

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE**

[2026] NZERA 166
3353503

BETWEEN	REX MATTHEWS Applicant
AND	NAPIER CITY AUTOMOTIVE LIMITED Respondent

Member of Authority:	Claire English
Representatives:	Justin Cameron, counsel for the Applicant Jol Bates, counsel for the Respondent
Investigation Meeting:	5 and 6 August 2025 in Napier
Submissions received:	Up to 16 February 2026 from Applicant Up to 12 March 2026 from Respondent
Determination:	20 March 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Mr Rex Matthews, was employed as a mechanic and store manager by the respondent Napier City Automotive Limited (NCA) since 2017. In April 2024, Mr Blair Morgan, the owner of NCA, discovered that Mr Matthews had issued an invoice for a service that did not include a charge for labour, and did not include a charge for certain parts Mr Morgan thought should be on-charged to the customer. The customer in question was Mr Matthew's mother. Mr Morgan and his wife Mrs Cathy Morgan, undertook further investigation, and located some 75 invoices over an approximately 5-year period which they believed demonstrated Mr Matthews

had been repeatedly undercharging for work done for his family and/or a family company. Following a disciplinary process, Mr Matthews was dismissed.

[2] He raises a claim of unjustified dismissal, and seeks compensation for hurt and humiliation, and reimbursement of what he says is underpayment of certain types of leave, annual leave, and Kiwisaver payments.

[3] NCA says his dismissal was justified. It says that Mr Matthews was unable to provide any sensible or credible answer to the allegations that he gave inappropriate and unauthorised discounts to friends and family, and in addition to this, he expressed the view that he could give what discounts he liked to customers without having those discounts authorised by Mr Morgan in advance. As a result, Mr and Mrs Morgan say they lost trust and confidence in Mr Matthews to act in the best interests of NCA and dismissal was the only appropriate option.

The Authority's investigation

[4] For the Authority's investigation written witness statements were lodged from Mr Mathews, and Ms Rebecca Dooney, a former colleague of Mr Matthews. Mr Morgan and Mrs Morgan gave evidence on behalf of NCA. All witnesses answered questions under affirmation from me and the parties' representatives. The representatives also gave closing submissions.

[5] As permitted by s 174E of the Employment Relations Act 2000 (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

[6] The issues requiring investigation and determination were:

- (a) Was Mr Mathews unjustifiably dismissed?
- (b) Was Mr Matthews unjustifiably disadvantaged, by having the use of his work vehicle removed when he was put on special leave with some personal possessions in the vehicle?
- (c) If NCA's actions were not justified, should compensation under s123(1)(c)(i) of the Act be awarded?

- (d) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Mr Matthews that contributed to the situation giving rise to his grievance?
- (e) Are any sums still owed to Mr Matthews under the Holidays Act 2003 in respect of sick leave and statutory holidays?
- (f) Should either party contribute to the costs of representation of the other party?

Background

[7] Mr Matthews was a trusted and respected employee of NCA. He had worked with Mr Morgan for some years, starting as a mechanic and over time being promoted to being second in charge of the business. He gave evidence that he was a hard worker, and had undertaken further education and training to support his career at NCA. Both parties agree that up until the end of his employment, there existed a close, trusting, and productive working relationship.

[8] Mr Matthews gave evidence about invoicing and discounting practices at NCA. He said that he was taught how to invoice by Mr Morgan, from the beginning of his employment. He said that there was a culture of discounting, and many or most invoices had some form of discount applied. There were discounts for family of staff, discounts for larger customers with fleet cars to be serviced, and discounts for regular customers who returned over time.

[9] Mr Matthews said that this was done through the point-of-sale (POS) system. When an invoice for a customer was created in the POS system, a button would bring up the previous invoice details including any discounts that had been previously applied. This was used as a guide for the current invoice, including repeating any previous discounts. The POS system allowed for discounts to be applied with a dedicated button for this function, such that all that needed to be done was to input the desired percentage rate, which would then be applied in the system. System print-outs were in evidence showing details that sat “behind” the customer facing invoice including details of all parts invoiced, the relevant codes, cost prices and recommended retail prices for parts, the sums actually charged for parts and labour, and the percentage discount applied (if any) to each line item.

