA 143
3085314

	BETWEEN	DUANE FARRELL First Applicant
		CORRECTIONS ASSOCIATION OF NEW ZEALAND INCORPORATED Second Applicant
	AND	CHIEF EXECUTIVE OF THE DEPARTMENT OF CORRECTIONS Respondent

Member of Authority:	Marija Urlich
Representatives:	Jim Roberts and Kirby Kleingeld, counsel for the Applicants John Rooney and Pema Gyeltshen, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions and further information received:	8 July, 15 August, 15 – 16 October and 6 December 2025, from the Applicants 8 August, 14 – 16 October 2025, from the Respondent
Determination:	9 March 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Authority issued a determination (the substantive determination) in Mr Farrell's favour on 7 June 2024 reserving remedies, contractual damages, penalties and costs.[1]

[1] *Duane Farrell & Anor v Department of Corrections* [2024] NZERA 331 at [143] – [144].

[2] The parties advise they have been able to resolve remedies and damages for one of the established personal grievances and contractual breach claims by way of consent judgment. What remains for the Authority to determine are remedies for the balance of the personal grievances, claims for damages and penalties. Submissions have been filed and, as agreed, this matter is determined on the papers.

Remedies for personal grievances

[3] Remedies are to be determined for the following personal grievances for unjustified disadvantage found in Mr Farrell's favour from the established failure of Corrections to:

(i) provide information in relation to serious threats to Mr Farrell's safety at work during 2017;
(ii) provide a safe system of work following his injury sustained at work on 20 April 2017;
(iii) provide a safe system of work following the assault he sustained at work on 7 March 2018;
(iv) fairly and reasonably place him on alternative duties on 13 March 2018; and
(v) fairly and reasonably consider alternatives to suspension on or about 6 April 2018.

[4] Mr Farrell is entitled to consideration of the remedies sought for these personal grievances. It is appropriate to globalise the personal grievances dealing with Mr Farrell's safety at work in 2017 and touching on the events in and around March 2018 due to their respective interwoven nature. In respect of the 2017 events the reasons are set out at [83] substantive determination. The events in March 2018 are best globalised because they arise from the same initiating matrix of events. The April 2018 grievance is properly considered as standing alone.

Personal grievances (i) and (ii)

[5] Mr Farrell's evidence and the supporting evidence of Alyssa Farrell's describe his emotional distress and loss of confidence that Corrections would take reasonable steps to ensure his safety at work. Mr Farrell gave compelling evidence of his

heightened awareness of the health and safety risks at work on his return after a considerable period off having suffered a serious injury at work, his desire to engage meaningfully in the threat assessment, his valiant and repeated efforts to engage meaningfully with Corrections to understand the risks better so appropriate measures could be put in place to mitigate reasonably knowable, and indeed known risks and his despondency at his apprehension of the lack of engagement by his employer. Mr Farrell's evidence of his discomfort and distress at repeatedly seeking to have his concerns taken seriously and addressed, including through the provision of relevant information was palpable as was his sense that these requests were rebuffed by his employer. He said he felt punished for doing his job and felt he had been left out of the loop about information that was pertinent to his safety. His understandable alarm and distress to learn the threat against him personally had been assessed by Corrections at the highest level and that this information had not been provided to him or why has amplified his fear of threats to himself and his family and made him feel on edge at work.

[6] An award of $30,000 under s 123(1)(c)(i) is appropriate given the profound and negative impact on Mr Farrell of these events and is in line with matters of a similar nature.

Personal grievances (iii) and (iv)

[7] These personal grievances cover the failure of Corrections to give clear instructions to Mr Farrell following the March 2018 incident and its decision to place him on alternative duties without fairly considering his views. The overlapping nature of the factual basis of these grievances is clear – the failure to engage fairly and reasonably with Mr Farrell in response to events which have compromised his health and safety at work. Mr Farrell's evidence was of his serious concern at having to clarify instructions from his manager as to his engagement with a prisoner who had assaulted him and his acute embarrassment at being reassigned duties to the gatehouse as Corrections response to the assault and his ability to interact with the prisoner. Placement at the gatehouse was a cause of acute embarrassment as it was seen by Mr Farrell and his co-workers as a punishment and humiliation. The shadow of the events of the previous year understandably caste Mr Farrell's experience of these events negatively.

[8] An award of $15,000 under s 123(1)(c)(i) is appropriate given the impact on Mr Farrell of these events and is in line with matters of a similar nature.

