

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2026] NZERA 208  
3351981

BETWEEN                      SHELANI DEVI  
Applicant

AND                              ALLIED INVESTMENTS  
LIMITED (T/A ALLIED  
SECURITY)  
Respondent

Member of Authority:        Sarah Kennedy-Martin

Representatives:             Hayley Johnson, advocate for the Applicant  
Eve Martin for the Respondent

Investigation Meeting:      2 December 2025

Submissions and Other      18 December 2025 from the Applicant  
Information Received:        8 January 2026 from the Respondent

Determination:                7 April 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Ms Devi was employed as a security guard by Allied Investments Limited (trading as Allied Security) from 12 October 2023. The individual employment agreement between the parties provided for casual employment. Ms Devi says after several things happened including an incident involving her and a member of the public at a supermarket site and a meeting with the Regional Manager about her swearing at her manager she was given no further shifts. She says her employment had become permanent by that stage and failing to give her shifts amounted to an unjustified dismissal.

[2] Allied Security say Ms Devi's employment was casual and she was not dismissed because she resigned in the meeting about her conduct. She was given

a cooling off period and remained on the list of casual employees for a period of time but after she did not take up the offer of any further work she was removed from the casual list in accordance with its normal procedure in those circumstances. From its perspective Ms Devi's casual employment came to an end at that point. It says the actions taken by Allied Security and decisions made in relation to all the matters raised by Ms Devi were justified.

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

[3] A written witness statements was lodged by Ms Devi. On behalf of Allied Security Travis Austin and Hilary Sinclair-Hyde lodged statements. Witnesses gave oral evidence and answered questions. Written submissions were lodged by both parties.

**Issues:** The issues identified for investigation and determination are:

- (a) Was Ms Devi's employment casual?
- (b) Did Ms Devi resign or was she dismissed?
- (c) If dismissed, was her dismissal justified?
- (d) Was Ms Devi also disadvantaged by Allied Security actions?
- (e) Should remedies be awarded?
- (f) Should any penalties be awarded against Allied Security?
- (g) If any remedies are awarded, should they be for blameworthy conduct by Ms Devi that contributed to the situation giving rise to her grievance?

### **Ms Devi's employment**

[4] Ms Devi was employed as a security guard and engaged to work from 12 October 2023. The employment agreement between the parties referenced casual employment as follows:

#### Casual Individual Employment Agreement

##### 1. Terms of Agreement

This casual employment agreement shall come into effect on 12/10/23 and shall remain in force until renegotiated or terminated pursuant to any provision of this agreement including any probationary period.

#### 4. Times and Hours of Work

4.0 The Employee will be offered work as and when required, with no fixed or guaranteed hours on any day.

4.1 The Employee may decline to accept any particular offer of work but if they do so on more than two consecutive occasions, or if the Employee declines work regularly, the Employer may after consulting the Employee, end this employment arrangement. The Employee agrees to notify the Employer promptly if they are not able to do work that they have agreed to.

4.2 Just because the Employer is sometimes able to offer the Employee work on successive days or weeks, does not mean that the Employee should expect, or that the Employer will provide, regular ongoing work.

[5] Under the heading “Workplace Practices” the employment agreement recorded:

14.4 Disciplinary action will be taken if any Employee uses threatening, abusive or insulting actions or language likely to cause ill will against any person or group, whether on the grounds of religion, colour, race, or ethnic origins, or age of the person or persons, or any other grounds.

[6] Clause 30 dealt with disciplinary procedures:

Before making a decision on any matter affecting the Employee’s employment the Employer will follow a process in good faith which allows the employee to have input into the matter at issue, and the appropriate outcome.

*Ms Devi was a casual employee*

[7] Ms Devi received work through a combination of being rostered shifts by Allied Security and accessing work through the allocation tool called Deputy to select the shifts she wanted. She was shown how to pick shifts that were “open shifts” on Deputy when she first started. In approximately November 2023 she started working regularly at various Countdown supermarkets across the Wellington region. Her evidence was of working six days a week for usually between four and nine hours each shift. She was still selecting “open shifts” on Deputy at that stage.

[8] Ms Devi says after a few months she asked about getting permanent shifts from a manager at the time because she was regularly working at sites that involved one supermarket chain. That manager said “yes, we will do something for you” or words to that effect. After that she says she was given regular shifts at Countdown

supermarkets in three locations and worked consistently around 50 -60 hours per week. There was no variation to the casual employment agreement.

[9] Ms Devi also says from January 2024, her shifts started to become regular at the same locations on the same days and times each week and she no longer needed to use Deputy because her shifts were given to her. She was being assigned jobs rather than having to accept them as they came up but she also selected open shifts.

