IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2026] NZERA 198
3357184

	BETWEEN	VOLHA DANILIUK Applicant
	AND	FOR THE BOYS LIMITED First Respondent
	AND	BIG BLACK SACKS LIMITED Second Respondent
Member of Authority:	Helen van Druten	
Representatives:	Aliaksandra Andreyuk, Advocate for the Applicant Jeremy Ansell and Nicole Meech, Counsel for the First Respondent David Waddell for the Second Respondent	
Investigation Meeting:	17 December 2025 in Auckland	
Submissions received:	16 January 2026 from the Applicant 16 January 2026 from the First Respondent 3 February 2026 from the Second Respondent	
Determination:	01 April 2026	

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In 2022, Volha Daniliuk was working as a permanent employee for Big Black Sacks Limited (BBS). She was offered, and accepted, a lump sum payment to work on an "on-hire" fixed term employment agreement (EA) with For The Boys Limited (FTB) and to then be 'on placement' with BBS. The fixed term EA was for a two-year period from 22 November 2022 to 21 November 2024.

[2] As the EA neared its end, Ms Daniliuk asked about an extension to the EA. Two options were presented to Ms Daniliuk but they were short term options and neither was acceptable to Ms Daniliuk so she declined both offers.

[3] Ms Daniliuk has raised personal grievances for unjustified dismissal and unjustified disadvantage. She claims that the uncertainty and changing assurances given by FTB negotiating her new agreement gave her no reasonable choice but to discontinue working, resulting in an unjustified dismissal. She claims that the fixed term employment agreement she signed in 2022 was invalid and began a course of conduct that resulted in reduced terms and removal of benefits, causing her unjustified disadvantage.

[4] An earlier Authority determination established that both grievances were raised in accordance with s 114 of the Employment Relations Act 2000 (the Act), though both had elements outside the employee notification period.[1] Those elements are now excluded from consideration in this determination.

The Authority's investigation

[5] For the substantive matter, witness statements were received from Ms Volha Daniliuk, Aliaksandra Andreyuk (as her sister and advocate) and Antoinette Tofilau as director of FTB. No representative from BBS attended the investigation meeting, though submissions were received from BBS.

[6] 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 preliminary matter and specified orders made. It has not recorded all evidence and submissions received.

Involvement of BBS

[7] Section 5 of the Act defines "a controlling third party" as a person:

a. Who has an employment agreement or other arrangement with an employer under which an employee of the employer performs work for the benefit of the person; and
b. Who exercises, or is entitled to exercise, control or direction over the employee that is similar or substantially similar to the control or

[1] *Daniliuk v For The Boys Ltd* [2025] NZERA 763 at [36].

direction that an employer exercises, or is entitled to exercise, in relation to the employee.

[8] The earlier Authority determination also joined BBS as a controlling third party to this matter pursuant to s 103B of the Act in relation to the unjustified disadvantage grievance claim only.[2] It had a labour hire agreement with FTB and Ms Daniliuk undertook her duties solely for BBS's benefit. It directed Ms Daniliuk where, when and how she undertook her duties. It had all the daily control (other than pay) of an employer. As a controlling third party, BBS is joined as a respondent to the disadvantage grievance.

The issues

[9] The issues requiring investigation and determination are:

a. When did Ms Daniliuk's employment come to an end?
b. Whether Ms Daniliuk was unjustifiably dismissed by virtue of her employment coming to an end?
c. Whether Ms Daniliuk was unjustifiably disadvantaged by BBS and/or FTB, specifically by:
    i. Unreasonable and unachievable KPIs within shortened employment agreement periods;
    ii. Unilateral changes to terms and conditions of the new employment;
    iii. Failure to provide a genuine fixed term reason for new employment terms; and
    iv. Uncertainty created by employment agreement negotiations.
d. If FTB's actions were not justified (by dismissing and/or disadvantaging Ms Daniliuk) and/or BBS's actions were not justified (by disadvantaging Ms Daniliuk), what remedies, if any, should be awarded, considering:
    i. Lost wages (subject to evidence of reasonable endeavours to mitigate her loss); and
    ii. Compensation under s123(1)(c)(i) of the Act.

