

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 207  
3317280

BETWEEN RACHEAL NUKU  
Applicant

AND ASSET CORROSION  
ENGINEERED SOLUTIONS  
LIMITED  
Respondent

Member of Authority: Peter Fuiava

Representatives: Applicant in person  
David Watson, advocate for the Respondent

Investigation Meeting: 10 and 15 December 2025 in Whangarei and by audio-  
visual link

Submissions and other information received: Up to, and including, 5 January 2026 from the Applicant  
12 & 15 December 2025 from the Respondent

Determination: 7 April 2026

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**DETERMINATION OF THE AUTHORITY**

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**Lapse of interim non-publication order**

[1] In an earlier determination,<sup>1</sup> I found that Racheal Nuku had raised her personal grievance of unjustified disadvantage with her employer, Asset Corrosion Engineered Solutions Limited (ACES or the company), within the relevant employee notification period of 90 days. ACES is a small sandblasting, painting and coating business in Whangarei.

[2] The abovementioned unjustified disadvantage grievance was Ms Nuku's apparent lack of knowledge that her status as a casually employed SW trade assist was replaced by an independent contractor agreement.<sup>2</sup> Having made that finding, which

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<sup>1</sup> *VSF v OIB* [2025] NZERA 377 at [28].

<sup>2</sup> At [28].

was based on the evidence and information that was before me at that time, the parties were directed to mediation, and to give that process the best chance of success at resolving matters at a lower level, an interim non-publication order was made which would continue while the parties were at mediation.<sup>3</sup> Because matters did not resolve there, my interim non-publication order has now lapsed.

[3] It was submitted by Ms Nuku's now former representative that a non-publication order should be made on the grounds that this would assist Ms Nuku get a job. It is understood that Ms Nuku has not worked since her employment with ACES ended in February 2024. When asked about her efforts to find alternative employment in the interim, Ms Nuku advised that she had not applied for any work because she felt that her employment relationship problem with her former employer was all too much.

[4] I do not consider this a sufficient reason to rebut the principle of open justice which is of fundamental importance and it has not been shown that there is a specific adverse consequence for Ms Nuku that would justify a departure from open justice.<sup>4</sup> Without more, how publication might reasonably affect Ms Nuku to find future employment remains speculative. As the grounds for a non-publication order are not made out, the application for such an order is declined.

### **What is the employment relationship problem?**

[5] Ms Nuku claims that she was unjustifiably dismissed and was unjustifiably disadvantaged in various ways by her employer who in turn, deny her claims in their entirety and say that it has inadvertently overpaid Ms Nuku in annual leave and in GST. By way of counterclaim, ACES seeks repayment in the total amount of \$5,197.34.

[6] In essence, the employment relationship problem arises from a denial by Ms Nuku that she signed a second individual employment agreement with the company dated 25 January 2021 and that her signature on that document is not hers but a forgery. In addition, Ms Nuku asserts that she did not know that, on 23 October 2023, her status as an employee had changed to that of an independent contractor and that the first time she knew about the change was in February 2024.

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<sup>3</sup> *VSF v OIB*, n 1, at [2].

<sup>4</sup> *MW v Spiga* [2024] NZEmpC 147 at [87]-[89].

### **How has the Authority investigated?**

[7] Following the preliminary determination, a further case management conference was held on 7 August 2025 in which Ms Nuku was directed to file an amended statement of problem that better defined the disadvantage claims that she wished the Authority to investigate. However, no amended statement of problem was filed and the investigation proceeded on the basis of witness statements provided by Ms Nuku, her sister, and their mother. For ACES, I received written witness statements from its company directors, Deborah Pou and Carlin Marriot.

[8] All witnesses answered questions under oath or affirmation from me and the parties' representatives. As permitted by s 174E of the Employment Relations Act 2000, 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.

### **What happened?**

[9] It is not disputed that Ms Nuku was first employed by ACES on 21 February 2020 as a casually employed or as-needed employee (the first IEA). Schedule 1 of that agreement records a start date of employment for Ms Nuku of 21 February 2020, that her position was that of an SW trade assist; that Ms Pou was her manager, and that Ms Nuku was guaranteed 40 hours' work per week for the duration of the project.

