

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 276
3380823

BETWEEN

DEVON HARRIS
Applicant

AND

ASTRA CONSTRUCTION
GROUP LIMITED
Respondent

Member of Authority: Matthew Piper

Representatives: Claudia Serra, advocate for the Applicant
Doreen Wu, for the Respondent

Investigation Meeting: 29 April 2026 in Auckland

Oral Determination: 29 April 2026

Written record issued: 4 May 2026

ORAL DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Devon Harris claimed he took leave and that when he returned he was unjustifiably dismissed from his role at Astra Construction Group Limited (Astra). Mr Harris sought compensation for injury to feelings, lost wages and costs.

[2] Astra's position was that Mr Harris either resigned or abandoned his employment and that it did not dismiss him. It denied Mr Harris was entitled to remedies.

The Authority's investigation

[3] For the Authority's investigation a written witness statement was lodged by Mr Harris. Astra failed to lodge witness statements or to provide information as directed by the Authority during a case management conference on 21 November 2025.

[4] Doreen Wu, Astra's owner, attended the Authority's investigation meeting. Ms Wu and Mr Harris each answered questions under oath or affirmation from me and the other party. Each party provided oral submissions.

[5] This determination was given orally at the conclusion of the Authority's Investigation Meeting. The content of that oral determination is recorded in this written record.

[6] 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

[7] The issues requiring investigation and determination were:

- (i) Did the applicant resign from his employment, or was he dismissed?
- (ii) If the applicant was dismissed from his employment, was the dismissal unjustified?
- (iii) Is the applicant entitled to wage arrears in relation to his notice period?
- (iv) If the respondent's actions were not justified, what remedies should be awarded, considering:
 - (a) Lost wages (subject to evidence of reasonable endeavours to mitigate loss); and
 - (b) Compensation under s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act)?
- (v) If any remedies are awarded, should they be reduced (under s 124 of the Act) for blameworthy conduct by the applicant that contributed to the situation giving rise to his grievance?
- (vi) Should a penalty be imposed on the respondent for breach of s 130 of the Act?

- (vii) Should either party contribute to the costs of representation of the other party.

Background

[8] Astra is a building company. It agreed to employ Mr Harris as a site co-ordinator after he had previously performed work for them as a carpenter. His role involved managing and coordinating the sub-trades and materials used on its building sites.

[9] Mr Harris was employed pursuant to an employment agreement dated 8 January 2024, and he commenced employment with Astra on 22 April 2024.

[10] Mr Harris told the Authority he worked closely with and was managed by a then director of Astra, Samuel Renall, with whom he had a family connection.

[11] Ms Wu confirmed that Mr Renall was Mr Harris' manager and that he was authorised to approve Mr Harris' leave.

[12] Mr Harris said that in August of 2024 he spoke to Mr Renall about a trip he was considering taking to Canada with friends in January 2025. Mr Harris was motivated to take the trip because he wished to take advantage of a particular sale on airfares to Canada.

[13] Mr Harris initially thought he would not be able to go on the trip because he had only recently started his role at Astra and he did not wish to jeopardise the opportunity he had been given to move from being "on the tools" to a co-ordinator role.

[14] Mr Harris told the Authority he discussed the situation with Mr Renall, who after considering the issue over a few hours, agreed he could book the ticket and go on the trip. Mr Harris said his conversation with Mr Renall was structured around the fact he did not wish to leave his role and that the two discussed how the trip could work.

[15] Mr Harris said Mr Renall was aware his precise return date was not known but that it would be in late March or early April, depending on the snow season.

[16] Mr Harris said Mr Renall told him that he could take annual holiday leave for the start of the trip, and then he could be on unpaid leave for the balance of the trip. Mr

Harris was to contact Mr Renall when a precise return date was known, but I find the approximate date described above was agreed between the two.

[17] Ms Wu confirmed she was not part of this approval process, and expressed doubts as to whether she would have approved it had she known about it. However, Mr Renall as a director and Mr Harris' manager had the authority to enter into the arrangement he did with Mr Harris.

[18] There was no formal application for leave beyond the oral discussions between Mr Harris and Mr Renall. No evidence was provided to the Authority that any formal process for taking leave existed at Astra.

[19] Mr Harris left for Canada on 25 January 2025. He left his tools with Astra for its workers to use. He said he did this because some workers at the company did not have the correct tools.

[20] While Mr Harris was away in Canada the company contacted him about a range of work-related issues. However, no one from Astra contacted Mr Harris to suggest that he was improperly away from work or that it was concerned he had abandoned his employment. Mr Harris was contactable the entire time he was in Canada via various messenger services the company knew of and had contacted him on.

[21] Mr Harris did not tender his resignation when he left for the trip or while he was away, and Ms Wu accepted no such message had been received by the company.

[22] Mr Harris' pay slips record that he was paid annual leave as if he continued to be an employee for the first few weeks he was away. He did not receive a final pay. This was consistent with the arrangement Mr Harris reached with Mr Renall.

