

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2026] NZERA 191  
3348120

BETWEEN TRACY ALPAR  
Applicant

AND BOOKIELAND LIMITED  
Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Michael Harrison, advocate for the Applicant  
Deeanne Phillips, counsel for the Respondent

Investigation Meeting: 26 August 2025 in Blenheim

Submissions: 5 September, 19 December 2025 and 23 March 2026  
from the Applicant  
12 September 2025 and 26 March 2026 from the  
Respondent

Determination: 30 March 2026

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment Relationship Problem**

[1] Tracy Alpar was employed by Bookieland Limited at its Mussel Pot restaurant from September 2022 as a chef until the employment relationship ended in 2024. The Mussel Pot closed down for approximately three months every winter. Ms Alpar was away overseas during the 2024 winter close down period and says she was unjustifiably dismissed after Bookieland's response to her WhatsApp message enquiring when work was starting again indicated she was no longer employed. Ms Alpar also discovered a social media post that appeared to show Bookieland recruiting for a new chef in her absence.

[2] Ms Alpar seeks compensation and lost wages.

[3] Bookieland is a limited liability company having its registered offices in Havelock and it operates the Mussel Pot. Ms Wong and Alessandro Arnetoli are the shareholders and Mr Arnetoli is the sole director of Bookieland. Ms Alpar's husband was the sole director and shareholder of the company that Bookieland purchased the Mussel Pot from. Ms Alpar had worked at the Mussel Pot for approximately 14 years prior to Bookieland purchasing the business.

*Bookieland's position*

[4] Bookieland initially relied on the existence of a fixed term agreement with Ms Alpar and Ms Wong's evidence she had told Ms Alpar Bookieland did not intend to offer another period of fixed term employment to Ms Alpar. Bookieland's position was that Ms Alpar's fixed term employment ended and she was not dismissed.

[5] Bookieland's subsequent written submissions accepted the fixed term agreement could not be relied on because the requirements in s 66 of the Employment Relations Act 2000 (the Act) regarding fixed term agreements were not met. The agreements had not been signed. Ms Alpar says she asked for amendments, including that her position was full time permanent and not fixed term.

[6] There was some disagreement about this, but it was accepted Ms Wong had not provided a new employment agreement for signing or made sure the fixed term employment agreements were signed by both parties and was not in a position to show agreement was reached between the parties about Ms Alpar's employment being fixed term for the 2023/2024 season.

[7] Having accepted the fixed term agreement was not in force Bookieland instead submitted Ms Alpar's employment ended by mutual agreement when Ms Wong told Ms Alpar in early May 2024 she would not be re engaged for a third season because the business was to be sold.

[8] Employment had therefore ended in May 2024 before Ms Alpar travelled overseas and not in August 2024 when Ms Alpar enquired about her return to work

date. Because Ms Alpar's personal grievance was not raised until 21 August 2024, Bookieland says Ms Alpar's claims are outside of the 90-day statutory time frame in s 114 of the Act for raising personal grievance claims and cannot proceed.

[9] The issues for investigation and determination are:

- (a) Was a grievance raised within the statutory 90-day time period?
- (b) Was Ms Alpar dismissed?
- (c) If so, was the dismissal and the way it was carried out, what a fair and reasonable employer could have done in all the circumstances at the time?
- (d) Should remedies be awarded?
- (e) Was there any contribution by Ms Alpar to the situation she found herself in?

### **The Authority's investigation**

[10] Written witness statements were lodged from Ms Alpar, and for Bookieland from Alessandro Arnetoli, managing director, Susana Wong, shareholder, and Junior J Vao Haupini, employee at Bookieland. The witnesses answered questions under oath or affirmation. The representatives provided submissions.

### **Ms Alpar's employment at the Mussel Pot**

[11] Ms Alpar worked at the Mussel Pot restaurant before Bookieland purchased the business in May 2022. Ms Alpar was offered and accepted employment with Bookieland and continued to work at the Mussel Pot restaurant until 2024.

[12] The Mussel Pot restaurant typically closed over the winter months prior to Bookieland purchasing it. After Bookieland purchased the business Ms Alpar travelled overseas during the first close down period in 2023 and returned to work in September 2023. Ms Alpar says it had been the new owners intention to keep the restaurant trading throughout 12 months of the year. Ms Alpar had a longstanding commitment to travel overseas for three months of the year and she negotiated an extended leave period during that year. Ms Alpar says Ms Wong and Mr Arnetoli agreed to this arrangement

on the basis any leave taken beyond annual leave she had accrued would be unpaid. Ms Wong denied any knowledge of this agreement and in any event there was a winter close down in 2023 and 2024.