[2] Above n 1.

e. If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Ms Daniliuk that contributed to the situation giving rise to her grievance?
f. Was there a breach of good faith by FTB under s 4 of the Act?
g. Was Ms Daniliuk's final pay unreasonably withheld in breach of s 4 of the Wages Protection Act 1983?
h. Should any penalties be awarded for a breach of s 4 of the Act and/or for failure to pay Ms Daniliuk's final pay; and
i. Should the party/ies contribute to the costs of representation of the other party/ies?

Background facts

[10] Prior to signing her employment agreement with FTB, Ms Daniliuk was employed on a permanent employment agreement by BBS. In 2022, BBS decided to contract out its staffing and HR related matters. At the time, Ms Tofilau was an employee of BBS. After some discussions with Mr Waddell as BBS's CEO, she set up a labour hire agency (FTB). Staff working for BBS were offered an incentive to work for FTB instead.

[11] By her own account, Ms Daniliuk said that in November 2022, BBS offered her $11,000 to terminate her EA with BBS and to move to a fixed term IEA with FTB. She agreed to do so.

[12] On 21 November 2022, Ms Daniliuk entered into an "on-hire assignment IEA" with FTB. She was placed to work at BBS on a two-year fixed term basis, concluding on 21 November 2024.

[13] The relevant sections of the EA and accompanying employment summary letter were signed by both parties and read as follows:

> The employee will be placed to work at the following 3rd party client's site address…from 21 November 2022 for a duration of 2 years, where completion of project/s will be on 21 November 2024. The client can then renew a new employment agreement and terms with the employee.
>
> 1.1 This agreement will come into force on the commencement date of the on-assignment placement and will continue until terminated at the end of the placement.

1.2 The parties acknowledge that [the] employment relationship ends upon the earlier of the following:
   a. At the end of the on-assignment placement; or
   b. When the third-party client ends the on-assignment placement; or
   c. when the Principal ends the placement.

1.3 The Principal has genuine reasons based on reasonable grounds for specifying that the Employee's employment is placement based…

I, Volha Daniliuk, …agree that my employment is on-assignment placement based and may be sometimes intermittent and that the Principal cannot guarantee ongoing employment.

20. Ending of placements
20.2 If the third party reviews its needs and terminates the placement earlier than originally indicated, then the employment in respect of that Assignment will need to give the employee six weeks' notice".

[14] According to FTB, the project/s referred to in the employment summary letter was the Dunnhumby review. This was a project initiated by Foodstuffs North Island, partnering with data science company Dunnhumby, to gather data analytics and intelligence to inform their customer strategies. Based on various media reports in 2019 and 2020, those in the industry knew the review was underway and many participated in the project, including BBS.

[15] On 5 November 2024, FTB emailed Ms Daniliuk. This email assured Ms Daniliuk that FTB were in negotiations with BBS to secure the best possible deal for Ms Daniliuk given her upcoming EA expiry. By return email, Ms Daniliuk confirmed her understanding that the EA was due to expire on 21 November 2024 and acknowledged the assurance of a further placement term.

[16] On 13 November 2024, FTB advised Ms Daniliuk that the new employment agreement would be for three and a half months on different terms and conditions to the original fixed term agreement. It also acknowledged Ms Daniliuk was on leave from 16 December 2024 to 9 January 2025.

[17] Ms Daniliuk then provided a "counteroffer" with a higher hourly rate as discussed with Ms Tofilau, declined the EA terms as proposed and included a 40 hours per week guarantee and four weeks' notice if no longer required. She also confirmed the new employment agreement term from 22 November 2024 to 22 February 2025.

[18] On 20 November 2024, after discussions with FTB did not meet the timeframes and terms she expected, Ms Daniliuk ceased work with BBS until a new EA was signed.

A one-week extension to the existing EA was offered by FTB on 21 November 2024 to complete the Dunnhumby review work.

[19] The same day, FTB sent a further email reaffirming the one-week extension of the existing EA on the same terms; and offering a new fixed term EA in a new position from 29 November 2024 to 15 March 2025. Ms Daniliuk did not accept either offer. She says that offer was made after several discussions and without explanation or any indication of a long-term plan.