[23] In late March 2025 Mr Harris messaged Mr Renall, to tell him he was about to arrive back to commence work and that he would be back at work on 3 April 2025, but that there was no reply.

[24] On 3 April 2025 Mr Harris contacted Ms Wu to say he had not heard back from Mr Renall. Ms Wu responded to say she would speak to Mr Renall and come back to

him. Mr Renall made contact with Mr Harris later that day and asked to see him the following week.

[25] By 7 April 2025 Mr Harris had not heard further from Mr Renall regarding his return to work and he therefore followed up with Ms Wu. Later that day Mr Renall contacted Mr Harris and asked him to collect his tools. When Mr Harris asked if that meant he needed to find another job, Mr Renall responded on 8 April 2025 “Yeah we don’t have work”.

[26] On 8 April 2025 Mr Harris emailed Ms Wu to ask if his employment was being terminated and, if so, that he be paid his notice. On 11 April 2025 Mr Wu responded that Astra considered Mr Harris had abandoned his employment and that Astra therefore considered the employment relationship had been terminated. She went on to say that after Mr Harris’ annual leave had all been used, he did not make further contact with the company and that the company had then attempted to contact him but were unable to reach him. Given the text and other messenger exchanges between the parties around this time, it appears unlikely the company did in fact attempt to contact him.

[27] Ms Wu then said she did not consider Mr Harris was entitled to be paid notice, but asked that all company property, including a phone and laptop, be returned. This was the first time she had asked for return of the company property.

[28] On 10 April 2025 Mr Harris went to Astra’s warehouse to collect his tools, but the bins he had left them in were empty. When he asked Mr Renall where the tools were, he was told they had been stolen.

[29] Ms Wu told the Authority there had been no break in or any other theft from Astra’s warehouse. The company therefore simply failed to return Mr Harris’ tools at the time it dismissed him, which were of significant value to him both because of their replacement cost and because they would allow him to obtain contracting carpentry work.

[30] On 14 April 2025 Mr Harris responded to Ms Wu’s email denying he abandoned his employment and saying he was upset at Ms Wu’s suggestion that he had. He further said he would not have left his tools in the company’s possession if he was leaving his role. Ms Wu did not reply.

[31] Mr Harris said that he was then removed from all group messenger conversations about work.

[32] On 17 April 2025 Mr Harris raised a personal grievance and sought wage and time records, which Astra failed to provide even when directed to do so some months later by the Authority at its case management call. As at the date of the Authority's Investigation Meeting the records had not been provided to Mr Harris.

[33] When Ms Wu was asked by the Authority why the wage and time records had not been provided, she said she had not noticed the request in the letter but did not deny that she received the letter.

[34] Mr Harris told the Authority that he found the conclusion of his employment abrupt, confusing and upsetting. He said he enjoyed the role and felt he had good relationships with his colleagues. He said that after the termination of his employment he was upset and that his mental health was affected, as was his relationship with his partner.

[35] Over the coming months Mr Harris applied for multiple jobs and called on contacts to seek work. He said he had difficulty obtaining carpentry work both because of a less than buoyant construction industry but also because he did not have tools. He took casual property maintenance work that became available.

[36] In order to meet his obligations Mr Harris was forced to go on the benefit, which he found unsettling, having been a person who had worked consistently since leaving school.

Did the applicant resign from his employment, or was he dismissed?

[37] Mr Harris was employed for an indefinite duration, commonly referred to as being a "permanent" employee.

[38] The following factors show Mr Harris did not resign from his role:

- (i) He never communicated that he wished to resign;
- (ii) He valued the site-coordinator role and specifically discussed with Mr Renall how he could take time off to do the trip but keep his role;

- (iii) He left valuable tools with Astra in its warehouse demonstrating good will and an intent to return; and
- (iv) Upon arriving back in New Zealand, and at around the time he had said he would, Mr Harris promptly indicated he was ready to resume his duties

[39] I therefore find Mr Harris did not resign from his role.

[40] For the same reasons, Mr Harris did not abandon his employment, as was suggested by Astra in Ms Wu's 11 April 2025 email. Even if he had done so, Astra did not take the steps required of it to attempt to contact Mr Harris to find out if he was intending to return, so it would not have been able to justify a dismissal on the grounds of abandonment.

[41] Instead, I find Mr Harris was dismissed from his employment when Mr Renall told him on 8 April 2025 that there was no further work for him and he would need to find another job.

[42] The termination of Mr Harris' employment was confirmed to him by Ms Wu on 11 April 2025.

If the applicant was dismissed from his employment, was the dismissal unjustified?

[43] In assessing the justification of Mr Harris' dismissal, the Authority needs to apply the test of justification found in s 103A of the Act and objectively assess whether Astra's actions were what a fair and reasonable employer could have done in all the circumstances at the time.