#### *Cash payments*

[13] Ms Alpar also says as of November 2022 Mr Arnetoli gave her a pay rise and offered her 7 per-cent of the profits on condition she committed to remain at the restaurant for five years. Ms Alpar says she agreed and requested that this increase and profit share be recorded in her contract when it was rewritten. The employment agreement was never finalised but Ms Alpar was paid a weekly amount in cash that she describes as the bonus. The profit share never eventuated. Bookieland deny Ms Alpar's recollection regarding any profit sharing arrangement but agree a portion of wages was paid in cash each week.

#### *Accommodation*

[14] Ms Alpar had previously owned the building and lived in the accommodation before Bookieland purchased the business and this building. Ms Alpar says Bookieland asked her to live on site. It was not her preference. She says it was offered as free accommodation. Ms Wong confirms that and described the accommodation as a "financial perk" of the arrangement so that Ms Alpar and her husband would have minimal accommodation costs. Electricity and internet were also covered. Ms Wong said in her written statement:

It was offered as a convenience and benefit to her and suited them both as they were already residing there at the time of purchase.

#### *Ms Alpar travels overseas during 2024 close down period*

[15] Ms Alpar again travelled overseas in 2024 during the close down period and she says she expected she would return to work at the Mussel Pot when it reopened in spring. Bookieland disagrees Ms Alpar could say she had that expectation. Ms Wong said she told Ms Alpar in May 2024 the business was going to be marketed for sale and should a sale proceed it was intended they would settle during the winter shut down. It

also says the WhatsApp communications they had while Ms Alpar was overseas show she intended to move on with her life and a new “adventure”.

[16] Ms Alpar says WhatsApp auto corrected the word “venture” to “adventure” in those messages, accepts she discussed new business ventures with Ms Wong but says it was always her intention to return to work at the end of the winter close down period. If the business was sold she intended to discuss employment with any new owners.

[17] Ms Alpar’s evidence was that she agreed to vacate the accommodation before she went overseas in 2024 because she was aware Ms Wong and Mr Arnetoli wished to sell the business. Ms Alpar agrees there was a conversation with Ms Wong and it was conveyed to her that if the business sold Ms Alpar was not on the list of employees who would transfer to the new employer. Ms Alpar says she was aware a new employer would likely have to consider whether it wanted to employ any existing employees but did not discuss this further with Ms Wong. She did not understand that her employment had ended at that stage.

[18] There was also a conversation with Ms Wong on 25 May 2024. Ms Alpar said “I will see you for work in September” or words to that effect. Ms Alpar said Ms Wong replied “maybe not. Hopefully we have sold” or words to that effect.

[19] Ms Alpar says there was no fixed date for return to work after the winter close down in either 2023 or 2024. In August 2024, while Ms Alpar was overseas having not heard from Ms Wong about whether the business had sold she sent a WhatsApp message to Ms Wong enquiring when she was to start back at work. Ms Alpar says Ms Wong did not reply. After searching online Ms Alpar could see the Mussel Pot had been listed for sale by an agent on 4 June 2024 .

[20] On researching further Ms Alpar found a social media post from May 2024 on the Mussel Pot’s facebook page. The post appeared to show Ms Wong had advertised for a chef and communicated with a person interested in the position either before or around the same time as the 2024 seasonal close down commenced. Ms Wong’s evidence was this vacancy related to another business she was involved with but the message under the post from Ms Wong undermines that evidence. The text of the

message shows Ms Wong responding to someone who had indicated they were interested in a vacant chef position. It is recorded Ms Wong and Mr Arnetoli were the owners of the Mussel Pot and were looking for a long term chef to join their kitchen. It sets out the seasonal close down and offered accommodation with the position.

[21] Ms Alpar says Ms Wong never responded to her message and it was this combination of events that led her to believe she had been dismissed.

[22] I note at this point the WhatsApp messages provided by Bookieland show Ms Wong did reply to Ms Alpar's enquiry about her return to work date on 12 August 2024 as follows:

We dealing with another potential buyer currently. So we just run with very low staff in case go through the deal. Think we are fine for staff now.

