IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2026] NZERA 230
3367783

	BETWEEN	COURTNEY JANSEN Applicant
	AND	BDS CHARTERED ACCOUNTANTS LIMITED Respondent

Member of Authority:	Simon Greening
Representatives:	Applicant in person Hayley Coles, counsel for the Respondent
Investigation Meeting:	17 and 18 March 2026 in Auckland
Submissions received:	24 March 2026 from the Applicant 27 March 2026 from the Respondent
Determination:	20 April 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Courtney Jansen was employed by BDS Chartered Accountants Limited (BDS) in the position of administrator from 4 November 2024 until 19 December 2024.

[2] Peter Taylor is the sole director of BDS. Isa Taylor is employed by BDS in the position of assistant manager. Sharon Searle was engaged as an external HR consultant by BDS.

[3] Ms Jansen says BDS failed to provide adequate training and support in her role as an administrator. Ms Jansen says BDS did not provide a healthy and safe work environment. Ms Jansen contends she was constructively dismissed by BDS on 19 December 2024.

[4] Ms Jansen also alleges BDS discriminated against her on racial grounds during her employment with the company.

[5] In addition, Ms Jansen has made a claim under s 4 of the Employment Relations Act 2000 (the Act) that BDS did not deal with her in good faith during the employment relationship.

[6] In respect of her personal grievance claims, Ms Jansen seeks compensation for hurt, humiliation and injury to feelings, and lost remuneration. She also seeks a penalty against BDS under s 4 of the Act.

The Authority's investigation

[7] For the Authority's investigation written witness statements were lodged by Ms Jansen, Ms Taylor, Mr Taylor, Ms Searle, and Mr Abel Abed. The witnesses answered questions from me under oath or affirmation, and from legal counsel acting for BDS.

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

The issues

[9] The issues requiring investigation and determination are:

(a) How did Ms Jansen's employment come to an end?

(b) If Ms Jansen resigned from BDS, then was she unjustifiably constructively dismissed?

(c) Was Ms Jansen unjustifiably disadvantaged by the alleged failure of BDS to provide adequate training and support?

(d) Was Ms Jansen unjustifiably disadvantaged by the alleged failure of BDS to provide her with a healthy and safe working environment?

(e) Was Ms Jansen discriminated against by BDS during her employment?

(f) Did BDS breach s 4 of the Act, and if so, should a penalty be issued?

(g) If any personal grievance is established, then is Ms Jansen entitled to remedies under s 123(1)(c)(i) and/or s 128 of the Act?

(h) Is either party entitled to costs?

How did Ms Jansen's employment come to an end?

[10] There is no dispute between the parties that Ms Jansen's employment agreement included a valid 90-day trial provision in accordance with s 67A(2) of the Act.

[11] BDS says that Ms Jansen's employment ended by way of dismissal in accordance with the trial provision in her employment agreement.

[12] At 10.51am on 19 December 2024, Ms Searle spoke with Ms Jansen on the phone. During the call, Ms Searle advised Ms Jansen that her employment was being terminated under the 90-day trial period in her employment agreement.

[13] Ms Searle gave Ms Jansen the option of having her employment come to an end by reason of resignation, if she preferred. Ms Jansen said to Ms Searle that she would consider this option. Ms Searle asked Ms Jansen to let her know by the end of the day, whether she would resign or preferred to receive a termination letter.

[14] At 11.30am Ms Jansen left the office. At 5.30pm, Ms Jansen emailed Ms Searle, resigning from her position at BDS.

[15] At 7.43pm, Ms Searle emailed Ms Jansen:

> Hi Courtney
> On behalf of BDS Chartered Accountants, we acknowledge receipt of your email resigning from your role.

[16] BDS says that Ms Jansen was dismissed during the phone call with Ms Searle. Ms Jansen was then given the opportunity to resign, to simply reflect what would be noted on Ms Jansen's record.

[17] BDS' intention was to offer a compassionate alternative to dismissal in order to support Ms Jansen's future employability. BDS says it did not intend to waive its rights under the trial provision.

