

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 241
3380563

BETWEEN KEITH GORRETT
Applicant

AND SKIBO LIMITED
Respondent

Member of Authority: Simon Greening

Representatives: Dave Cain, advocate for the Applicant
Allan Gray for the Respondent

Investigation Meeting: 19 March 2026 in Whangarei

Submissions received: 31 March 2026 from the parties

Determination: 22 April 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Keith Gorrett was employed by Skibo Limited trading as Wynn Fraser Paints (SL) in the position of sales assistant from 7 October 2024 until his dismissal on 26 February 2025.

[2] Allan Gray is the sole director of SL.

[3] Kim Metcalfe is employed by SL in the position of branch manager. On the morning of 26 February 2025, a female staff member sent a text message to Ms Metcalfe requesting a meeting with her as soon as she arrived at work.

[4] Both of the parties agree the name of this staff member should be anonymised in this determination. I have anonymised the name of this female staff member and will refer to her as CXJ throughout this determination.

[5] At approximately 8.30am CXJ arrived at work. CXJ gave Ms Metcalfe a letter she had received from Mr Gorrett the previous day.

[6] CXJ became very upset as she explained to Ms Metcalfe that Mr Gorrett had been sexually harassing her, and after receiving this letter from him, she decided to tell her employer.

[7] A few minutes later, Mr Gray arrived at work. Ms Metcalfe told Mr Gray about the letter and the allegations of sexual harassment.

[8] Mr Gray asked Ms Metcalfe and CXJ to come to his office. CXJ gave the letter to Mr Gray. On her mobile phone, CXJ had text messages and an image of a sexual nature that she had received from Mr Gorrett. CXJ showed these text messages and image to Mr Gray. CXJ gave Mr Gray her mobile phone and explained that she had been sexually harassed by Mr Gorrett.

[9] Ms Metcalfe and CXJ left Mr Gray's office.

[10] Following his meeting with CXJ, Mr Gray immediately met with Mr Gorrett. Mr Gray says that during this meeting Mr Gorrett accepted he had sent the text messages to CXJ, including the image which was on CXJ's mobile phone, and that he had written the letter.

[11] During this meeting Mr Gray made the decision to dismiss Mr Gorrett.

[12] Approximately one week later, on 4 March 2025, Mr Gray sent Mr Gorrett an email summarising the situation from his perspective:

Keith Gorett,

As you know we met last week after a young female staff member brought to our attention actions of yours that would constitute gross misconduct if proven. A formal complaint had been made that morning of sexual harassment and behaviour unbecoming.

I immediately called you to my office and showed you a letter written by you to the complainant, along with text messages and images of a sexual nature on the complainant's phone. You confirmed that you had written the letter and sent the texts and images.

On the basis of that information, I decided to dismiss you immediately from our business. You were escorted to your vehicle with your personal belongings.

I could/should have called a formal disciplinary meeting at the time but on the basis of our informal meeting and the admissions made by you at that time I saw no benefit of

advancing down more formal lines. The potential outcome was clear, and the safety and wellbeing of the victim was the most important matter of focus at that time.

After your dismissal and removal from the site NZ police were informed and statements were taken by them at Whangarei Police station. A formal complaint was made to them which they are now investigating.

I personally delivered to your address a trespass notice prohibiting you access to our site at Wynn Fraser. A copy of that notice now sits with NZ Police and will be enforced should you decide to disregard it.

For the avoidance of doubt your employment with Wynn Fraser was terminated on 26 February 2025.

[13] Mr Gorrett says he was unjustifiably dismissed on 26 February 2025. He seeks compensation for hurt humiliation and injury to feelings. He also seeks reimbursement of lost remuneration as a consequence of the dismissal.

The Authority's investigation

[14] For the Authority's investigation written witness statements were lodged by Mr Gray, Mr Gorrett, Michele Gorrett, CXJ, and Ms Metcalfe. The witnesses answered questions from me under oath or affirmation and from Mr Gorrett's advocate.