[23] Ms Alpar appears to have responded with a thumbs up emoji. Ms Wong says because she had made it clear before Ms Alpar left that the fixed term agreement had come to an end and as far as she was concerned Ms Alpar knew that and there was agreement Ms Alpar would not be returning to work at the Mussel Pot.

*Ms Alpar was a permanent employee*

[24] Concessions were appropriately made by Bookieland in written submissions that the unsigned fixed term agreements did not meet the requirements of s 66 of the Act and cannot be relied on. Bookieland also accepted Ms Alpar must be treated as a permanent employee but says this was a seasonal employment arrangement and points to the fact her annual leave was paid out during the second seasonal break as evidence that Ms Alpar employment ended at the end of each season and recommenced again after the three month close down. It also points to Ms Alpar's own conduct such as vacating her accommodation, accepting her final payslips and not disputing the arrangement at the time to confirm Ms Alpar understood and accepted the seasonal nature of her role and that employment had ended in May 2024 before the seasonal close down and before she went overseas.

*There was no mutual agreement that Ms Alpar's employment was ending*

[25] In short, the evidence does not support the position there was mutual agreement Ms Alpar's employment would come to an end in May 2024 at the start of the seasonal close down. I note at this point on questioning Ms Wong about the conversation with Ms Alpar about sale of the restaurant, it was not clear Ms Alpar could have known she was agreeing to her employment terminating before she left in May 2024 to go overseas. Ms Alpar could have known Ms Wong hoped the business would sell but not that employment had come to an end. In Ms Alpar's mind until a sale went through employment would carry on in the same way it always had after the three-month seasonal shut down and that was a conclusion she could have reached based on the evidence before the Authority.

[26] While there was agreement Ms Wong told Ms Alpar she was not on a list for employment with any new employer, that conversation went no further. In the absence or any other evidence that Ms Alpar's employment had been terminated and given the regular seasonal work pattern, Ms Alpar could reasonably have an expectation of ongoing employment after the winter shut down. It was also reasonable to for Ms Alpar to form the view that if the business sold she could have negotiated her employment with the new owners.

[27] The WhatsApp messages do indicate Ms Alpar was thinking in general terms about business ventures but that is not determinative of whether or not she was dismissed. Employees are entitled to make arrangements for the future and in circumstances where Ms Wong had told her Bookieland was to be marketed for sale, it was reasonable for Ms Alpar to consider options for her future. That is not indicative of mutual agreement between the parties that employment had ended before Ms Alpar left for overseas.

[28] In terms of the other things Bookieland rely on to say there was mutual agreement employment had ended, I reach the same conclusion about vacating the accommodation. Ms Alpar said she vacated knowing it was possible a sale would go through over the winter while she was away so it made sense to pack up her possessions.

[29] I do not place much weight on the finalisation of payslips and payment of accrued annual leave as evidence employment had ended. Ms Alpar's said she had

negotiated three months off over the winter during the first season (2023) at a time when it had been Bookieland's intention to trade throughout the year. Ms Alpar said they agreed this would be without pay and no annual leave could be paid out because she had been employed for less than 12 months. She wanted her accrued annual leave paid out during the second seasonal break (2024) and the remainder was to be unpaid leave as she had negotiated previously. Ms Wong denied this was agreed but accepted they had many conversations at the start with Ms Alpar as they came up to speed with the business.

[30] Bookieland's submission that Ms Alpar did not dispute the seasonal arrangement also does not take Bookieland any further. Ms Alpar's evidence and her actions were consistent with the arrangement she says she discussed with Ms Wong and/or Mr Arnetoli at the start of her employment. Her message to Ms Wong on 12 August 2025 asking what date she was to start back is consistent with the arrangement Ms Alpar describes and says was agreed to at the start of her employment with Bookieland.

#### *Ms Alpar was dismissed*

[31] The classic definition of dismissal is found in *Wellington, Taranaki & Marlborough Clerical v Greenwich*.<sup>1</sup> That case makes it clear that the termination of employment must be at the initiative of the employer. It can be communicated explicitly or arise from an employer's conduct.