[10] Mr Matthews described the practice of discounting as both routine on a daily basis and “ad hoc”. He said it was done all the time, but that there was no policy around it and Mr Morgan would just make calls in the moment which he would implement. He further said that when Mr Morgan was not present, he would make those calls himself, referencing previous invoices sent to the customer as a guide. Mr Matthews was critical of NCA and Mr Morgan for not having any written policy around discounting, while at the same time stating that Mr Morgan taught him and other staff how and when to apply discounts, and that it was a common practice.

[11] Mr Morgan accepts there was no written policy as to discounts. He says it was not needed as there were very few staff, and the policy was simple, and could be expressed in a sentence or two. Mr Morgan says that the policy was that a discount of 10% could be applied to “friends and family”, and that for larger customers with fleet cars a 15% discount was to be applied. Mr Morgan’s evidence was that the POS system had customer details on it and each customer page noted the discount percentage – if any – to be applied to that customer. Mr Morgan says that this was well-understood, and that discounts over this rate were not to be given. Anything else needed to be approved by him.

[12] In early April 2024, Mr Morgan noticed that Mr Matthews had issued an invoice for a service that did not include a charge for labour. The customer was Mr Matthews’ mother. Mr Matthews states that he believed there was a potential warranty claim, and that in such cases, it was practice not to charge for labour. He said that he had spoken to Mr Morgan about the job and told him he thought there was a warranty claim that could be made, and Mr Morgan had approved the invoice without a labour charge.

[13] Mr Morgan said that he recalled the discussion about the warranty claim, but had taken the view that no warranty claim could be made and had said this. He said he had never said that the invoice could be sent without a labour charge. Mr Morgan later viewed the draft invoice in the system and added two hours of labour on to it. He didn’t specifically mention this to Mr Matthews however.

[14] Mr Matthews said that when he came to issue the invoice, he saw that someone had added a labour charge on to it, but he did not know who had done that. So he reversed that out, and issued the invoice without the labour charge.

[15] When Mr Morgan saw that the invoice had been issued without a labour charge, he was upset and angry. He said that he had “smelled a rat”. He then went into NCA’s business records and located other invoices sent to Mr Matthews’ mother, and to the business run by Mr Matthews’ family, which was a regular customer of NCA.

[16] Mr Morgan, with the help of Mrs Morgan, located some 75 invoices sent to Mr Matthews’ family business over the previous five years. Of these, Mr Morgan says that only 18 of them fit within the discount policy, or to put it another way, when inspected, 57 out of the 75 invoices showed that discounts greater than 15% had been applied. In addition, Mr Morgan was concerned that discounts close to or at cost price had been given on parts, or that in some cases parts had not been charged for at all.

[17] Mr and Mrs Morgan calculated that, over the previous 5 years between 2019 and early 2024, discounts given to Mr Matthews’ family business over and above the rate of 15% amounted to approximately \$9,800, representing a direct loss to the company.

[18] They put together a letter setting out their concerns. When Mr Matthews arrived at the premises at the start of his working week, being a Tuesday, he was given a sealed envelope and told to go home and read it, and that he would not be needed at work that day. He was very concerned that something untoward had happened, and he decided to open and read the letter in the staff room. He recalls being very distressed at the allegations. He was asked to leave his company car at the workshop, and another employee drove him home.

[19] Mr Matthews complains that he was not given the opportunity to retrieve his work tools from the workshop, or his personal effects including a car seat, from the company car. It was then agreed that Mr Matthews would go on paid special leave as an alternative to suspension. Mr Matthews is critical of NCA for retaining the company car during this period, although he is not able to say clearly why he would need the company car as he was not at work.

[20] Mr Matthews sought legal advice and attended two disciplinary meetings with Mr and Mrs Morgan. At the investigation meeting, he strongly resisted the idea that he had inappropriately issued invoices to his family business, or that he had done so without authorisation.