[20] Between 22 and 25 November 2024, FTB made various minor changes to the offer in Ms Daniliuk's favour, including a $3,400 bonus to "transition from your current placement to your new placement offer". These were declined by Ms Daniliuk.

[21] On 27 November 2024, a solicitor acting for Ms Daniliuk wrote to FTB raising concerns about Ms Daniliuk's employment and outlining her potential claims.

Consideration and Analysis

When did Ms Daniliuk's employment end?

[22] Ms Daniliuk's employment end date is important as any claim for unjustified dismissal must first establish that there was a dismissal. The s 103A test of justification is then considered to determine whether that dismissal was justified.

[23] Ms Daniliuk was employed on a fixed term employment agreement with an end date of 21 November 2024. Based on information from Ms Daniliuk, it is clear that she was aware and accepted fixed term employment at time of signing the agreement.

[24] In the absence of any other offer or invalidity of that agreement, her employment was due to come to an end on 21 November 2024, being the end of her fixed term agreement.

[25] Based on email correspondence in that period, the parties met and discussed what Ms Daniliuk wanted and what FTB wanted to present to her. That was contingent on what BBS would approve.

[26] At time of her employment ending, there was no agreement between the parties to continue employment beyond 21 November 2024.

[27] In her statement, Ms Andreyuk pointed to actions by the employer after 21 November 2024 suggesting Ms Daniliuk was still an employee. FTB did not expressly tell Ms Daniliuk her employment had ended. It did not pay her final pay. Additionally, Ms Daniliuk continued to drive the company Ute until 12 March 2025 and receive fixed monthly allowances. On 11 March 2025, FTB's advocate wrote "Volha is on unpaid leave…[and] does not require a work vehicle" and that it still had her final pay and would release it if she resigned.

[28] These actions by FTB are not consistent with the ending of employment; however, they are also insufficient to indicate an ongoing employment relationship. Ms Daniliuk had not accepted further employment with FTB, did no further work for FTB or BBS, and there was no evidence to suggest she considered there was an ongoing employment relationship.

[29] I therefore conclude that Ms Daniliuk did not resign during the term of her employment and her employment ended on 21 November 2024 by the expiry of her fixed term agreement, without any agreed renewal or extension.

Unjustified Dismissal

[30] Ms Daniliuk maintains that the fixed term agreement she signed in November 2022 is invalid as it does not meet the requirements of s 66 of the Act, therefore she was a permanent employee and the ending of her employment on 21 November 2024 was an unjustified dismissal. This claim requires careful consideration of the requirements of s 66 of the Act.

[31] As the Employment Court confirmed, an employee employed under a fixed-term agreement which does not satisfy the requirements of s 66(2) may elect to treat the expiry of the agreement as ineffective and therefore be treated as though they were a permanent employee throughout the period.[3]

[32] Section 66 of the Act sets out the requirements for a lawful fixed term agreement provided certain criteria are satisfied. Ms Daniliuk's 2022 EA met the requirements of s 66(1) of the Act with an end date of 21 November 2024. The question is then whether it met the requirements of ss 66(2) - (4) of the Act.

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[3] *Morgan v Tranzit Coachlines Wairarapa Ltd* [2019] NZEmpC 66 at [5] and [6].

[33] Section 66(2) of the Act sets two requirements:

> (2) Before an employee and employer agree that the employment of the employee will end in a way specified in subsection (1), the employer must–
>
> a. have genuine reasons based on reasonable grounds for specifying that the employment of the employee is to end in that way; and
> b. advise the employee of when or how his or her employment will end and the reasons for his or her employment ending in that way.