[32] The difference in evidence about whether Ms Wong did or did not respond to Ms Alpar's 12 August message lead to the same conclusion. Both not responding and replying that Ms Alpar was not needed indicate Ms Alpar's employment was terminated. I find that Bookieland made it clear Ms Alpar was dismissed on or about 12 August 2025 after Ms Alpar's WhatsApp message and after she discovered the post and message from Ms Wong regarding a vacancy for a chef at the Mussel Pot.

[33] A personal grievance was raised on Ms Alpar's behalf with Bookieland on 21 August 2024. This is within the 90-day statutory time frame for raising personal

---

<sup>1</sup> *Wellington, Taranaki & Marlborough Clerical v Greenwich* (1993) ERNZ Sel Cas 95 AC at 103

grievances in s 114 of the Act. There is no issue as to whether her grievance was raised in time.

*The dismissal has not been justified by Bookieland*

[34] In assessing whether a dismissal is justified the Authority considers the test for justification set out in s 103A of the Act. This involves determining whether Bookieland's actions and decisions about Ms Alpar's dismissal were what a fair and reasonable employer could have done in all the circumstances at the time.

[35] Bookieland initially relied on the fixed term agreement as a justification for the dismissal but conceded the fact the agreements were not signed was a significant flaw and that Ms Alpar was instead a permanent employee. It then submitted Ms Alpar's employment ended by way of mutual agreement between the parties but I have found the evidence did not support that position.

[36] In considering Bookieland's actions against the fair and reasonable employer test the Authority assessed whether Bookieland sufficiently investigated and raised concerns with Ms Alpar before dismissing her and gave Ms Alpar a reasonable opportunity to respond to those concerns and also genuinely considered Ms Alpar's responses. Because Bookieland was working on the basis the fixed term agreement had come to an end the usual steps an employer takes before dismissal did not occur.

[37] In these circumstances Bookieland has not been able to provide a justification for Ms Alpar's dismissal and I find Ms Alpar was unjustifiably dismissed.

**Remedies**

[38] Having been successful with her personal grievance claims Ms Alpar is entitled to a consideration of remedies. Ms Alpar seeks three months lost wages and compensation for humiliation, loss of dignity and injury to feelings caused by the unjustified dismissal.

*Compensation for humiliation and injury to feelings*

[39] Ms Alpar's evidence was that her dismissal had a major impact on her mental health. She returned to New Zealand early from overseas due to concerns about finances and gave evidence of the impact on her after employment ended in this way. She described being consumed by worry about finances and said her emotional and physical health deteriorated. Ms Alpar sought advice and treatment from health professionals and provided letters from her general practitioner and a counsellor/therapist confirming that. Initially she was only able to find sporadic on call work that involved a long commute. She described some of the stress related impacts on her life such as difficulty sleeping and feelings of anxiety and emotional lows. She acknowledged she was also caring for an unwell family member.

[40] Bookieland submitted that only limited weight should be given to the letters from health practitioners. They record self-reported matters and no diagnosis and no contemporaneous clinical notes or screening tools were referred to. Not returning for a third season was submitted to be a disappointment and not humiliation or a serious loss of dignity. Bookieland also submits Ms Alpar had other stressors on her and the medical information does not separate out the impact of dismissal from other stressors.

[41] Based on the findings above that Ms Alpar was unjustifiably dismissed I accept she suffered injury to feelings and humiliation as a result of a suddenness of the dismissal and the financial consequences. It is not always necessary for applicants to support a claim for compensation with detailed personal health information. Ms Alpar's harm and loss is also assessed against others who have been unjustifiably treated to establish where that sits compared to the range of compensation awarded.<sup>2</sup>

[42] In this case I am satisfied Ms Alpar's health was impacted to the extent she needed to seek advice from medical practitioners and that this was a result of the unjustified dismissal. She was able to make arrangements and take steps with the support of her family to start her own business and it was acknowledged there were other stressors in her life at that time.

---

<sup>2</sup> *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

[43] Taking all of that into account and with reference to other similar cases, including that Ms Alpar had other stresses at the time, I consider an appropriate award under s 123(1)(c)(i) of the Act to be \$12,000.00 for harm and loss caused by humiliation, loss of dignity and injury to feelings arising from her employment ending so abruptly and caused by the unjustified actions of her employer.

*Lost wages*

[44] Ms Alpar also seeks three months lost wages calculated at an hourly rate of \$25.00 for a 56 hour week. She was also paid a weekly cash amount of \$350.00 and received a total of \$1,750.00 each week.