[21] He said that NCA had no proof that he issued the invoices in question because the POS system did not record who finalised or issued an invoice. The invoices could have been issued by him or by any other staff member and there was no way of telling which invoices he was personally responsible for.

[22] In any case, Mr Matthews maintained that the invoices did not show discounts being given to his family business in a way that was different to or inconsistent with discounts given to other regular customers. Finally, Mr Matthews says that he was authorised to give any discounts he did give to his family business by way of repeated past practices that had originally been approved by Mr Morgan, and in any event, he had the ability to give discounts himself in Mr Morgan's absence.

[23] Mr Morgan took exception to this. He was particularly concerned by what he said was Mr Matthews' admission that he would, could, and did give his own discounts without all discounts specifically being authorised by Mr Morgan first. He said this was a trust issue, and after hearing this he could no longer trust Mr Matthews to appropriately defer to him as the owner of NCA.

[24] Mrs Morgan gave evidence including about payroll matters, and about the aspects of the investigation she had performed herself. She accepted that the POS system did not have individual employee codes that would enable the person who had issued (or finalised) each invoice to be identified. Nevertheless, she believed that Mr Matthews had issued the invoices in question, on the basis that he and Mr Morgan did approximately 90% of the invoicing and Mr Morgan would not have issued invoices with levels of discount higher than 15%.

[25] She said that she did not accept that the invoices showed that Mr Matthews' family business received discounts at levels consistent with discounts given to other favoured clients, stating that 15% was a maximum level of acceptable discount, and the invoices showed that on many occasions, that level had been exceeded.

[26] She further did not accept that Mr Matthews had been following past practice, by replicating previously agreed or authorised discounts. She said in particular that this was not plausible to her because when looking through the invoices, they demonstrated no internal consistency, and the discount level moved up and down with no particular pattern.

[27] Finally, both Mr and Mrs Morgan emphasised that there was a well-understood policy about discounting, albeit a simple and verbal one. That is, a 10% discount was available for family and some other repeat customers, a 15% discount was available for favoured business customers, and anything else would need to be specifically approved by Mr Morgan. They believed that Mr Matthews was aware of this because he had been trained in how to invoice by Mr Morgan and had applied the policy correctly in relation to other customers. Therefore, his failure to adhere to the policy when issuing invoices to his family business was a deliberate and underhand decision, to act against the best interests of NCA.

[28] Ms Dooney gave evidence also. Her evidence was that during her tenure from September 2023 to March 2024, she did the majority of the invoicing for NCA. She explained that when issuing invoices, she would check the details on the relevant customer page to see if a discount rate had been noted for that customer, and if so she would use that. She said that otherwise, she would seek approval from Mr Morgan or Mr Matthews to issue an invoice.

Analysis

[29] When considering Mr Matthews' claim of unjustified dismissal, the question I must consider is whether NCA's actions were what a fair and reasonable employer could have done in the circumstances at the time. In doing so, I must take into account whether:

- a. NCA sufficiently investigated the concerns it had before taking action against Mr Matthews;
- b. NCA raised its concerns with Mr Matthews before taking action against him;
- c. NCA gave Mr Matthews a reasonable opportunity to respond to the allegations against him; and
- d. NCA genuinely considered Mr Matthews' explanations before deciding to dismiss him.

[30] The overarching question I must consider is whether Mr Matthews' dismissal was an option that was open to a fair and reasonable employer in all the circumstances at the time.

[31] Mr and Mrs Morgan sufficiently investigated the concerns they had with Mr Matthews invoicing before raising the matter with him. They provided a significant number of invoices to the Authority which they attributed to Mr Matthews. Many of these clearly showed discounts of greater than the accepted 10 or 15% rates on their face. Mr and Mrs Morgan also provided print-outs of the POS system showing the codes and cost prices of items entered, customer details, and any recommended discount percentage if noted for that customer, for those invoices. These internal details also suggested in many instances that significant discounts had been provided over and above the acceptable percentages.