[15] As permitted by s 174E of the Employment Relations Act 2000 (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

[16] The issues requiring investigation and determination are:

- (a) Was Mr Gorette unjustifiably dismissed by SL?
- (b) Did SL breach clause 43 of the individual employment agreement and, if so, should a penalty be issued?
- (c) Did SL breach s 4 of the Wages Protection Act 1983 (WPA) by not paying Mr Gorrett's final pay on time and, if so, should a penalty be issued?
- (d) Did SL breach s 27 of the Holidays Act 2003 (HA03) by not paying Mr Gorrett's outstanding annual leave entitlement when his employment came to an end?
- (e) If a personal grievance is established, is Mr Gorrett entitled to compensation under s 123(1)(c)(i) of the Act; and/or reimbursement of remuneration under s 128(2) of the Act; and if any remedy is awarded should it be reduced under

s 124 of the Act for blameworthy conduct by Mr Gorrett which contributed to the circumstances which gave rise to his grievance?

(f) Is either party entitled to an award of costs?

Application for non-publication

Legal principles

[17] Mr Gorrett has made an application for a non-publication order prohibiting the publication of his name and the name of his employer.

[18] A full Court has considered the correct approach to non-publication in the Authority and the court.¹ In summary, the Authority will only consider making a non-publication order where there is reason to believe that specific adverse consequences could reasonably be expected to occur which justify a departure from the principle of open justice.²

[19] The assessment in each case requires two steps. The first step is an assessment of whether there is reason to believe that specific adverse consequences could reasonably be expected to occur to justify a departure from open justice in the circumstances of the case. A number of factors are relevant as part of this weighing exercise:³

- (a) The circumstances of the case.
- (b) The interests of the person or entity applying for a non-publication order.
- (c) The interests of the other party or parties to the litigation.
- (d) The interest of any third party.
- (e) The public interest, including the rights of the media.
- (f) Any further issues of equity and good conscience.
- (g) Tikanga and its principles, values or concepts.

Analysis

[20] Mr Gorrett has made three submissions in support of his application for a non-publication order:

¹ *MW v Spiga Ltd* [2024] NZEmpC 147.

² *FDE v UWV* [2024] NZEmpC 179 at [8].

³ Above n 1 at [9].

- (a) The irreparable harm arising from unfounded allegations of sexual harassment.
- (b) The unfounded nature of the allegations diminishes the public interest.
- (c) Protection from undue hardship.

[21] Mr Gorrett's submissions rest on his argument that the allegations of sexual harassment made by CXJ are unfounded. However, Mr Gorrett gave CXJ a letter on 25 February 2025, in which he made the following comments:

I am writing this to you because I feel I have to try and explain myself and how I feel.
...
I have noticed that you don't smile around me anymore and when I walk into a room you quickly leave.
...
It seems you can't wait to leave and get away from me.
...
You don't come and hang out at the front counter anymore and I can't imagine we would ever swap scents anymore, much less show me what bra you are wearing.
...
I feel totally responsible for that and for making your feel so uncomfortable around me.
...
I have found myself in a position now when we do talk my heart races and that odd time we touch makes the hair on my arms raise up.
...
I have become a creep, and I hate myself for it.
...
Please forgive this stupid old fool for all the wrong that I have done to you.

[22] In addition, Mr Gorrett records in the letter that he showed CXJ his genitals. There are comments of an explicit sexual nature in this letter, which I have decided not to set out in this determination.

[23] Mr Gorrett sexually harassed CXJ.⁴ In the letter to CXJ, he used words of a sexual nature and described conduct of a sexual nature. He described past behaviour towards CXJ which was of a sexual nature. He described a sexual act he wanted to perform on CXJ. He apologised for his behaviour towards her. According to CXJ's witness statement, she had been sexually harassed by Mr Gorrett over a period of six weeks. Mr Gorrett's letter was written at the end of this six-week period. The behaviour was unwanted and unwelcome in nature, and the behaviour had a detrimental effect on CXJ.

⁴ Section 108 of the Employment Relations Act 2000; *Craig v Slater* [2018] NZHC 2712 at [399].

[24] In the letter, Mr Gorrett accepts full responsibility for his behaviour towards CXJ and how his behaviour had made her feel. Mr Gorrett apologises for all “*the wrong I have done to you.*”

[25] I also note Mr Gorrett’s submission that if sexual harassment had been substantiated there would be a public interest in identifying the perpetrator to prevent future harm. The allegations of sexual harassment are not unfounded and therefore cannot form the basis for granting a non-publication order. This conclusion addresses the first two submissions made by Mr Gorrett in support of his non-publication order.