[10] Allied Security says Ms Devi remained a casual employee. Her agreement provided for casual employment. Allied Security makes shifts available to a pool of casual employees through its Deputy system and she primarily used the Deputy system to select the shifts she wanted to work. There was no guarantee of work and Ms Devi had no obligation to accept them. It also says although Ms Devi had regular work that does not equate in and of itself with permanent employment. Allied Security set out Ms Devi's work pattern that showed variability in days worked, shift length, weeks worked. Days worked each week ranged between none and seven days in any given week with no two consecutive weeks showing the same worked hours.

[11] Allied Security accepted Ms Devi's annual leave was accrued. It submitted annual leave accrual does not determine employment status whereas Ms Devi relied on this to support her submission she was a permanent employee.

[12] There is no definition of casual employment in the Act and it is accepted employment relationships can change over time. When asked to determine whether employment was casual or permanent the Authority seeks to identify the real nature of the relationship. This is done with reference to a number of factors including what the parties intended, how the relationship operated in practice and the obligations on the employee to accept work and on the employer to offer work. There are examples in the past where the Authority and the court have determined an employment relationship to be permanent despite a written agreement characterising employment as casual.<sup>1</sup>

[13] The starting point is that Ms Devi's employment agreement was written in such a way that it provided for casual employment. The title was "Casual Employment

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<sup>1</sup> See for example: *Jinkinson v Oceana Gold (NZ) Ltd* [2009] ERNZ 225, *Enoka v AFFCO New Zealand Ltd* [1998] 3 ERNZ 889, *Rachelle v Air New Zealand Ltd* [2019] NZEmpC 191, *Baker v St John Central Regional Trust Board* [2013] NZEmpC 34 and *Bay of Plenty District Health Board v Rahiri* [2016] NZEmpC 67.

Agreement". The specific working of cl 4.0 of the employment agreement was clear Ms Devi would be offered work as and when required with no fixed or guaranteed hours. She was free to accept or decline any particular offer of work. It was also set out that just because Allied Security offered work on successive days or weeks, that did not mean Ms Devi should expect Allied Security would provide ongoing regular work. These are typical hall marks of casual employment that were recorded as terms and conditions of Ms Devi's employment.

[14] Allied Security says it did this through its Deputy app. It had no obligation under the employment agreement to offer Ms Devi work and she was free to accept or decline work as she wished. It said she primarily applied for shifts through Deputy but even when a shift was offered to Ms Devi through a manager there was still no obligation on her to accept that shift. There were no rosters. Deputy and phone calls from managers were the method by which shifts were offered.

[15] Allied Security's submission about annual leave accrual not being determinative of casual employment is correct. The obligation on an employer is to ensure employees receive their entitlement to annual leave which is set out in s 16 of the Holidays Act 2003. After 12 months of continuous service all employees receive four weeks annual leave and that entitlement remains until either the annual leave is taken or it is paid out to the employee.

[16] Section 28 of the Holidays Act 2003 provides for "pay as you go" annual leave. That involves annual leave being paid to the employee regularly with their wages instead of accruing the statutory entitlement. Casual employment does not automatically mean "pay as you go" annual leave can be paid. Section 28 sets out when it is permissible. As a starting point it can only be paid to an employee whose work is so intermittent or irregular that it is impracticable for the employer to provide the employee with four weeks' annual holidays.

[17] That was not the nature of Ms Devi's work. Her work was not intermittent or irregular and for that reason accrual of annual leave was not an indicator of permanent employment in this case.

[18] While it is noted Ms Devi's evidence was of a conversation asking for something more permanent from a manager there was no more detail about what was agreed. Her name may have been next to shifts in Deputy but that did not mean there

had been a change in the fundamental nature of the casual employment relationship. The nature of the conversation she reported she had with a manager was not sufficient to have changed the fact there was no obligation on her to take shifts offered or on Allied Security to continue to offer shifts. Ms Devi accepts she also did other shifts over this time period that were “open shifts” she picked up by selecting them in Deputy.

[19] After considering how the relationship was operating in practice and the employment agreement between the parties the real nature of Ms Devi’s employment was a casual employment relationship.

*Ms Devi was not dismissed*

[20] Ms Devi gave evidence of a shift at a supermarket and an incident with a shopper. Ms Devi was stood down from the shift after the client requested she not work there again. She was given shifts elsewhere. Ms Devi points out her employment agreement set out a process that needs to be followed if a client no longer wanted a particular guard working at their site. This process was not followed. The incident was of a type that led to Ms Devi making a complaint to Police and it was upsetting for her. Ms Devi could not remember the exact date but the records from Allied Security show her last shift at that site was 20 March 2024.