[18] BDS' says Ms Jansen's employment was terminated during the phone call with Ms Searle, however BDS was required to give Ms Jansen one week's written notice, as required by her employment agreement.

[19] BDS did not comply with the notice provision in Ms Jansen's employment agreement.

[20] During the phone call on 19 December 2024, Ms Searle did not provide notice of termination of employment to Ms Jansen, instead she gave Ms Jansen the option of resigning, otherwise termination of employment would follow.

[21] Following the phone call Ms Jansen sent Ms Searle an email, outlining her decision to resign from BDS.

[22] I find that Ms Jansen resigned on 19 December 2024.

[23] If I had found that Ms Jansen's employment was terminated during the phone-call on 19 December 2024, it would have followed that BDS would not have been able to rely on s 67(2)B of the Act, because it did not comply with the written notice provision in the employment agreement.[1]

Was Ms Jansen unjustifiably constructively dismissed?

[24] On 19 December 2024, during her phone call with Ms Searle, Ms Jansen was given the option of resigning or being dismissed.

[25] Ms Searle provided the Authority with a copy of the termination letter; she was proposing to send to Ms Jansen.

[26] However, Ms Jansen elected to resign rather than face termination of employment. Therefore, the termination letter was not sent to Ms Jansen.

[27] In her evidence, Ms Searle said the option of resigning, rather than termination, was presented to Ms Jansen to support her in any future job search.

[28] I find that Ms Jansen was constructively dismissed because she was presented with an option of resigning or being dismissed.[2]

[29] BDS submits that if Ms Jansen was constructively dismissed, nevertheless the dismissal was justified.[3]

---

[1] *Ioan v Scott Technology NZ Limited* [2019] NZCA 386 at [12].
[2] *Auckland Shop Employees IUOW v Woolworths (NZ) Ltd* [1985] 2 NZLR 372 (CA).
[3] *Ramkissoon v Commissioner of Police* [2017] NZEmpC 85, (2017) 15 NZELR 203 at 233.

[30] This case can be distinguished from the cases BDS relies on, where an employee is facing disciplinary action and chooses to resign rather than be dismissed.[4]

[31] BDS did not raise concerns with Ms Jansen about her conduct or performance. This is because BDS considered invoking its right to terminate Ms Jansen's employment under the 90-day trial provision in her employment agreement.

[32] Section 67B(2) of the Act provides that if an employer terminates an employment agreement containing a trial provision under s 67A by giving the employee notice of the termination before the end of the trial period, then the employee is unable to raise a personal grievance for unjustified dismissal.

[33] This case is analogous to cases where an employer has sought to rely on s 67(B)(2) of the Act by not following a process, but because the employer has not complied with the requirements of this provision of the Act, the court has subsequently ruled the dismissal to be unjustified.[5]

[34] I find that Ms Jansen was unjustifiably constructively dismissed.

Was Ms Jansen unjustifiably disadvantaged by the alleged failure of BDS to provide adequate training and support?

[35] A personal grievance for unjustified disadvantage is a claim that an employee's employment, or one or more conditions of the employee's employment, is or are affected to the employee's disadvantage by some unjustifiable action by the employer.[6]

Adequate training

[36] Ms Jansen says BDS did not provide her with a structured onboarding plan, training documents were lengthy and difficult to follow, and training sessions were often interrupted for unrelated urgent tasks or progress updates.

[37] BDS says that various members of the team were involved in providing training to Ms Jansen. Ms Abygail Caylao provided remote training sessions via MS Teams, because she was not based in New Zealand. Ms Taylor also provided training and

---

[4] *Mutze v Lincoln Supermarket Ltd* [2014] NZERA Christchurch 5; *Tuisamoa v Te Whare O Nga Tumanako Maori Women's Refuge Incorporated* [2022] NERA 214.
[5] *Smith v Stokes Valley Pharmacy (2009) Ltd* [2010] NZEmpC 111 at [108.
[6] Employment Relations Act 2000, s 103(1)(b).

support. BDS also provided Ms Jansen with video recordings of training sessions so she could rewatch these training sessions as required.