[10] Schedule 1 of the first IEA did not expressly state the name of the project that Ms Nuku would be working on but Ms Pou gave evidence during the substantive investigation meeting that, in 2020, her company had obtained a significant contract related to the 2020 America's Cup which required ACES to paint pontoons that would be used by the watching public for the event (the pontoon project). While the project was significant and required ACES to recruit additional casual staff, including Ms Nuku, it was not indefinite and only provided the company with 11 months of painting work from February to December 2020.

[11] It was Ms Pou and Mr Marriot's evidence that on 22 December 2020, ACES staff were verbally told at an end-of-year barbecue that the pontoon project would be winding down. With the exception of some minor touch-up work, the project had run its course and as a result, staff were being given their two weeks' notice.

[12] Ms Nuku's payslips from 2020 record that she was paid wages at the rate of \$22 per hour and an hourly overtime rate (time-and-a-third) of \$29.26. Those rates are consistent with the hourly rates set out in Sch 1 of her first IEA. While the pontoon project ended towards the end of 2020, Ms Nuku continued to be engaged by the company as a casually employed SW trade assist in 2021. During that year, Ms Nuku's payslips record two pay increases for her. On 25 April 2021, her wages increased to \$23 per hour and her overtime hourly rate became \$30.59. On 8 August 2021, her ordinary pay was increased a second time to \$25 per hour and her overtime rate was increased to \$33.25 per hour.

[13] Although there is no dispute between the parties concerning the validity and the terms and conditions of the first IEA, Ms Nuku takes issue with a purported second IEA dated 25 January 2021, which appears to bear her signature (the second IEA).

[14] Ms Nuku asserts that she did not sign the second IEA and that her signature has been forged. ACES submit that the second IEA and Ms Nuku's signature are genuine and the agreement supersedes the first IEA. The key difference between the two employment agreements is that the first IEA contains a minimum guarantee of 40 hours of work for the duration of the project whereas the second IEA provides no obligation on the employer to offer work and that there is no minimum number of hours for each work session.<sup>5</sup>

[15] If Ms Nuku is correct that the second IEA contains her forged signature, it would mean that the first IEA continues to have effect and has not been replaced. Moreover, the provision guaranteeing her with 40 hours of work per week for the duration of the project continued to define her employment resulting in a significant underpayment by ACES of her wages in the amount of some \$56,000.

[16] On 28 January 2022, Ms Nuku sprained her back while at work and was on ACC from 8 February 2022 onwards. As casual staff, Ms Nuku was never on a roster and it was her manager, Ms Pou, who would let her know by text message when she was required to work. Following her injury, Ms Pou had no contact with Ms Nuku until March 2023 when Ms Pou telephoned her to offer her light-duty work on a short-term

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<sup>5</sup> Second IEA, 25 January 2021, pg 4.

project as a safety watch for a tank project (the Tank 9 project). Ms Nuku accepted and recommenced working for ACES on 19 March 2023. Ms Nuku's payslips from this period show that she was paid an ordinary rate of \$25 per hour and an overtime rate of \$33.25 per hour.

[17] By August 2023, the Tank 9 project was drawing to a close and Ms Pou and Mr Marriot held a toolbox meeting with staff advising them that future work was not secure and that the project would end. On 8 September 2023, Ms Nuku received her last payslip for the Tank 9 project and according to Ms Pou, her casual employment ended when the project did.

[18] In October 2023, Ms Pou states that she contacted Ms Nuku about other work becoming available and says further that an independent contractor agreement was entered into with Ms Nuku because she had previously indicated at the toolbox meeting why her son was being paid more than her. She was told that her son had been engaged as an independent contractor and that contractors were paid more than employees at \$29 per hour.

[19] Matters appear to have come to a head on 7 February 2024 when Ms Nuku asked Ms Pou whether she could use one of her annual leave days when she was absent from work on 5 February 2024. Ms Pou's response was that Ms Nuku did not have any annual leave because she was an independent contractor. The response caught Ms Nuku by surprise because she claimed that she was not aware that her employment status had changed from being an employee to an independent contractor.

[20] On 11 February 2024, ACES provided Ms Nuku with an independent contractor agreement but noticing that it was backdated to 23 October 2023, she did not sign it.

