

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 149
3366684

BETWEEN SIRIKANYA PANKHUM
Applicant

AND SUPER VAPE STORE
LIMITED
Respondent

Member of Authority: Simon Greening

Representatives: Emma Brankin, advocate for the Applicant
Miriam O’Hare for the Respondent

Investigation Meeting: 19 February 2026 at Auckland

Submissions received: 26 February 2026 from both parties

Determination: 10 March 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Sirikanya Pankhum was employed as a retail assistant by Super Vape Store Limited (SVSL) from 11 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 Pankhum commenced employment on 11 October 2024; however, the Auckland store Ms Pankhum was to work in did not open until 18 November 2024.

[4] Ms Pankhum’s employment relationship with SVSL concluded on 13 January 2025.

[5] Ms Pankhum says she was unjustifiably dismissed by SVSL. Ms Pankhum seeks compensation pursuant to section 123(1)(c)(i) of the Employment Relations Act 2000 (the Act), and lost remuneration.

[6] Ms Pankhum'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.

[7] SVSL says it was justified in its decision to terminate Ms Pankhum's employment because her employment agreement included a probation period clause, and her performance was not satisfactory.

[8] SVSL's position is that performance concerns were raised with Ms Pankhum, and she was provided with a fair opportunity to improve her performance.

The Authority's investigation

[9] For the Authority's investigation, written witness statements were lodged by Ms Pankhum, Ms Pedersen, Ms Rehardt, Mr Puttapoun, 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.

[10] 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

[11] The issues requiring investigation and determination are:

- (a) Was Ms Pankhum unjustifiably dismissed by SVSL?
- (b) If a personal grievance is established, is Ms Pankhum entitled to compensation under s 123(1)(c)(i) of the Act and/or reimbursement of remuneration under s 128(2) of the Act?
- (c) If any remedy is awarded, should it be reduced under s 124 of the Act for blameworthy conduct by Ms Pankhum which contributed to the circumstances which gave rise to her personal grievance claim?

(d) Is either party entitled to an award of costs?

Was Ms Pankhum unjustifiably dismissed by SVSL?

[12] 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.¹

[13] The Authority must also have regard to the resources available to the employer when considering the employer's actions in context.²

[14] SVSL says its decision to terminate the employment agreement was justified because Ms Pankhum was not performing in accordance with the expectations of the role and because Ms Pankhum's probation period had come to an end.

Performance concerns and probation period

[15] Ms Rehardt was Ms Pankhum's manager. In her witness statement, Ms Rehardt says she provided verbal feedback to Ms Pankhum on various occasions. During these discussions, Ms Rehardt says she advised Ms Pankhum the areas where improvement was required and reiterated the performance standards expected of her.

[16] Ms Rehardt says further training was offered to Ms Pankhum.

[17] SVSL maintains a human resources manual. If there are issues with an employee's performance, then the manual prescribes a staged warning process which SVSL would follow in order to address poor performance.

[18] Stage one requires a verbal warning to be issued, and for this to be recorded on the employee's personnel record. Stage two requires a written warning to be issued by SVSL to the employee. Stage three requires a final written warning to be issued by SVSL to the employee. Stage four requires, if there is still no improvement after the agreed period of time, a further meeting with the employee is required and dismissal may be the outcome.

¹ Employment Relations Act 2000, s 103A(2).

² *E TU Incorporated v Singh* [2024] NZEmpC 84 at [49].

[19] The manual records:

If conduct or performance fails to meet acceptable standards, the individual will be given 48 hours' notice in writing of a disciplinary meeting in the form of a letter in which he or she will be advised of the details of the alleged breach of discipline. The letter will enclose supporting documents.

[20] SVSL did not put any of its performance concerns to Ms Pankhum, in writing.

[21] SVSL provided a hand-written diary note, to the Authority, in support of its submission that Ms Pankhum did receive a written warning. Ms Pankhum denies receiving any written warning. The manual states that a letter in the form of an invitation to a disciplinary meeting must be sent to the employee, and this process must be followed before a written warning is issued.

[22] SVSL did not follow this process. I find SVSL did not issue a written warning to Ms Pankhum.

[23] SVSL did not organise any meetings with Ms Pankhum in order to address performance concerns.

[24] SVSL did not follow the manual's prescribed process for addressing poor performance, in relation to Ms Pankhum.

[25] SVSL did not invite Ms Pankhum to any disciplinary meetings.

[26] Ms Pankhum received a WhatsApp message 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.

[27] Ms O'Hare understood that Ms Pankhum's probationary period was three months in length. However, Ms O'Hare accepted the individual employment agreement recorded a six-month probation period.

[28] An employer may dismiss an employee for poor performance.³ 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.⁴

[29] SVSL did not raise performance concerns with Ms Pankhum and give her an opportunity to improve, or put Ms Pankhum on notice that if her performance did not improve then she might face dismissal.