[34] Looking first at s 66(2)(a), what constitutes a genuine reason and reasonable grounds is not defined in the Act. In *Tillmans Fine Furniture Ltd v Rookes*, the court provides some guidance on s 66 interpretation. The court found that "the combination of ss 66(2)(a) and 66(3) supports a conclusion that all of the circumstances need to be taken into account when objectively assessing whether the fixed term is genuinely based on reasonable grounds". [4]

[35] In that decision, the court also reiterated its support for the analysis in *Canterbury Westland Free Kindergarten Association (t/a KidsFirst Kindergartens) v New Zealand Education Institute*, where the court presented two propositions:[5]

a. A genuine reason must not only be sincerely held but must not be for an improper reason; and
b. what section 66 contemplated was that fixed term employment should be confined to special discrete projects of limited duration as opposed to situations of ongoing employment.

[36] In oral evidence, FTB says that the main project referred to in the summary employment letter attached to Ms Daniliuk's employment agreement was the Dunnhumby review.

[37] FTB maintained that it had a legitimate, genuine reason for the fixed term because:

a. As a third-party employer, FTB only wanted to employ Ms Daniliuk for the period specified by the client (BBS). If BBS no longer required Ms Daniliuk, the agency (FTB) would have to end that placement. FTB would have no further work for her after the BBS work ended.

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[4] *Tillmans Fine Furniture Ltd v Rookes* [2025] NZEmpC 152 at [32] and [42].
[5] *Canterbury Westland Free Kindergarten Association (t/a KidsFirst Kindergartens) v New Zealand Education Institute* [2004] 1 ERNZ 547 at [42].

b. The legitimacy of the fixed term agreement was driven by the reality of the two-year Foodstuffs Dunnhumby review. Approximately 80 per cent of Ms Daniliuk's account management work was for Foodstuffs. Once the Dunnhumby review came to an end, there would not be enough work to maintain an Account Manager role.

[38] Ms Daniliuk maintained that it was not a valid fixed term agreement. She drew attention to the following:

a. In 2022, she was told by BBS that nothing would change when she moved across to a fixed term agreement and it was presented as a formality.
b. Mr Waddell's involvement was constant and unmistakeable. Mr Waddell (for BBS) continued to control her work, overtime and duties.
c. She was not told what a 'fixed term' was at the time of signing the agreement. She signed the fixed term agreement because she did not pay attention to it at the time as everyone was moving across.

[39] I prefer the reasoning of FTB on this point. The Dunnhumby review had the potential for significant impact on account manager positions in particular. There was little reason for FTB to make the EA permanent when the Dunnhumby review was time limited. When the review it was finished, FTB had limited other clients making another placement for Ms Daniliuk unlikely.

[40] Mr Waddell's daily control over Ms Daniliuk's work does not, in itself, negate the validity of a fixed term agreement. BBS was the client, Ms Daniliuk was employed by FTB, working for BBS so it is not unexpected that he would allocate her work and manage overtime. Ms Daniliuk was paid by FTB once hours were approved by BBS.

[41] I further contemplated whether this fixed term agreement was created for an improper reason, even if a genuine and sincerely held reason. BBS was entitled to outsource its labour resourcing and management, so compliance with s 66(2)(a) relates to FTB, not BBS. Having considered all the circumstances, I am satisfied that FTB had a genuine reason based on reasonable grounds for the fixed term nature of the employment.

[42] The second criteria within s 66(2)(b) of the Act also has two specific requirements - the employer must, firstly, advise the employee when and how the employment will end and, secondly, advise the reasons for the employment ending in that way.

[43] The first requirement set out in s66(2)(b) was satisfied. Ms Daniliuk had a 21 November 2024 end date. Ms Daniliuk knew that the employment would end. In both oral and written evidence, Ms Daniliuk says that she knew that she had signed a fixed term agreement with FTB and that it was due to expire in November 2024.

[44] As for the second requirement, there was no evidence of any advice to Ms Daniliuk as to the reasons for her employment ending other than what appears in the employment summary letter. This issue therefore comes down to whether the reference in that letter to "the project/s" served to advise Ms Daniliuk of … the reasons for her … employment ending [on the date stipulated].

[45] The reason for the fixed term contract offer was deliberately vague and "broad" as Ms Tofilau put it. While the Dunnhumby review was the project referred to, keeping it broad enabled BBS to give Ms Daniliuk other smaller projects if capacity allowed. Ms Tofilau accepted that the wording should have been more specific and said the company's more recent contracts now reflect this.