[21] The following day, on 12 February 2024, Ms Nuku met with Ms Pou and Mr Marriot to inform them both that she was not prepared to sign the ICA. She was advised that by not signing the agreement, she could potentially end up owing ACES money because independent contractors were paid a higher flat rate of \$29 per hour than casual employees.

[22] On 13 February 2024, ACES provided Ms Nuku with a casual employment agreement to sign. Mr Marriot stated that this was to acknowledge her preference to revert to working on a casually employed basis. Ms Nuku subsequently sought the advice of her mother about the ICA and the new casual employment agreement, but she was advised not to sign either but to instead seek further independent advice which she did.

[23] Ms Nuku subsequently requested Ms Pou to provide her with a copy of her first IEA as well as a copy of her payslips from 23 October 2023 onwards. Although a copy of the abovementioned employment agreement was provided, Ms Nuku was advised that she had been emailed her payslips each week and that these recorded the hours she had done for every week worked. On 15 March 2024, Ms Nuku was provided with a copy of her payslips which indicate that ACES had been generating invoices on her behalf since 23 October 2023.

[24] On 15 February 2024, Ms Nuku received a further text message from Ms Pou that informed her that there would be no work for her the following day. A similar text message was sent by Ms Pou on 16 February. Ms Nuku says that she was being “punished” by ACES for questioning her employment status because she was not offered any further work for the company.

[25] On 30 April 2024, Ms Nuku raised her personal grievance of unjustified dismissal and various claims of unjustified disadvantage.

[26] On 7 May 2024, ACES responded to Ms Nuku’s personal grievance stating that her first IEA had been superseded by her second IEA. It was further claimed that on 23 October 2023, the parties had entered into an arrangement of a contract for services and that this independent contractor arrangement replaced any prior terms and conditions of casual employment from that point on.

[27] The difficulty for ACES has been its lax workplace practices which has resulted in its present predicament with an ICA that has not been signed by either party and nothing in writing to evidence Ms Nuku’s agreement to become an independent contractor. The paucity in documentation was to ACES’s detriment in my preliminary

determination which considered information that was available at that time.<sup>6</sup> However, since then, new and additional information has been provided to the Authority which addresses this gap in the evidence.

### **What is the new information and evidence?**

[28] The new information provided to the Authority is relevant to the second IEA which Ms Nuku denies signing, and to ACES's understanding with respect to the ICA and its subsequent actions following 23 October 2023, when Ms Pou says that Ms Nuku verbally agreed to work as an independent contractor.

[29] I turn first to the second IEA whose key difference with the first IEA is the absence of a minimum number of hours for each work session.<sup>7</sup> When the two employment agreements are compared with each other, the second IEA is noticeably different and this was because it was a template that was derived from an external third-party HR consultant.

[30] By way of contextual background, it may be noted that in early 2020, the COVID-19 pandemic reached New Zealand. In response to the potential disruptive effect of the pandemic on New Zealand businesses, the government established the COVID-19 Business Advisory Support, and in conjunction with the Regional Business Partner Network, efforts were made to assist small and medium-sized enterprises to navigate their way through an unprecedented period of economic uncertainty.

[31] I requested from ACES any supporting information that the company had sought assistance from Northland's regional economic development agency (Northland Inc) in January 2021. Among other things, I was provided with an email (12 December 2025) from an HR consultant who confirmed that she had reviewed ACES' individual employment agreements for its staff and provided it with compliant employment agreement templates it could use, which formed the basis of Ms Nuku's second IEA.

[32] The HR work that ACES received cost it \$1,500 which is a reasonable sum for a small business. This not insignificant expenditure counts against any suggestion that

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<sup>6</sup> *VSF v OIB*, n 1, at [27].

<sup>7</sup> In contrast to Sch 1 of the first IEA that guaranteed 40 hrs of work per week for the duration of the project.

the company had forged Ms Nuku's signature because it had gone to the trouble and expense of applying to Northland Inc for a grant for additional HR support during a period of significant economic disruption and uncertainty.