[32] The number of invoices that were not issued by Mr Morgan which on their face provided discounts in excess of 10 or 15%, and which appeared to be issued to Mr Matthews' friends and family were concerning enough to warrant being raised with Mr Matthews formally. The concerns were not trivial, and appeared to suggest repeated instances over time. Sufficient investigation occurred to justify the raising of serious concerns.

[33] There is no doubt that those concerns were raised with Mr Matthews directly. They were put to him via letter, and supporting information was provided. Meetings occurred between the parties. There was no confusion as to what the Morgan's concerns were, and Mr Matthews was well aware of the seriousness of the situation.

[34] Likewise, I find that Mr Matthews was given a reasonable opportunity to respond, and did so.

[35] There is however, real dispute between the parties as to whether Mr and Mrs Morgan genuinely considered Mr Matthew's explanations before deciding to dismiss him. I summarise his explanations as being that the POS system did not record who issued any invoices, so it should not be readily assumed that Mr Matthews was responsible for all the invoices in question; that there was no policy on discounting, so he cannot reasonably be disciplined for not following rules that did not exist; and in any case, the invoices in question are consistent with discounts previously provided by Mr Morgan.

[36] Mr Matthews took the position that all the staff could and did invoice. He was supported in his evidence by Ms Dooney, who gave evidence that it was in fact she who performed a considerable amount of invoicing for all staff members during her tenure

with the respondent. Mr Matthews accepted however, that he and Mr Morgan issued the majority of the invoices, with him issuing invoices in Mr Morgan's absence.

[37] Overall, the undisputed evidence was that Mr Matthews was Mr Morgan's second-in-command, and not only would he issue invoices for his own work, but he would assist others where needed. In those circumstances, where the majority of invoicing was done by either Mr Morgan or Matthews, and in Mr Morgan's absence at the very least supervised by Mr Matthews, it does not assist Mr Matthews to stand on ceremony and take the position that the POS system does not explicitly record who issued any given invoice. I find it more likely than not that the invoices in question were issued by Mr Matthews, especially as they were predominantly invoices issued to people known to him or his family business.

[38] Mr Matthews also took the position that there was no policy around discounting or what an acceptable discount could be, and therefore it was unreasonable to take action against him for breaching a policy that did not exist. However, this was directly contradicted by his own evidence about when and how discounting occurred, and how he had been taught how to invoice by Mr Morgan and used the till and POS system to apply such discounts. There was certainly no written policy, and the respondent and Mr and Mrs Morgan never suggested otherwise. However, I find there was an unwritten policy in place, to the effect that established repeat customers, including friends and family, were to receive a 10% discount, and corporate customers with fleet cars were to receive a 15% discount. Other discounts were either to be approved by Mr Morgan, or were in accordance with promotional specials promulgated from head office from time to time.

[39] Given the simplicity of this policy, the number of years that Mr Matthews had worked for NCA, his senior position in the business, and his frank acceptance and recollection of being trained in invoicing by Mr Morgan, I do not accept it is plausible that Mr Matthews was unaware of the generally accepted practices around discounting at NCA. It is significant that his own in-person evidence was able to accurately describe the practices I have set out above, even though he maintained that there was no policy because it was not in writing.

[40] It follows that I do not accept that NCA, and Mr and Mrs Morgan on its behalf, did not genuinely consider Mr Matthew's explanation that there was no policy and/or

that he was not aware of it. The matter was clearly discussed during the disciplinary process, with the “sticking point” being a lack of a written policy rather than no policy at all.

[41] Finally, Mr Matthews explained that the invoices in question showed only discounts that were in accordance with past practices, and/or had been approved by Mr Morgan in the past. Mr and Mrs Morgan did not accept this, pointing to invoices that had high percentage discounts, or where insufficient or wrong (eg cheaper) parts had substituted to reduce the price charged. Based on the evidence before the Authority, there is no consistency to the problematic invoices, and they appear on their face to show higher levels of percentage discounts. Mr Morgan’s evidence is that he did not issue these invoices himself, and they do not show discounts consistent with his own past practices.