[30] SVSL terminated Ms Pankhum's employment agreement by sending her a WhatsApp message. SVSL did not follow the fair process requirements set out in the Act.⁵

[31] Ms Pankhum was unjustifiably dismissed by SVSL.

Remedies

[32] Ms Pankhum 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

[33] 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.⁶ 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.⁷

[34] Ms Pankhum gave evidence at the investigation meeting that following the dismissal she organised an appointment with her doctor because she felt depressed. She felt ashamed to tell her friends she had lost her job. For a period of six months following her dismissal she told family and friends she was still employed by SVSL.

³ *Yan v Commissioner of Inland Revenue* [2015] NZEmpC 36 at [33].

⁴ Above n 5 at [5].

⁵ Above n 3.

⁶ *Paykel Ltd v Ahlfield* [1993] 1 ERNZ 344 at [342].

⁷ *Pyne v Invacare New Zealand Limited* [2023] NZEmpC 179 at [41].

[35] Ms Pankhum was not aware of any issues with her performance. SVSL's decision to terminate the employment agreement came as a complete shock to Ms Pankhum.

[36] Ms Pankhum's partner, Mr Puttapoun, and colleague, Ms Pedersen, provided witness statements to the Authority. In their evidence they shared their observations of the emotional impact the dismissal took on Ms Pankhum.

[37] Taking all of these factors into account, an award of \$12,500 as compensation under s 123(1)(c)(i) of the Act is appropriate in this case.

[38] Within 28 days of the date of this determination I order SVSL to pay Ms Pankhum the sum of \$12,500 as compensation pursuant to s 123(1)(c)(i) of the Act.

Reimbursement of lost wages

[39] 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.⁸

[40] Ms Pankhum claims \$27,260 (gross) pursuant to s 128 of the Act for remuneration lost as a result of the dismissal. At the time of the investigation meeting Ms Pankhum had been unemployed for 58 weeks.

[41] Ms Pankhum was paid \$656.16 (gross) per week during her employment with SVSL. In addition, Ms Pankhum continued to receive a weekly Work and Income benefit (WINZ) whilst employed by SVSL.

[42] Ms Pankhum has provided the Authority with evidence of attempts to mitigate her lost remuneration, which include job applications and the assistance she is now receiving from a case worker employed by WINZ.

[43] The steps Ms Pankhum took in the three-month period following her dismissal were reasonable, and therefore she is entitled to recover her losses for that period.⁹

⁸ Above n 7 at [28].

⁹ *Maddigan v Director-General of Conversation* [2019] NZEmpC 190 at [164].

[44] However, I decline to exercise my discretion and order SVSL to pay more than three months' ordinary time remuneration.

[45] The assessment of lost remuneration must allow for all contingencies which might, but for the unjustifiable dismissal, have resulted in termination of the employee's employment.¹⁰

[46] Although Ms Pankhum has been out of work for a considerable period of time, it is very unlikely her employment with SVSL would have continued beyond the three-month period following termination of her employment because the Auckland store closed.

[47] Ms Pankhum continues to receive a WINZ benefit. The total lost remuneration for the three month period following termination of employment is \$7,873.92 (gross).

[48] I order SVSL to pay Ms Pankhum the sum of \$7,873.92 (gross) for remuneration lost as a result of the personal grievance.

[49] Ms Pankhum was not paid for two public holidays which fell on days she would have otherwise worked. Ms Pankhum did not accrue annual leave on income received in the form of cash in her first week of employment.

[50] I order SVSL to pay Ms Pankhum the sum of \$311.28 (net).

Contribution

[51] The Authority must consider whether there ought to be a reduction in the remedies that would otherwise have been awarded to the employee.¹¹ 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.¹²

[52] There must be a causal connection between the employee's conduct and the situation which gave rise to the dismissal.¹³

¹⁰ *Sam's Fukuyama Food Services Limited v Zhang* [2011] NZCA at [26].

¹¹ Employment Relations Act 2000, s 124.

¹² Above n 7 at [39].

¹³ *Salt v Fell* [2008] NZCA 128 at [78].

[53] 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 performance concerns before a reduction in remedies under s 124 would be contemplated.¹⁴

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

Orders

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

- (a) to pay Ms Pankhum the sum of \$12,500 as compensation pursuant to section 123(1)(c)(i) of the Act for the personal grievance claim based on unjustified dismissal; and
- (b) to pay Ms Pankhum the sum of \$7,873.92 (gross) for lost remuneration arising from her dismissal; and
- (c) to pay Ms Pankhum the sum of \$311.28 (net) in respect of public holiday and annual leave entitlements owing.

Costs

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

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

¹⁴ *Paykel v Ahlfeld* [1993] 1 ERNZ 334 (EmpC).

[58] 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

Simon Greening
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.