[9] The benefit loss for the period Mr Farrell was placed on alternative duties at the gatehouse is not allowed.[2]

Personal grievance (v)

[10] The evidence was Mr Farrell's mental health hit rock bottom while he was suspended. He said the satisfaction and sense of purpose he got from his job was lost and he felt untethered. These feelings were compounded because he was unable to speak to his work colleagues who provided an important source of support. His counsellor's notes were provided to the Authority and confirm his feelings of isolation and humiliation at being away from work. The financial impact of the suspension caused hardship to Mr Farrell and his family and was a constant cause of worry to him.

[11] An award of $15,000 under s 123(1)(c)(i) is appropriate given the sever impact on Mr Farrell of being suspended and is in line with matters of a similar nature.

[12] Annual leave deducted from Mr Farrell's balance for the period 10 to 23 October 2019 is not to be reimbursed. While it is accepted he remained on suspension during this period he had asked for and was granted a period of leave for which he travelled overseas to visit family.

[13] Mr Farrell seeks $19,000.11 (gross) in lost wages. This is made up of overtime financial loss based on previous overtime payments received. Corrections disputes Mr Farrell's claim and calculations. It says the found grievance extended only to the failure of Corrections to consider alternatives to suspension.

[14] While overtime is not a contractual entitlement the loss for which a disadvantage may be claimed arises from a found breach of conditions of employment. Paid overtime was a normal part of Mr Farrell's employment. But for his suspension he likely would have accessed regular overtime for which he would have been paid. A compounding factor is the considerable length of Mr Farrell's suspension over which time Corrections

[2] N1 at [143].

could have re-visited the alternative duty issue. Accordingly, this is a loss arising from the personal grievance for which he is entitled to be reimbursed. However, how much overtime he was likely to have received is difficult to assess given these unknown factors. Looking at the loss suffered, being the ability to earn overtime, the information before the Authority including the calculation issues raised and giving fair weight to the variability of overtime, I assess Mr Farrell as being entitled to an award of 50% of the gross earnings claimed which is $9,500.06 (gross) under s 123(1)(b).

[15] Mr Farrell seeks an award of interest on any order of reimbursement of wages. Given the difficulty with calculating these wages I decline to exercise my discretion and award interest on this sum.

If any remedy is awarded, should it be reduced (under s 124 of the Act) for blameworthy conduct by Mr Farrell that contributed to the situation giving rise to his grievance?

[16] No deduction from the remedies awarded is to be made under s 124 of the Act. Mr Farrell did not contribute in a blameworthy way to the situation giving rise to his personal grievances.

General damages

Mr Farrell

[17] Mr Farrell seeks an award of general damages of between $45,000 and $65,000 for three breaches of clause 6.1.4 of the collective agreement. Corrections says the findings of the Authority are not as Mr Farrell describes, that he has been compensated by way of personal grievance for two breaches for which he seeks damages and/or that the evidence of loss is not sufficient to establish an award of damages.

[18] The Authority found Mr Farrell had established breaches of clause 6.1.4 of the collective agreement by failing to provide a safe system of work in response to the injury he sustained at work on 20 April 2017 and the assault on 7 March 2018.[3] Mr Farrell has been compensated by way of personal grievance in respect of the failure of Corrections to provide information about serious threats to his safety in 2017.[4]

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[3] N1 at [143].
[4] *Cronin-Lampe v Board of Trsutees of Melville High School (No 2)* [2023] NZEmpC 221 at [271] – [297].

(i) failure to provide safe system of work – 20 April 2017 assault

[19] This finding relates to Corrections' failure to fairly consider Mr Farrell's request for medical attention. The factual basis is set out in the substantive determination.[5]

[20] While it is accepted the evidence of harm caused to Mr Farrell consequent to this breach is not of the category described in *JCE v Chief Executive, of the Department of Corrections* it is still significant.[6] Mr Farrell sustained a serious injury at work, sought treatment including by way of ambulance which was not fairly considered. There was insufficient evidence of a clear process to deal with such matters and no medical treatment available on site. Mr Farrell's evidence of the harm caused to him from this failure was compelling. He felt humiliated, belittled and 'less than' in his workplace. The failure to fairly consider his request for medical attention feed into Mr Farrell's growing sense of being less important at work than those for whom he had responsibility, he has found this hurtful and upsetting and corrosive to his wellbeing and sense of himself. The ongoing negative impact to his psychological state is evidenced by the supporting evidence including that of his wife, treating doctor and counsellor.

[21] Considering the evidence of negative impact to Mr Farrell of this breach and the factors relevant to an assessment of damages I find he is entitled to an award of $20,000 for general damages for this breach.