[21] Ms Devi completed three more shifts at other sites on 22 March, 23 March and 1 April 2024. On 2 April she received a call from her supervisor about a four hour shift at a Countdown that was some distance from her home. Her evidence is that she agreed to do this shift if her fuel was covered. Ms Devi says the manager agreed and the job was allocated to her on Deputy. Allied Security said the manager communicated with Ms Devi about fuel but they did not reach an agreement and the shift was removed for that reason.

[22] From Ms Devi’s perspective she was already on her way to the shift and using petrol when the manager cancelled the shift and removed it from Deputy. She returned home very frustrated. She called the manager when she was angry. Ms Devi also sent him some harsh text messages because she felt he had wasted her time. She used swear words and called him names that were derogatory and one that could be interpreted as a racist slur but Ms Devi denies it was intended as that. Ms Devi accepts that sending

those messages to her manager was wrong and she deeply regrets sending those messages.

[23] The record of the text messages show the manager responded to the first few text messages asking Ms Devi to refrain from messaging him again and said he would be arranging an investigation meeting. Ms Devi went on to send further text messages.

[24] Ms Devi's last shift was on 1 April 2024. The messages were sent on 2 April. On 8 April Travis Austin, Regional Manager, sent her an email asking her to attend a meeting. She says she never saw this email until after Sacked Kiwi raised a grievance on her behalf. The same day (8 April) Ms Devi emailed Mr Austin asking why she was not getting many shifts. She thought it might have been because of the earlier incident that resulted in her being removed from all further work at that site:

Can you give me some advice on what is happening? Have I been fired? I have not had a satisfactory response from Brian as to what is happening. I have asked multiple times for shifts but I have no work. I am struggling financially and stressed because I still have bills to pay. I haven't worked for nearly a month. I haven't been told that I am no longer working for Allied so .... What is happening?

[25] I note at this point Ms Devi recorded she had not had work for nearly a month but the records show it was seven days.

[26] Ms Devi says she went to Allied Security's office on or about 10 or 16 April because she was concerned about not getting many shifts and had not heard back from her manager. She met with Mr Austin but says she did not know that was a meeting about her conduct. It was unclear what date this meeting took place but Ms Devi said she was unaware the meeting was about her conduct because she did not receive the email inviting her to the meeting. Allied Security also say the meeting was rescheduled to 16 April. It was unclear how Ms Devi was unaware of the meeting because the email address appeared to have been one Ms Devi had used in the past.

[27] Ms Devi described what occurred at the meeting and what led up to her speaking about resigning. She says another manager came in and shouted at her and called her racist. She was trying to explain her side of the story about her request for fuel to be covered and the removal of the shift after she had left home. Ms Devi's evidence was that she became very nervous at being shouted at so she said that she would look to resign. She says it was a spur of the moment thing because she felt attacked and that she was not being heard. She also said she wanted to speak to HR

first. She handed back one jacket but kept the rest of her uniform. Ms Devi's evidence was that she did not resign because what she indicated was not that she was actually resigning but rather that she would look to resign, she did not provide a resignation letter, confirm a final day or definitively say she would resign.

[28] On 29 April Ms Devi emailed Mr Austin again to ask what was going to happen next because she had not heard from anyone at Allied Security. Mr Austin said he would reply later in the day but he did not. On 13 May she emailed again still having not heard from anyone. She asked if she was still an employee and said she was going to Work and Income because she had no money. Mr Austin replied "no shifts at the moment".

[29] Ms Devi says up until this point she had been receiving regular shifts. After her emails in April and May went largely unanswered and she was no longer rostered for any work, she believed Allied Security had ended her employment. A personal grievance was raised on her behalf on 27 May 2024 and on 30 May 2024 she was offered one shift for the first time since 1 April 2024. The shift was for 2 June 2024, but after that no more shifts were offered. Ms Devi said she did not reply to the offer of the 2 June shift because she felt it was only being offered to her because a personal grievance had been raised.

[30] Allied Security say the meeting was about Ms Devi's conduct and she accepted she sent the messages, stated she was not sorry and repeatedly spoke over others and the meeting was not constructive and was brought to a close early after she resigned. Mr Austin's evidence was that Ms Devi said she no longer wanted to work for Allied Security. She left the meeting and returned shortly after to hand in her uniform which he says indicated she was resigning from her employment. He said because she resigned before the meeting had finished the process was unable to be finalised. Her resignation was effective immediately and he says she subsequently stopped applying for and accepting shifts through the Deputy. He says she remained a casual employee and eligible for shifts for a period which is normal practice .