[38] On 12 November 2024, Ms Jansen emails Ms Taylor outlining the topics she will cover in training with Ms Caylao the following day.

[39] On 9 December 2024, Ms Jansen sent an email to Ms Searle. This email suggests the training provided by BDS to date was helpful, however Ms Jansen has concerns about workload, managing competing priorities, and the employer's expectations. In regard to the training provided to date, in her email Ms Jansen writes:

> Hi Sharon,
> I hope this email finds you well. I wanted to take a moment to check in with you now that I've completed my first month in the role. Overall, I'm feeling much more comfortable with tasks like client setups, organizing client team folders, scheduling meeting invites, requesting documents, and following up on information.

[40] On 12 December 2024, Ms Jansen emailed Ms Searle. In her email, Ms Jansen expresses her concern that Ms Taylor is frustrated that she is still needing assistance with how to complete client exits. Ms Jansen explains to Ms Searle that the training provided by BDS has been "quite unorganised and messy".

[41] BDS is a relatively small accounting business, with approximately 15 employees. In determining whether Ms Jansen has been unjustifiably disadvantaged by the failure of BDS to not provide adequate training, I am required to consider the resources of the employer.[7] I also note Ms Jansen was employed by BDS for a short period and was still learning how to undertake certain parts of her job at the time she resigned.

[42] BDS provided adequate training to Ms Jansen. I have come to this conclusion by considering the staff resources and training videos provided by BDS, the one-on-one training provided, BDS being a relatively small business, and Ms Jansen continuing to learn aspects of her role when she resigned.

[43] Ms Jansen was not unjustifiably disadvantaged by the alleged failure of BDS to provide her with adequate training.

---

[7] Employment Relations Act 2000, s 103A(3)(a).

Adequate support

[44] On 9 December 2024, Ms Jansen sent Ms Searle an email raising concerns about her workload.

[45] Another administrator at BDS, Adel Abed, had resigned. Ms Jansen was concerned that tasks he was previously doing, were now being assigned to her. Ms Jansen was managing five inboxes, including her own.

[46] Ms Jansen also maintained different email role titles, including executive assistant to Mr Taylor, client services coordinator, and administrator.

[47] BDS had developed a master-list of all administrative tasks. The total number of tasks on this list was 130. Ms Jansen says that 44 of those tasks had been assigned to her.

[48] After receiving this email, Ms Searle called Ms Jansen to discuss her concerns. Ms Searle also arranged a meeting between Ms Jansen, Ms Taylor and Mr Taylor.

[49] This meeting was held on 11 December 2024. During this meeting, BDS decided to support Ms Jansen by introducing a daily task email whereby priorities and tasks for each day were set out in an email.

[50] BDS was aware of the concerns Ms Jansen had raised regarding her workload. BDS provided support by helping Ms Jansen prioritise the key tasks to complete each day.

[51] An example of a daily task email was provided to the Authority. The email is dated 12 December 2024 and is sent from Ms Taylor to Ms Jansen. In the email Ms Taylor sets out the priorities for the following day and details for the relevant tasks.

[52] I accept that Ms Jansen’s workload was significant. However, BDS engaged constructively with Ms Jansen by meeting with her to discuss concerns and by providing guidance each day on the key priority tasks that needed to be completed.

[53] The difficulty for both parties, is the employment relationship was very much in its infancy when concerns were raised in regard to Ms Jansen’s workload.

[54] A few days after this meeting, on 19 December 2024, Ms Jansen resigned. The parties did not have sufficient time to assess whether the daily task email would provide sufficient support to Ms Jansen or whether additional support was required.

[55] I find that Mr Jansen was provided adequate training and support, in the circumstances, which include the short period of employment, the resources available to BDS and the steps taken by BDS to respond to her concerns.

[56] Ms Jansen's unjustified disadvantage claims do not succeed.

Was Ms Jansen unjustifiably disadvantaged by the alleged failure of BDS to provide her with a healthy and safe working environment?