[42] Mr and Mrs Morgan’s evidence is that they discussed these issues with Mr Matthews, and it was as part of these conversations Mr Matthews expressed the view that if Mr Morgan was absent, he was entitled to implement discounts as seemed appropriate to him without checking, advising, or seeking authorisation from Mr Morgan. They both stated that they were unaware of either of them giving him such authority, and that they were not aware that he had been acting in such a fashion. This increased their concerns rather than alleviating them.

[43] NCA, via Mr and Mrs Morgan, reached the view that the invoices in question were not consistent with the unwritten discounting policy, and were not consistent with past practice for those customers or with past instructions from Mr Morgan in relation to those customers. Given the high and ad hoc or sporadic nature of the discounts present in the invoices before me, my view is that these conclusions were fairly open to them. I find that NCA did genuinely engage with Mr Matthews in considering his explanations, but in the end, and after discussion, did not accept his explanations. This was a conclusion that was reasonably open to them.

[44] When considering the test of justification, I find that NCA met the criteria set out in 103A. Accordingly, I find that his dismissal was procedurally justified. Having said this, I must also consider the substantive justification of his dismissal, or whether the employer’s actions were what a fair and reasonable employer could have done in all the circumstances at the time.

[45] This is a situation where the underlying allegations were serious. They involved invoicing, money handling, and at a fundamental level, whether the owners of the business could have trust and confidence in their most senior and long-standing employee to act in a way that best benefited the business. Concerns of this type are inherently serious, and are of the sort that can support and justify a decision to dismiss rather than requiring a lesser sanction.

[46] Although Mr Matthews objects to the conclusions NCA has reached, I find that these conclusions were ones that were open to it on the facts available to it. NCA and the Morgans were not obliged to accept Mr Matthews' explanations, and the conclusion they ultimately reached, that he had been giving discounts to friends and family that were not properly authorised and were not within the usual allowed scope, were ones that were open to them to reach. The claim of unjustified dismissal is not made out.

[47] Having said this, I note that NCA and the Morgans had never reduced the discounting policy to writing, or taken steps to ensure that the details in the POS system were consistent, up-to-date, and reliable. For example, Mr Morgan's evidence was that he was not fully aware of the fact that the POS system would replicate past invoices so they could be used as a template. NCA's lack of sound and consistent systems made matters more difficult when concerns arose.

[48] Having found that Mr Matthews' claim of unjustified dismissal is not made out, no remedies are properly payable. No orders are made.

Unjustified Disadvantage

[49] Mr Mathews has also raised a claim of unjustified disadvantage, relating to NCA's decision to remove the work vehicle from him while he was on special leave during the employment investigation, and a delay in him being able to remove all his personal possessions from it.

[50] Once the allegations against him were raised, Mr Mathews was put on paid special leave by agreement. As part of this, his work vehicle remained at the shop, so that other staff could use it. Mr Matthews complains about this, as well as the fact that for a short period, his personal possessions remained in that vehicle including a child's car seat.

[51] Mr Matthews could not explain why he would need the use of the work vehicle during the time he was on special leave and not at work. He said that at some point, Mr Morgan had told him he could use the vehicle as he wished, and this meant that it was no longer properly a “work vehicle” and that he should have had access to it and free use of it at all times up until his dismissal.

[52] Mr Morgan did not agree that he had made such a promise.

[53] I find it implausible that Mr Mathews had any contractual right to the extended and uninterrupted use of the work vehicle as he has suggested. I also cannot understand what disadvantage Mr Matthews might have suffered from the removal of the work vehicle while he was on special leave, as by definition he did not need to use that vehicle to get to and from work, visit customers, or undertake any work-related tasks, and he did not argue otherwise. NCA’s decision to take the work vehicle from Mr Matthews and have it available for the use of other staff during the time Mr Matthews was on special leave is a justifiable decision consistent with the terms on which the vehicle was provided to Mr Matthews to use in the first place, and did not create any disadvantage to him in his employment – if he had returned to his employment, the vehicle remained there for him to use. This claim is not made out.