[46] Ms Daniliuk quite rightly says that the letter does not specify or even refer to the Dunnhumby review and therefore does not meet the requirements of s 66(2)(b). At face value I initially accepted that proposition. However, I also note the lengthy discussion of s 66(2)(b) in the Court of Appeal in *Norske Skog Tasman Limited v Clarke*.[6] In that decision, the court overturned a decision of the Employment Court, preferring to take the approach that:

> we consider that in s66 the phrase "advise … of" has a meaning which is equivalent to "give … notice of". So it is sufficient to comply with ss66(2)(b) if the employer brings the relevant reasons to the attention of the employee. We would likewise accept that a failure by an employee to take on board those reasons…does not mean that the employer has failed to comply with s66(2)(b).

[47] I considered this dicta alongside the "all of the circumstances" approach suggested in *Tillmans Fine Furniture* including that:

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[6] *Norske Skog Tasman Limited v Clarke* [2004] CA181/03, [2004] 3 NZLR 323, 7 NZELC 97, [2004] 1 ERNZ 127 at [52] and [53].

a. The Dunnhumby review was a well-known Foodstuffs project affecting many Foodstuffs suppliers. It would be very unlikely that an Account Manager doing 80 per cent of their work with Foodstuffs would not know that the Dunnhumby review outcome would significantly reduce the need for account managers once it was completed.
b. The *Norske Skog* decision also emphasised that any background knowledge held by the employee is highly relevant. The nature of the advice to be given by employer to employee under s66(2)(b) might be different depending upon the extent of knowledge already possessed by the employee. There would be no point, as a matter of law, in requiring information to be communicated for the sake of it.[7]
c. Both FTB and BBS submitted that Ms Daniliuk was discussing the review weekly with the team.
d. Though untested evidence, BBS submitted that Ms Daniliuk "was definitely aware she was moving onto a two-year contract to cover the period of the two-year Foodstuffs Dunnhumby review." BBS knew, in 2022, the potential for the Dunnhumby review to substantially change the business and change the need for regular account manager visits which was a significant portion of Ms Daniliuk's role.
e. Based on Ms Daniliuk's own evidence, she did not sign any further employment agreement because of the instability and consequent uncertainty showed at the time coming up to her end date, not because of the end date itself. Had the agreement ended clearly, there was no issue with its fixed term nature.
f. In written submissions, Ms Daniliuk noted the actions of FTB in 2024 were "continuity markers inconsistent with a clean, pre-planned end that had been *clearly explained* two years earlier (emphasis added)."

[48] Significant weight is placed on these factors and in particular Ms Daniliuk's knowledge of the industry and the review; and her evidence that it was not the expiry of the contract that was at issue, it was the way she was treated in that renegotiation period. I therefore conclude that the requirements of s 66(2)(b) were met.

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[7] Above n 6 at [177].

[49] For completeness, I do not consider that s 66(3) of the Act applies here. I distinguish these circumstances from *Morgan v Tranzit*, as there was no evidence of any attempt by FTB to exclude or limit rights under either the Act or the Holidays Act 2003 at commencement of the offer of employment.[8] This was demonstrated further when employment (albeit short-term) was offered that was not anticipated originally and it did not seek to reduce leave entitlements in that offer either. I do not consider that s 66(3)(b) applied.

[50] I am satisfied that the fixed term agreement signed by FTB and Ms Daniliuk in November 2022 met the requirements of s 66 of the Act.

Was Ms Daniliuk disadvantaged in her employment?

[51] Ms Daniliuk based her disadvantage claim on the following:

a. Unreasonable and unachievable KPIs within shortened employment agreement periods;
b. Unilateral changes to terms and conditions of employment;
c. Failure to provide a genuine fixed term reason for new employment terms; and
d. Uncertainty created by the renegotiation of her employment agreement in November 2024.

[52] As outlined in the earlier determination of 26 November 2025, claims raised by Ms Daniliuk relating to events in 2023 were determined to be out of time and only considered to the extent they may indicate a prior course of conduct.