[57] BDS owed an implied duty to Ms Jansen to provide a healthy and safe work environment. The content of this implied duty is informed by the Health and Safety at Work Act 2015.[8] Section 36 of this Act provides that employers must ensure, so far as is reasonably practicable, the health and safety of employees while at work.[9]

[58] The requirement to take all practicable steps to ensure an employee's safety only arises where an employer knows, or ought to reasonably know, about the circumstances giving rise to the risk of harm.[10]

[59] Ms Jansen says the work environment was hostile because BDS placed unreasonable expectations on her and did not provide her with sufficient support.

[60] Firstly, I start with what BDS knew, our ought to have reasonably known, about Ms Jansen's concerns.

[61] Ms Jansen emailed Ms Searle on two occasions. The first email is dated 9 December 2024. The title and tone of this email suggests Ms Jansen is checking in with Ms Searle, following her first month of employment with BDS. In the email, Ms Jansen explains that her training has gone well to date, but is concerned about her additional workload following Mr Abel's departure.

---

[8] *Robinson v Pacific Seals New Zealand Ltd* [2014] NZEmpC 99 at [25].
[9] Health and Safety at Work Act 2015, s 36(1).
[10] Above n 8 at [29].

[62] The second email is dated 12 December 2024. The title and tone of this email suggests Ms Jansen is aware of Ms Taylor's frustration with her performance to date. She explains to Ms Searle that she is trying her best to manage competing priorities, wants to perform well, and be of assistance to the team.

[63] Ms Jansen concludes this email with the following words:

> I would just like for you to keep a record of me recognising this for future reference if required as I have gathered I need to be able to hold my own against both Peter and Isa performance wise and be able to explain short comings.

[64] I have considered these emails. I have also considered emails from Ms Taylor to Ms Jansen which demonstrate support and the offer of additional training.

[65] In conclusion, BDS was not made aware of Ms Jansen's concerns regarding a toxic or unsafe work environment, neither were there circumstances or events in the workplace which could have led to BDS becoming aware of Ms Jansen's concerns.

[66] In her witness statement, Ms Jansen sets out examples of behaviour she describes as bullying in nature. Ms Jansen says Ms Taylor made comments about her hair and make-up, and the clothes she wore to work. Ms Jansen cites further examples. She says in her final week at work, Mr Taylor required her to scan and electronically file client records which ran to approximately 500 to 1000 single pages in length, made "passive aggressive comments" about her workload, and made a comment about his workload which she felt intimidated by.

[67] Ms Jansen discussed her issues at work with Ms Searle. However, in her conversations and emails with Ms Searle, she does not raise concerns regarding bullying behaviour towards her.

[68] BDS was not made aware of Ms Jansen's concerns in regard to alleged bullying, while the employment relationship was on foot. It was therefore unable to take steps to address Ms Jansen's concerns. Ms Jansen raised these specific concerns in her personal grievance letter on 24 February 2025.

[69] Therefore, Ms Jansen does not succeed with this claim.

Was Ms Jansen discriminated against by BDS during her employment?

[70] Ms Jansen says that during a company Christmas event, a person made a racially insensitive comment. Ms Jansen did not raise her concern with BDS at the time.

[71] An employee has a personal grievance where they have been discriminated against in their employment.[11] An employee is discriminated against in their employment if their employer, by reason directly or indirectly of any of the prohibitive grounds of discrimination, dismissed that employee or subjects that employee to any detriment, in circumstances in which other employees employed by that employer on work of that description are not or would not be dismissed or subjected to such detriment.[12]

[72] Although the alleged comment is inappropriate, it does not in of itself establish the legal and factual basis to make out a claim for discrimination. BDS was not aware of the comment that was made at the Christmas event. BDS did not dismiss Ms Jansen or subject her to detriment by reason of any of the prohibited grounds of discrimination.

[73] Ms Jansen does not succeed with this claim.

Did BDS breach s 4 of the Act, and if so, should a penalty be issued?

[74] There is no legal or factual basis for making a finding that BDS breached s 4 of the Act. This claim does not succeed.