[26] In regard to the third submission, Mr Gorrett submits that being publicly and falsely labelled in connection with sexual harassment is a deeply damaging experience that impacts mental wellbeing and social relationships. Mr Gorrett seeks a publication order to protect him from undue personal hardship that might arise if a non-publication order was not granted.

[27] Mr Gorrett regrets his behaviour towards CXJ. This point is evident from reading the letter he gave to CXJ. However, in his written submissions, Mr Gorrett says he has been wrongly accused of sexual harassment. Mr Gorrett’s written submission, that he had been falsely accused of sexual harassment, cannot be correct, because he wrote a letter to CXJ using words and describing conduct of a sexual nature, and in some aspects, of an explicit sexual nature, and then apologised for his behaviour towards her.

[28] SL does not seek a non-publication order.

[29] I decline Mr Gorrett’s application for a non-publication order.

Was Mr Gorett unjustifiably dismissed by SL?

[30] The legal test for determining whether a dismissal is unjustified, is whether the employer’s actions, and how the employer acted, were what a fair and reasonable employer could have done in the all the circumstances at the time the dismissal occurred.⁵

⁵ Employment Relations Act 2000, s 103A(2).

[31] There may be a range of responses open to a fair and reasonable employer, the task of the Authority is to objectively examine the employer's decision-making process, and determine whether what the employer did, and how it was done, were steps which were open to a fair and reasonable employer.⁶ Overall, it is an objective assessment.⁷

[32] On the morning of 26 February 2025, CXJ provided Mr Gray with the letter she had received from Mr Gorrett, and her mobile phone which contained text messages and a photo of his naked upper chest sent by Mr Gorrett.

[33] In her witness statement, CXJ says that during her meeting with Mr Gray on 26 February 2025, she told him about her interactions with Mr Gorrett since January 2025. She said that on multiple occasions Mr Gorrett had asked her to send him a photo of her breasts, that he had talked with her about erectile dysfunction, he had touched her buttocks and tried to kiss her while they were in the paint room together.

[34] Mr Gorrett is in his mid-seventies. CXJ is 26 years old.

[35] The meeting between Mr Gray and Mr Gorrett on the morning of 26 February 2025 was short in length.

[36] Mr Gray wrote in the email he sent to Mr Gorrett on 4 March 2025, that this meeting was informal in nature. Mr Gray also noted the meeting was not a formal disciplinary meeting. Mr Gray accepted he could/should have organised a formal disciplinary meeting. However, he pointed out in this email, that because Mr Gorrett had accepted he had written the letter and sent the text messages and image to CXJ, he decided there was little point in organising a formal disciplinary meeting.

[37] There is a dispute about what information Mr Gray provided to Mr Gorett at the meeting. Mr Gorrett accepts Mr Gray showed him the letter he had written CXJ and said to Mr Gray that he had written it.

[38] I accept Mr Gray's reasonably contemporaneous evidence, which is the email he sent to Mr Gorrett on 4 March 2025, that at this meeting he had shown Mr Gorrett the letter, text messages, and image on CXJ's mobile phone.

⁶ *Emmerson v Northland District Health Board* [2019] NZEmpC at [263].

⁷ *Cowan v Idea Services Limited* [2020] NZCA 239 at [16].

[39] In her witness statement, CXJ said that she provided Mr Gray her mobile phone prior to his meeting with Mr Gorrett. Mr Gorrett also notes he saw a mobile with the apology letter when he entered Mr Gray's office.

[40] Mr Gray relied on text messages of a sexual nature, a photo of Mr Gorrett's chest, events described by CXJ, and the letter from Mr Gorrett, to conclude Mr Gorrett had sexually harassed CXJ.

[41] Mr Gray had sufficient evidence to reach this conclusion.

[42] However, there were significant defects in the process followed by SL which resulted in Mr Gorrett being treated unfairly.⁸ Mr Gorrett was not given advance notice of the meeting. He did not know what the meeting was about. Mr Gray didn't provide Mr Gorrett with any information prior to the meeting. Mr Gorrett was not aware of the allegations prior to the meeting and was not provided with an opportunity to provide a response.⁹

[43] Mr Gray quite rightly accepted at the investigation meeting that he should have slowed down the process. I agree with Mr Gray.