[31] Mr Austin also says he delayed processing her final pay while offering her an opportunity to return to work after taking time to reconsider. He also tried to contact her several times but she did not respond. He says he responded to her emails and tried to call her but she did not pick up. She also made contact when she was advised

by Work and Income that she would have a lengthy stand down period before being eligible for assistance.

[32] While strong submissions were made on Ms Devi's behalf that she was dismissed Allied Security says she had access to Deputy and could access and select shifts. Having found above the employment relationship remained casual Ms Devi could not have an expectation of ongoing work and in these circumstances Ms Devi was not dismissed.

*Ms Devi was not disadvantaged by Allied Security's actions*

[33] Ms Devi claims she was disadvantaged after the incident that resulted in her not working at that site in the future without any proper process being followed. In order to have been disadvantaged one or more of Ms Devi's conditions of employment had to have been affected to her disadvantage by an unjustifiable action by the employer.

[34] Clause 31.6 of the individual employment agreement provided a process to be followed in these circumstances:

- (a) The Employee will be advised of the client's directive and will be stood down from the site immediately on full pay;
- (b) The Employer will gather all information reasonably available from the client as to the reason for the client's decision;
- (c) The Employer will discuss the information available with the Employee and determine whether it is appropriate to make representations regarding the Employee's reinstatement to the client's site;
- (d) If the Employer concludes it is inappropriate to make representations to the client, or the client is unwilling to reinstate the Employee, the Employer will meet with the Employee to discuss options for redeployment to other sites.

[35] Ms Devi was simply told she was not to work at that particular site anymore. In these circumstances Allied Security may not have followed the process set out in the employment agreement between the parties but the manager involved did not give evidence so it remained unclear whether redeployment was discussed in accordance with option (d) above.

[36] In any event Ms Devi was offered shifts at other sites and because work carried on at other sites it is not clear how Ms Devi was affected to her disadvantage by not working at that particular site.

[37] In addition, Ms Devi's evidence and submissions were that all shifts were removed and her access to the Deputy app was disabled. This was submitted to amount to a constructive dismissal. Allied Security deny access to Deputy was removed. Constructive dismissal was not raised in the statement of problem so those submissions have been put to one side but I have nevertheless considered whether Ms Devi could have been disadvantaged by this.

[38] Ms Devi's statement was that she was no longer rostered onto shifts but there were no rosters. Some shifts may have been offered to Ms Devi as opposed to her selecting an open shift and having that approved by a manager but that is different from having access to Deputy removed.

[39] Ms Devi's emails enquiring about work also do not mention that she could not access the Deputy app. Ms Devi's email of 8 April asks what is happening because she has asked for shifts multiple times but had no work. Her email of 29 April asks if they can discuss what is happening after the meeting because she was not getting any shifts with Allied.

[40] The email of 13 May asks Mr Austin to reply and confirm that she is still registered under a casual contract and that there are no shifts available at the moment. She does not say she no longer has access to the Deputy App.

[41] Allied Security say Mr Austin tried to call Ms Devi but she did not pick up. It disabled access to the Deputy app and processed her final pay after the appropriate amount of time. This was based on its position that Ms Devi resigned at the meeting and then did not take up any shifts offered after that date. It says there was little to no work available at that time. I am unable to conclude access to the Deputy app was removed as Ms Devi asserts.

[42] Submissions were also made on Ms Devi's behalf that the April investigation meeting was not a fair investigation because she had no notice of the allegations, no access to information and was not aware that her ongoing employment was at risk.

[43] The evidence was difficult to follow in relation to when the investigation meeting took place and there was a conflict between what Ms Devi said happened at the meeting and what Allied Security said occurred. What is agreed is that Ms Devi referred to resignation and that the meeting became heated. While resignation may not have been intended the word resignation was used. This coupled with returning some of her uniform would appear to provide a basis for Allied Security to believe it did not need to finalise the investigation process.

[44] In response to the questions from the Authority to Ms Devi about her email address at the investigation meeting a submission was made suggesting the email produced at the investigation meeting could have been altered. This was strenuously denied by Allied Security in its submissions. Ms Devi did not give evidence about an email being altered in which case that particular allegation is not able to be resolved by this determination.

[45] I have found Ms Devi was not disadvantaged in her employment by the investigation, having access to Deputy disabled or being removed from one particular site.

[46] The outcome is that Ms Devi has not been successful with her personal grievance claims in the Authority and accordingly there is no consideration of remedies.

### **Costs**

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

[48] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Allied Security 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 Ms Devie 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.

[49] 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>2</sup>

Sarah Kennedy-Martin  
Member of the Employment Relations Authority

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<sup>2</sup> [www.era.govt.nz/determinations/awarding-costs-remedies](http://www.era.govt.nz/determinations/awarding-costs-remedies)