(ii) failure to provide safe system of work - 7 March 2018 assault

[22] This finding relates to Corrections' failure to provide clear instructions to assist with the exercise of discretion in any dealings with the prisoner following the assault.[7]

[23] Again the evidence of harm caused to Mr Farrell consequent to this breach is not of the category described in *JCE*.[8] However, Mr Farrell has suffered consequent to this breach, exacerbating his existing serious concerns about his health and safety at

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[5] N1 at [85] – [86].
[6] *JCE v Chief Executive, of the Department of Corrections* [2020] NZEmpC 46, [2020] ERNZ 92.
[7] N1 at [96].
[8] Refer N6.

work and Corrections ability to keep him safe and amplifying his sense of humiliation and isolation which has negatively impacted his mental health.

[24] Considering the evidence of negative impact on Mr Farrell of this breach and the factors relevant to an assessment of damages I find he is entitled to an award of $5,000 for general damages for this breach.

CANZ

[25] CANZ says it is entitled to damages, either general damages of $10,000 for union time or a nominal sum, because Corrections have been found to have breached the collective agreement and it has suffered loss as a consequence. It says while it acknowledges there is no absolute evidence of "clear loss", that is not the test because special damages have not been sought and, as it says is the case here, the damage is obvious. That damage is described as the use of union time to support Mr Farrell through these lengthy processes.

[26] There is insufficient evidence of loss or harm to support a claim of general damages or nominal damages. It is accepted CANZ used it resources to support Mr Farrell through the employment relationship problem That support is a consequence of his union membership and it is unclear on the information before the Authority how the use of such resources that can be described as a loss.

Penalties

[27] Mr Farrell and CANZ seek a globalised penalty of $15,000 for established breaches of clause 6.1.4 of the collective agreement in respect of the events on 20 April 2017 and 7 March 2018 and breach of clause 10.1.2 of the collective agreement regarding ocnsultation. Corrections submit there should be no penalty awarded or if the Authority is minded to do so, it should be nominal and paid to the Crown.

[28] The maximum penalty against a corporation is $20,000.[9] The breaches are sufficiently interrelated to warrant a globalisation – they arise from breaches of the collective agreement. In considering whether a penalty is warranted and, if so, at what

[9] Employment Relations Act 2000, s 135.

level, regard is had to the factors set out in s 133A of the Act, as well as the Employment Court decisions in *Nicholson v Ford* and *A Labour Inspector v Daleson Investment Ltd*.[10]

[29] Correction's failure to provide Mr Farrell with a safe workplace has been established. The breaches are serious, they occurred over time and have been found to be repeated though in different factual circumstances. Similarly, the breach of the consultation provision of the collective agreement is serious – it is meaningful to effected employees and an important conduit for information to Corrections in a change setting. With the support of his union, Mr Farrell has taken significant steps to enforce these fundamental terms of his employment agreement and the harm he has suffered consequent to those breaches has been established. Corrections is a large and significant agency operating workplaces which are dynamic and inherently dangerous. This inherent danger is particularly acute for those employees working in prisoner facing roles such as Mr Farrell of which there are a significant number. Their safety is a priority, as is their informed engagement with their employer, as reflected in the parties' collective agreement and that prioritisation is a relevant factor in assessing the appropriateness and level of penalty.

[30] Standing back and including comparison to other cases, matters of proportionality and the relevant matters listed in s 133A of the Act, a fair penalty is $8,000. Corrections is ordered to pay half the penalty to Mr Farrell to compensate him for the inconvenience and resources expended in seeking to enforce significant and fundamental terms of his employment and the balance is to be paid to the Crown. The penalty is to be paid within 21 days of the date of this determination.

Outcome

[31] Within 21 days of the date of determination Corrections is to make the following payments to Duane Farrell:

a. $60,000 for compensation pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000;

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[10] *Nicholson v Ford* [2018] NZEmpC 132 and *Labour Inspector v Daleson Investment Ltd* [2019].

b. $9,500.06 (gross) pursuant to section 123(1)(b) of the Employment Relations Act 2000;
c. $25,000 without deduction in general damages; and
d. $4,000 in penalty.

[32] Within 21 days of the date of determination Corrections is to pay a $4,000 penalty to the Crown:

Costs

[33] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Farrell and CANZ may lodge, and then should serve, a memorandum on costs within 21 days of the date of this determination. From the date of service of that memorandum Corrections will then have 14 days to lodge any reply memorandum.

[34] On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted. 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.

Marija Urlich
Member of the Employment Relations Authority