[44] Mr Gorrett was unjustifiably dismissed.

Remedies

Compensation for humiliation, loss of dignity and injury to feelings

[45] 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.¹⁰

[46] 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.¹¹

⁸ Employment Relations Act 2000, s 103A(5).

⁹ *Angus v Ports of Auckland Limited* [2011] NZEmpC 160 at [47].

¹⁰ *Paykel Ltd v Ahlfield* [1993] 1 ERNZ 344 at [342].

¹¹ *Pyne v Invacare New Zealand Limited* [2023] NZEmpC 179 at [41].

[47] I accept Mr Gorrett's evidence that he was not given time to gather his thoughts or explain himself. Following the short meeting, Mr Gray escorted Mr Gorrett to his car and later that afternoon he was served with a trespass notice.

[48] Mr Gorrett said the way in which he was terminated caused him to feel embarrassed and prevented him from having an opportunity to respond to the allegations. Mr Gorrett felt depressed and suicidal, and suffered with significant anxiety following the dismissal.

[49] Taking all of these factors into account and subject to contribution, I consider an award of \$12,000 as compensation under s123(1)(c)(i) of the Act to be appropriate in this case.

Reimbursement of lost wages

[50] 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) of the Act to order an employer to pay a greater sum.¹²

[51] Mr Gorrett seeks the sum of \$9,620.13 for remuneration lost as a result of the personal grievance.

[52] 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.¹³

[53] If SL had followed a fair process, Mr Gorrett would have still been dismissed.

[54] A fair and reasonable employer, based on the evidence it had at the time the decision was made to dismiss Mr Gorrett, could have reached the conclusion that he had sexually harassed CXJ and terminated the employment relationship as a result.

[55] In his letter to CXJ, Mr Gorrett accepted full responsibility for his behaviour, and asked CXJ to forgive him for all the wrong he had done to her.

¹² Employment Relations Act 2000, s 128.

¹³ *Sam's Fukuyama Food Services Ltd v Zhang* [2011] NZCA 608 at [26].

[56] SL was entitled to reach this conclusion. The termination of Mr Gorrett's employment was therefore inevitable.¹⁴

[57] If SL had followed a disciplinary process, Mr Gorrett's employment would have been extended by a further week.¹⁵

[58] Mr Gorrett's gross wages for one week equates to \$740.01. Subject to contribution, Mr Gorrett is entitled to this sum by way of reimbursement of remuneration lost as a result of the personal grievance.

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

[59] The Authority must consider whether there ought to be a reduction in the remedies that would otherwise have been awarded to the employee.¹⁶ The approach to contribution requires the Authority to consider whether the employee's conduct contributed to the situation giving rise to the dismissal and, if so, whether the conduct was culpable and/or blameworthy.¹⁷

[60] Mr Gorrett's conduct towards CXJ was unacceptable. Although Mr Gorrett's letter to CXJ contains an apology and acceptance of his wrongdoing, the letter itself continues to sexually harass CXJ because in the letter he describes an explicit sexual fantasy he had entertained involving her.

[61] In her witness statement, CXJ records:

After learning what was in the letter, I felt sick to my stomach. This letter was meant to be an apology, however it felt like self-sabotage and manipulation. It felt predatory. The thought of this letter still makes me feel sick. To this day I have still not been able to read this letter to myself due to the stress it makes me feel, I have only been able to have others read to me.

[62] This is a situation where Mr Gorrett's conduct towards CXJ was not only blameworthy but also wholly contributed to the situation giving rise to the dismissal.

[63] This is a rare case where awarding any remedy to Mr Gorrett would not be consistent with the Authority's statutory obligation to act as it thinks fit in equity and good conscience.¹⁸

¹⁴ *Idea Services Limited v Wills* [2025] NZEmpC 28 at [98].

¹⁵ Above n 14 at [98].

¹⁶ Employment Relations Act 2000, s 124.

¹⁷ *Yang v Te Whatu Ora – Health New Zealand* [2025] NZEmpC at [63].

¹⁸ Employment Relations Act 2000, s 157(3).