[45] The Act permits reimbursement to the employee of lost wages in an amount that is the lesser of the sum equal to lost remuneration or to three months ordinary time remuneration. The message exchange that confirmed Ms Alpar was dismissed took place on 12 August 2024. The evidence was that Ms Alpar returned from overseas early and actively sought employment.

[46] It was submitted on her behalf that she looked for work and applied for numerous hospitality and management roles but was unable to be offered work because nearly all positions required a current managers certificate. She did engage in some unpaid work in mid-September in order to re-sit her managers certificate. I was provided with IR records for the relevant period and there is no income in the form of salary or wages until 22 December 2024. This was after Ms Alpar started her own business which was consistent with her evidence.

[47] Bookieland submitted Ms Alpar was well remunerated and that her accommodation was part of her overall package lifting her earnings to a high amount for the industry she was in. As a policy principle Bookieland says higher remuneration reduces an employee's vulnerability and this submission was supported by reference to the "high income" threshold provided for in the Employment Relations (Restraint of Remedies) Amendment Bill which has since been passed into law.

[48] Following on from that Bookieland says Ms Alpar was not a vulnerable employee but an experienced business woman and this is a relevant factor in assessing

remedies. By 9 October 2024 Ms Alpar had incorporated a company and by 25 October had settled on the purchase of commercial premises and by 22 December had opened her own cafe, MPR Eatery. Bookieland says it is likely from at least September/October 2024 Ms Alpar was fully committed to her own business and that means she cannot claim for any lost wages beyond that point.

[49] Ms Alpar's earnings were not at a level comparable to the 2026 amendments to the Act and the vulnerability of an employee is not part of the test for whether or not lost wages should be awarded in this case. There was no service tenancy agreement that would bring the accommodation squarely within the employment relationship but oral evidence of the arrangement was given by Ms Wong and Ms Alpar.

[50] Bookieland continued to operate the Mussel Pot and I have found above that Ms Alpar's employment ended on 12 August 2024. I have accepted Ms Alpar's health and wellbeing was impacted as a result of humiliation and injury to feelings for a period of time after her dismissal. Due to her family support and her own resources she was able to make plans for her future that included a new business in Havelock. Noting it is not a requirement to provide direct evidence of all the steps taken to find work I accept reimbursement is appropriate in these circumstances where there has been an unjustified dismissal and there is a loss that is a consequence of that.

[51] The date the Mussel Pot opened again after the winter close down in 2024 was not provided but evidence was given that Bookieland hired new staff for a third season for trading with at least one being approached in August 2024. Noting Ms Alpar's new company was trading by mid-December I consider an award equivalent to two months lost wages is appropriate.

#### *Annual holiday arrears*

[52] It is submitted Ms Alpar is due annual holiday arrears resulting from annual holiday pay being calculated based on an amount that did not include the \$350.00 cash component of Ms Alpar's wage payments. It is appropriate an order is made for outstanding annual holiday arrears to be paid.

[53] If the parties are unable to agree on the calculation they have leave to return to the Authority.

### *Contribution*

[54] Under s 124 of the Act, contribution to the situation that gave rise to the personal grievance must be considered. Bookieland has accepted it could not rely on the fixed term employment agreements and that Ms Alpar was therefore a permanent employee. Bookieland was unable to justify the dismissal given it was operating in a way that relied on a fixed term coming to an end. That was a mistake on the part of Bookieland and it would be unfair to attribute blame for this to Ms Alpar. In these circumstances, Ms Alpar has not contributed to the personal grievance.

### **Orders**

[55] Bookieland Limited is to pay Tracy Alpar within 28 days of this determination:

- (a) Compensation under s 123(1)(c)(i) of the Act in the amount of \$12,000.00 for unjustified dismissal.
- (b) Lost wages under s 124(1)(b) and 128 of the Act in an amount of \$14,000.00.
- (c) Annual holiday arrears.

### **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, Tracy Alpar 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 Bookieland Limited 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.

[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.<sup>3</sup>

Sarah Kennedy-Martin  
Member of the Employment Relations Authority

---

<sup>3</sup> [www.era.govt.nz/determinations/awarding-costs-remedies](http://www.era.govt.nz/determinations/awarding-costs-remedies)