Remedies

Compensation for humiliation, loss of dignity and injury to feelings

[75] The remedy of compensation is for the emotional harm suffered by the employee as a result of the personal grievance and not intended as a punitive action to signal disapproval of the employer's conduct.[13]

[76] In considering an award of compensation, the assessment required is the nature and extent of harm caused to the employee by the employer's breach.[14]

---

[11] Employment Relations Act 2000, s 103(1)(c).
[12] *Turner v Te Whatu Ora – Health New Zealand* [2023] NZEmpC 158 at [64].
[13] *Paykel Ltd v Ahlfield* [1993] 1 ERNZ 344 at [342].
[14] *Pyne v Invacare New Zealand Limited* [2023] NZEmpC 179 at [41].

[77] At the investigation meeting Ms Jansen described the shock of receiving a telephone call on 19 December 2024 from Ms Searle. Only a few days prior, Ms Jansen recalled receiving an email from Ms Searle encouraging her to "keep going and persevere", with a reminder that the Christmas break would give her an opportunity to rest and reset for the new year ahead.

[78] Ms Jansen felt every embarrassed about the situation at work. A number of months went by before she told her Mum that she was no longer employed by BDS. The way in which employment ended with BDS had a detrimental effect on Ms Jansen's emotional well-being. Ms Jansen also gave evidence about her loss of confidence following her departure from BDS.

[79] I have also considered the nature of the breach by BDS which led to Ms Jansen's employment with BDS concluding. BDS says it gave Ms Jansen an opportunity to resign, rather than be dismissed under the trial provision in her employment agreement.

[80] Taking all of these factors into account, I consider an award of $7,000 as compensation under s123(1)(c)(i) of the Act to be appropriate in this case.

[81] Within 28 days of the date of this determination I order BDS to pay Ms Jansen the sum of $7,000 as compensation pursuant to s 123(1)(c)(i) of the Act.

Reimbursement of lost wages

[82] The Authority must order the employer to pay the lesser of a sum equal to that lost remuneration or to three months' ordinary time remuneration, subject to contribution and the discretionary power in s 128(3) to order an employer to pay a greater sum.[15]

[83] Ms Jansen was unemployed for a period of 6 months following the conclusion of her employment with BDS.

[15] Employment Relations Act 2000, s 128.

[84] I have had regard to the legal principle, that where a dismissal is regarded as unjustified purely on procedural grounds, allowances must be made for the likelihood that if a proper process had taken place, the employee would still have been dismissed.[16]

[85] If Ms Jansen had not resigned on 19 December 2024, she would have been dismissed. BDS had prepared the termination letter.

[86] Termination of employment was therefore inevitable.[17] If BDS had terminated Ms Jansen's employment agreement on 19 December 2024, she would have received one week's written notice.

[87] Although BDS did not comply with s 67(2) of the Act by dismissing Ms Jansen, and providing her written notice, the process adopted by BDS was not causative of Ms Jansen's loss.[18]

[88] Following receipt of her resignation email, BDS paid Ms Jansen the sum equivalent to one week's notice which included payment of statutory holidays up to and including 27 December 2024.

[89] Therefore, Ms Jansen has not lost remuneration as a result of the personal grievance.[19]

Should any remedy be reduced under s 124 of the Act?

[90] Ms Jansen did not contribute to the situation that gave rise to the personal grievance she has established. Accordingly, no reduction in remedies is made under s 124 of the Act.

---

[16] *Sam's Fukuyama Food Services Ltd v Zhang* [2011] NZCA 608 at [26]; *Butler v Ohope Chartered Club Inc* [2021] NZEmpC at [16]-[32]; and *Faitala v The Pacific Island Business Development Trust* [2026] NZEmpC 53 at [74].
[17] *Idea Services Limited v Wills* [2025] NZEmpC 28 at [98].
[18] *Gafiatullina v Propellerhead* [2021] NZEmpC 146, [2021] ERNZ 654 at [153].
[19] Employment Relations Act 2000, s 128(1)(b).

Summary and orders

[91] Within 28 days of the date of this determination I order BDS to pay Ms Jansen the sum of $7,000 as compensation pursuant to s 123(1)(c)(i) of the Act.

[92] Costs will lie where they fall.

Simon Greening
Member of the Employment Relations Authority