[64] A 100 percent reduction under s 124 of the Act is appropriate in the circumstances.¹⁹ The remedies awarded under s 123(1)(c)(i) and s 128 of the Act are reduced to nil.

Did SL breach clause 43 of the individual employment agreement and, if so, should a penalty be issued?

[65] Clause 43 of the individual employment agreement records:

Disciplinary Procedures

If the employer wishes to engage in a formal disciplinary process, the employer agrees to take the following steps:

- i. Provide the employee with a verbal warning.
- ii. The employee shall be entitled to have a support person attend any formal disciplinary meeting with them and at the meeting the employee shall be given an opportunity to explain or deny the allegations.
- iii. A written warning containing the specific allegation and the likely consequences should the allegation found to be true.
- iv. A final written warning.
- v. Dismissal.

[66] SL did not advise Mr Gorrett of his right to a support person, notify him of the allegations prior to the meeting or provide him with a fair opportunity to respond to the allegations.

[67] Section 133A sets out a number of factors the Authority must have regard to in determining an appropriate penalty. In addition, the full Court in *Borsboom v Preet PVT Ltd*²⁰ has set out other factors that must be considered when determining a penalty application.

[68] Clause 43 is an important clause because to some extent it reflects the principle of natural justice that should underpin a disciplinary process. A penalty is appropriate to mark SL's fault by not complying with its own disciplinary process.

[69] Mr Gray was candid at the investigation meeting, that upon reflection, a disciplinary process should have followed after he learnt of the allegations against Mr Gorrett. Mr Gray notes this point in his email to Mr Gorrett one week later. This is not a case that requires a penalty to serve as a deterrent, either generally or particularly in respect of SL. A penalty of \$500 is proportionate to the seriousness of the breach.

¹⁹ *Knapp v Locktite Aluminium Specialties Limited* [2015] NZEmpC 71 at [34].

²⁰ *Borsboom v Preet PVT* [2016] NZEmpC 143 at [141]-[148].

[70] Within 28 days of the date of this determination I order SL to pay the Crown the sum of \$500 pursuant to s 134(1) of the Act.

Did SL breach s 4 of the Wages Protection Act 1983 (WPA) by not paying Mr Gorrett's final pay on time and, if so, should a penalty be issued?

[71] On 12 March 2025, Mr Gorrett received his final pay. Mr Gray says that although Mr Gorrett's employment was terminated on 26 February 2025, company property had not been returned and therefore SL did not immediately process his final pay.

[72] Mr Gray emailed Mr Gorrett on 4 March 2025. Mr Gray did not ask for company property to be returned in this email.

[73] On 7 March 2025, Mr Gray received a letter from Mr Gorrett's advocate raising a personal grievance for unjustified dismissal on his behalf.

[74] Mr Gray paid Mr Gorrett his final pay on 12 March 2025.

[75] Mr Gorrett received his final pay two weeks after the date of his dismissal.

[76] Mr Gray also said the delay in final pay being processed was also due to him wishing to seek clarity from Mr Gorrett's advocate as to whether he was acting for Mr Gorrett.

[77] Although Mr Gorrett's final pay was delayed by two weeks, and this amounts to a breach of s 4 of the WPA, there are no aggravating features or evidence of a deliberate breach of the WPA by SL.

[78] The application for a penalty is declined.

Did SL breach s 27 of the Holidays Act 2003 (HA03) by not paying Mr Gorrett's outstanding annual leave entitlement when his employment came to an end?

[79] Mr Gray paid Mr Gorrett his outstanding annual leave balance on 12 March 2025.

[80] Mr Gorrett received this payment two weeks after the date of his dismissal.

[81] Although Mr Gorrett's outstanding annual leave entitlement pay was delayed by two weeks, and this amounts to a breach of s 27 of the HA03, there are no aggravating features or evidence of a deliberate breach of the HA03 by SL.

[82] The application for a penalty is declined.

Summary and orders

[83] Within 28 days of the date of this determination I order SL to pay the Crown the sum of \$500 pursuant to s 134(1) of the Act

Costs

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

[85] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Gorrett 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, SL 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.

[86] 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.²¹

Simon Greening
Member of the Employment Relations Authority

²¹ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.