Claim of unreasonable KPIs

[53] This claim relates to the future proposed agreement. Ms Daniliuk claimed that those KPIs set by BBS were unreasonable. On 22 November 2024, Ms Tofilau emailed the proposed KPIs from BBS to Ms Daniliuk seeking feedback and input with the clarification that achievement (or not) did not affect pay. That email was clear that those KPIs were open for discussion. Based on the email from Ms Tofilau, there is no evidence to suggest that Ms Daniliuk was disadvantaged in her employment by the setting of draft KPIs for future work.

Unilateral changes to terms and conditions of employment

[8] Above n 3.

[54] In 2023, Ms Daniliuk was given a contractor agreement and a casual agreement by FTB that rightfully raised concerns for her. This was explored at length with both Ms Daniliuk and Ms Tofilau in questions during the Authority investigation meeting.

[55] By her own admission, Ms Tofilau explained that she did not know much about human resources and employment agreements in 2022. She engaged an external advisor to assist her with EAs and it was evident that these gradually improved over time as her knowledge increased. The casual agreement was accidentally sent to Ms Daniliuk and several others. Both parties agreed they had laughed about that incident and Ms Tofilau had said not to sign it. I accept FTB sending Ms Daniliuk a casual employment agreement in 2023 was a genuine mistake not any attempt by FTB to disadvantage her or to undermine her employment. Ms Daniliuk did not sign either agreement.

[56] There was no basis established for Ms Daniliuk's claim that she was disadvantaged by unilateral changes to her terms and conditions of employment. In questioning by counsel for FTB, Ms Daniliuk conceded that none of her terms and conditions were unilaterally changed by the company between 21 November 2022 and 21 November 2024.

Failure to provide a genuine reason for new fixed term employment

[57] Ms Daniliuk also claimed that FTB caused her unjustified disadvantage by failing to provide a genuine fixed term reason for the new 22 November 2024 EA.

[58] As Ms Daniliuk's employment ended on 21 November 2024, there was no requirement to renegotiate terms of a new fixed term employment period. In any event, the written offer letter of 21 November 2024 does not support that claim. Ms Daniliuk was offered a placement as Business Development Manager for three and a half months with a specific reason for a specific project.

New terms of employment

[59] FTB was not obliged to offer Ms Daniliuk ongoing employment after the conclusion of the fixed term. However, FTB gave assurances that Ms Daniliuk's employment would be extended beyond 21 November 2024. Until BBS indicated the terms and conditions of employment, FTB could not make any offer to Ms Daniliuk.

[60] Both parties at the investigation meeting agreed that it was difficult to get certainty from BBS and this created the delay. The uncertainty and lack of urgency by BBS to act in a timely manner directly contributed to Ms Daniliuk's hesitancy to accept the terms and conditions of any continuation and significantly impacted her decision to decline both offers. However, BBS had no obligation to offer Ms Daniliuk a new term of employment. There was also no evidence to suggest that BBS gave any such assurances. Those assurances came from FTB.

[61] I have considered whether FTB's assurances that an offer would be forthcoming and the last-minute and uncertain nature of the negotiations did unjustifiably disadvantage Ms Daniliuk.

[62] No evidence presented to the Authority suggested FTB deliberately delayed any of the discussions with Ms Daniliuk. I preferred the written and oral evidence of Ms Tofilau that she was doing her best to get the best deal for Ms Daniliuk.

[63] There was no disadvantage created by the delays in negotiating a new agreement. Emails between FTB and Ms Daniliuk show a process of negotiation and discussion. The lack of timeliness was outside FTB's control. FTB did what it reasonably could by providing a one-week extension to the existing EA on the same terms and conditions to allow Ms Daniliuk an opportunity to continue working while the details of that second agreement were finalised. When the second agreement was presented to Ms Daniliuk, Ms Tofilau confirmed in writing that she had put the start date of 28 November 2024 to allow Ms Daniliuk an opportunity to think it over and seek legal advice. In all the circumstances, allowing Ms Daniliuk time to seek advice and think over the offer was the actions of a fair and reasonable employer in the circumstances at the time.