[33] In addition, the signature on the second IEA is a substantial match with Ms Nuku's signature on her timesheet for the week commencing 23 November 2021,<sup>8</sup> which she accepted was her signature. Although Ms Nuku denies ever signing the second IEA, I was not provided with any expert evidence from a handwriting expert so I am left with making my own assessment. The signature on the second IEA is very similar to Ms Nuku's timesheet signature and I am satisfied that the employee signature on the second IEA has got there because Ms Nuku signed it. Consequently, the second IEA has replaced her first IEA with ACES, and as a result, Ms Nuku's wage arrears claim of some \$56,000 falls away.

#### **What about the ICA?**

[34] While it is a fact that neither party signed the ICA, a purely oral contract is as valid as a written one. The difficulty for ACES to date has been providing sufficient supporting evidence of a verbal agreement with Ms Nuku that she had agreed to be engaged as an independent contractor, which she is adamant is not so.

[35] While Ms Nuku may genuinely believe this to be the case, for the reasons that follow, I do not consider her belief to be reasonably held. This is because Ms Nuku's relevant bank account statements, which were requested, show a marked difference in the reference field following the change on 23 October 2023. The bank statements show that prior to 19 October 2023, the reference that ACES had used since 25 February 2020 was "wages". However, this changed on 2 November 2023, when the reference description became "contract W/E 30 October 2023". The following week and the two weeks that followed thereafter, the reference descriptors used were "contractor wages" and "contract".

[36] Ms Nuku can reasonably be expected to see these changes in her bank statement which on its face indicate that her relationship had changed from being an ACES employee to being engaged as an independent contractor. The reference descriptors

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<sup>8</sup> Common bundle page 231.

existed long before matters appear to have reached a head with the parties on 7 February 2024 as noted at [19] above.

[37] With this information appearing in Ms Nuku's own bank statement, I find that she must have known that her increased pay was due to her changed status from employee to an independent contractor. It is not plausible that Ms Nuku simply accepted her increased remuneration because she believed that her employer knew what it was doing. It is more probable than not that she was aware that she was being paid more because, like her son, contractors were paid the higher rate of \$29 per hour as opposed to \$25 per hour for casually employed staff.

[38] I find that Ms Nuku was not unjustifiably disadvantaged on account of her employer not telling her that she had been engaged as an independent contractor. Based on the bank statement information, which corroborates Ms Pou's and Mr Marriot's evidence, I find on the balance of probabilities that a verbal agreement was reached with Ms Nuku that she would work for ACES after 23 October 2023 as an independent contractor. It follows that Ms Nuku was not unjustifiably dismissed in February 2024 because she was no longer an employee at that time.

[39] As for ACES counterclaim of an alleged overpayment in wages to Ms Nuku in the amount of \$5,197.34, the working relationship between the parties ended in February 2024. Given the effluxion of time, the alleged overpayment now falls outside the recoverable period under s 6 of the Wages Protection Act 1983. ACES can now only seek recovery through restitution based on unjust enrichment or mistake. However, given the historicity of the alleged overpayments, the last of which relate to GST in 2023, I find that Ms Nuku received those funds in good faith and has changed her financial position in reliance on those payments, making it inequitable to require her to repay those monies now. The counterclaim is declined.

## **Conclusion**

[40] For the reasons given, Ms Nuku's claims of unjustified dismissal and unjustified disadvantage are not made out and are declined. Further, for the reasons given, ACES's counterclaim is also unsuccessful.

## **What about costs?**

[41] The parties are encouraged to resolve any issue of costs between themselves. My preliminary view is that costs ought to lie where they fall because there has been a mixed measure of success by both parties with respect to the preliminary and substantive matters during the course of this investigation. ACES was also unsuccessful with its counterclaim against Ms Nuku and this investigation could have been avoided altogether had it sufficiently documented changes to the working relationship with Ms Nuku in the first place.

[42] If the parties disagree with my preliminary view on costs and wish to be heard on the matter further, ACES may lodge, and then should serve, a memorandum on costs within 21 days of the date of this determination. From the date of service of that memorandum, Ms Nuku may then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for them to continue to negotiate costs between themselves may be granted. The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.<sup>9</sup>

Peter Fuiava  
Member of the Employment Relations Authority

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<sup>9</sup> For further information about the factors considered in assessing costs see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1).