[54] Mr Matthews also claims that he was prevented from removing personal property from the vehicle particularly a child’s car seat. Mr Matthews’ evidence was that when he read the initial disciplinary letter at work, he was distressed and distracted, to the extent that he cannot remember events as clearly as he would normally expect and was then driven home by a co-worker. It was in these circumstances that the car seat was left in the work vehicle which remained at the work premises. Later, this was brought to the attention of NCA, who returned it.

[55] I do not find that NCA or Mr and Mrs Morgan, intended to retain the car seat as part of the employment process. It is more likely that this was overlooked by both parties in a stressful circumstance. It was returned relatively promptly when the request was made. For these reasons, there is insufficient evidence for me to find that this was an unjustified action, or that it caused disadvantage to Mr Matthews in the terms and conditions of his employment. This claim is not made out.

[56] As Mr Matthews' unjustified disadvantage claim/s are not made out, no remedies are made.

Sick Leave and Statutory Holiday Payments

[57] Mr Matthews raises a concern that NCA has calculated his pay for sick leave and for public holiday entitlements incorrectly. He says that the problem arises because NCA has calculated his pay for these types of leave by using only his minimum hours of work, and has failed to take into account that he often worked overtime. He says that if overtime had been included as it should have been, his pay for both sick leave and public holiday entitlements would have been higher.

[58] Mr Matthews says that in respect of sick leave taken since 2018, these days were all paid to him at the rate of 8 hours per day, when the correct calculation should have been based on a 9-hour day. He has not stated what sum he seeks to remedy this breach.

[59] Mr Matthews also points to 2 public holidays being ANZAC Day 2018 and Queen's Birthday 2018 and unnamed others, and says that he routinely worked a 9 hour day, but these public holidays were calculated on the basis of an 8 hour day. He has provided no calculations of what he says he is owed, or when he says he worked more hours than were recorded by NCA and says that he cannot calculate what he is owed because NCA provided him with wage and time records in a PDF form not an excel spreadsheet, and he cannot be expected to perform manual calculations or engage in manual data entry to work out what he is owed.

[60] The respondent relies on its time and wage records and holiday and leave records, and says that it has paid Mr Matthews what he was owed.

[61] Following the investigation meeting, I consider this matter and formed the view that I did not have sufficient information about Mr Matthews' claims on these points. I invited him to provide me with further information particularly what sum he sought be awarded to him, how this was or should be calculated, and which public holidays and/or sick leave days he sought further awards for.

[62] NCA also provided further information explaining its calculations. NCA explained its approach to the payment of public holidays in some detail. It confirmed that Mr Matthews was paid for such days using the relevant daily pay calculation in s 9 of the Holidays Act 2003. At first, this was done on the basis of Mr Matthews'

contractual 8-hour day. Later, Mr Matthews' hours increased to 8.5 hours per day. This resulted in back-pay being made to Mr Matthews to account for this extra time. NCA does not accept that Mr Matthews routinely worked 9 hour-days such that this would properly entitle him to a further uplift in public holiday pay, and says that his overtime was intermittent and irregular. In respect of sick leave, it says that the first sick leave claimed was on 20 February 2019, and on the rare occasions sick leave was taken it was always paid at the rate of 8.5 hours in a day.

[63] NCA has provided time and wage and holiday and leave records which appear accurate on their face. Mr Matthews has not quantified his claim for further pay, has not specified which days or dates he seeks payment for, and has not provided information which might support his claim that he worked more hours on certain days than were recorded by NCA. In these circumstances, I find that this claim is not made out. No orders are made.

Orders

[64] Mr Matthews' claims of unjustified dismissal and unjustified disadvantage are not made out. No orders are made.

[65] In relation to the claims relating to underpayment of sick leave and public holiday entitlements, I find this claim is not made out. No orders are made.

Costs

[66] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves, taking into account the possibility that costs should lie where they fall for reasons expressed above.

[67] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the respondent 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 the applicant will 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.

[68] 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.¹

Claire English
Member of the Employment Relations Authority

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