[64] There was also no disadvantage created by offering new terms and conditions of employment. FTB assured there would be another fixed term offer made and that occurred, albeit on different terms and conditions than Ms Daniliuk was expecting. A further review of the email resulting from the 6 November 2024 meeting to discuss hourly rates did not constitute an offer of employment or commitment to that hourly rate. Ms Daniliuk knew that any offer needed BBS's final approval and Ms Tofilau's email was presented as a proposed rate she intended to put to Mr Waddell, not an offer of employment by FTB.

[65] Ms Daniliuk felt that she was treated unfairly and that the unnecessary to and fro caused confusion and anxiety. The terms of the new agreement were not what she expected. While acknowledging the impact on Ms Daniliuk, the Authority must apply the s 103A test. There is no information before me that indicates that FTB's or BBS's actions, and how the employer acted, were not what a fair and reasonable employer could have done in all the circumstances. There was no obligation to present an offer within Ms Daniliuk's required timeframes or on the terms and conditions Ms Daniliuk expected. FTB presented an offer, as it had said it would, prior to the end of employment. It was Ms Daniliuk's decision not to accept those offers.

[66] Ms Daniliuk's claim for unjustified disadvantage is unsuccessful.

Was there a breach of good faith?

[67] No breach of good faith on FTB's part was determined. FTB was responsive, and communicative, albeit sometimes with mixed messages and communicating unconfirmed information which exacerbated the confusion.

[68] BBS chose not to engage and provide its evidence in this matter; therefore, I rely substantially on the evidence provided by FTB and Ms Daniliuk. Unfortunately, BBS's lack of responsiveness and decisiveness flowed through FTB to impact Ms Daniliuk.

[69] I accept Ms Daniliuk's concerns that this created uncertainty, pressure and confusion. However, this in itself does not mean there was a breach of good faith.

Was Ms Daniliuk's pay unreasonably withheld?

[70] By reason of expiry of the term of employment, employment ended on 21 November 2024. At that point, Ms Daniliuk was entitled to receive any final pay.

[71] Ms Tofilau, as FTB's director, provided various unsatisfactory responses for not making any final payment. These included an assumption that Ms Daniliuk would agree to an extension, Ms Daniliuk being on unpaid leave, logistical issues and BBS not paying FTB. These were not appropriate reasons to withhold final pay. No information was provided to back up these reasons. As late as October 2025, claims made about cash flow issues were not backed up with any evidence. Ms Daniliuk's final pay was

eventually paid in full on 3 November 2025, almost 12 months after ceasing employment.

[72] Withholding Ms Daniliuk's pay for such an extended period was a breach of s 4 of the WPA by FTB and a breach of the terms of the employment agreement. Consideration of a penalty is appropriate. I refer to s 133A of the Act and relevant case law for determination on the quantum of any penalty.

[73] Ms Daniliuk provided evidence of her attempts to receive her final pay. FTB gave at least two assurances, through its representative, that money would be paid and it was not forthcoming. There were two part-payments made after repeated efforts by Ms Daniliuk.

[74] It should not be necessary to chase wages owed. The emotional effects having to do so was significant for Ms Daniliuk, causing her unnecessary anxiety and impact on her mental and financial wellbeing.

[75] As in *Liu v Legend International Holdings Ltd*, there is an overarching public interest in maintaining employment standards.[9] It cannot be for employers to withhold final pay and for such an extended period. I consider that a penalty of $2,000 is appropriate. Based on the timing of this error and the efforts Ms Daniliuk has undertaken to recover money already owing to her, that amount is awarded to Ms Daniliuk.[10]

Conclusion

[76] Within 21 days of this determination, FTB is required to pay Ms Daniliuk a penalty of $2,000 for withholding her final pay.

Costs

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

[78] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Ms Daniliuk may lodge, and then should serve, a memorandum on costs

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[9] *Liu v Legend International Holdings Ltd & Ors* [2025] NZERA 702.
[10] Employment Relations Act 2000, s 136(2) provides that the Authority may order that the whole or any part of any penalty recovered must be paid to any person.

within 28 days of the date of this determination. From the date of service of that memorandum FTB and BBS 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.

[79] 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.[11]

Helen van Druten
Member of the Employment Relations Authority

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