[44] Astra did not comply with any of the procedural fairness requirements set out in s 103A(3) of the Act. If there was a shortfall of work for him to perform, this was not put to him, nor was the prospect that his role could be disestablished or that his employment could have been in jeopardy.

[45] No valid substantive reason for the dismissal was provided to Mr Harris or the Authority.

[46] Rather Mr Harris was simply told there was no more work for him and his employment was terminated.

[47] Mr Harris was therefore unjustifiably dismissed by Astra.

Remedies

[48] Given Mr Harris has established a personal grievance for unjustified dismissal, he is entitled to consideration of remedies.

[49] Mr Harris has claimed lost wages and compensation for hurt and humiliation.

Lost wages

[50] As set out above, Mr Harris took reasonable steps to mitigate his losses and provided evidence of what his losses were to the Authority.

[51] Accordingly, pursuant to s 128 of the Act, Mr Harris is awarded 3 months' lost wages from 8 April 2025 less the amounts he received for casual work and government assistance. The total I award to Mr Harris for lost wages is \$13,270.28.

[52] Mr Harris is not awarded compensation for his notice period in addition to the above award because in all the circumstances this would amount to double recovery for the same loss.

Compensation for humiliation, loss of dignity and injury to feelings

[53] In assessing whether an award should be made for humiliation, loss of dignity and injury to feelings, the Authority must quantify the emotional harm and loss arising out of the unjustified actions.¹

[54] Mr Harris was shocked at how Astra chose to dismiss him. He described the impact the experience had on his sense of self, relationship and emotional wellbeing.

[55] Mr Harris' dismissal was made worse for him by the fact that Astra had inexplicably failed to return his tools to him. These were items that would have allowed him to have a greater sense of autonomy and control after his dismissal. Their being wrongly taken from him deepened his sense of being wronged.

¹ *Richora Group Ltd v Cheng* [2018] NZEmpC 113

[56] Having considered similar cases and the situation as experienced by Mr Harris an award of \$15,000 in compensation under s 123(1)(c)(i) is appropriate.

Contribution

[57] In accordance with s 124 of the Act, I have considered whether there should be any reduction applied to the remedies awarded to Mr Harris for blameworthy contribution on his part.

[58] Mr Harris did not contribute to the situation in a manner that would justify a reduction in the remedies awarded to him. Accordingly, the remedies awarded to Mr Harris are not reduced for contribution.

Should a penalty be imposed on Astra?

[59] I must also consider whether there is any breach of s 130 of the Act, which requires all employers to keep a wages and time record showing specific information in relation to each employee, and to provide that record to the employee or their representative “immediately” upon request.²

[60] Mr Harris, via his representative, requested a copy of his wages and time record in accordance with s 130 of the Act, by letter dated 17 April 2025.

[61] No response has ever been received and the records were not provided at the direction of the Authority. Accordingly, a breach of s 130 of the Act has been established.

[62] The requirements of s 130 are employment standards, and form part of the minimum requirements that all employers must meet.

[63] Astra is liable for a penalty of up to \$20,000, as set out in s 135(2)(b) of the Act.

[64] Having considered the law in relation to quantification as set out in *Borsboom (Labour Inspector) v Preet PVT Limited*³, I note that section 133A requires I have regard to the object of the Act, the nature and extent of the breach, whether they were

² Section 130(2) of the Employment Relations Act 2000.

³ [2016] ERNZ 514

intentional, the nature and extent of any loss or damage, steps to mitigate effects of the breach, circumstances of the breach, any vulnerability of the employee and finally previous conduct.

[65] Failure to provide minimum standards directly disadvantages employees, and often arise in circumstances involving a distinct power imbalance. This was the case for Mr Harris who was unable to fully understand the circumstances of his dismissal because of the information not provided to him. Mr Harris asked for access to his records, and was ignored.

[66] Astra received the letter of 17 April 2025, but failed to take reasonable steps to comply with their legal obligations, including after being referred to the relevant statutory provision. In this sense Astra's failure to provide the information was deliberate.

[67] With respect to the breach's severity, I note the judgement of the Court in *Preet* suggests failures to keep required records should be assessed at 50% of the maximum of \$20,000.

[68] There is no evidence of similar previous conduct by the respondent. I must also be cognisant of issues such as consistency and proportionality. That, when combined with a perusal of recent penalties would also suggest a moderate discount.

[69] Having weighed these factors I consider the imposition of a penalty of \$5,000 on Astra to be appropriate.

[70] Mr Harris was unable to properly understand his position in relation to his claims against Astra and this situation was ongoing. I therefore consider it appropriate that \$2,000 of the penalty imposed on Astra should be paid to him.

Costs

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

[72] If they are not able to do so and an Authority determination on costs is needed Mr Harris may lodge, and then should serve, a memorandum on costs within 28 days

of the date of issue of the written determination in this matter. From the date of service of that memorandum Astra would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[73] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.⁴

Orders

[74] By not later than 27 May 2026, Astra Construction Group Limited is ordered to pay to Mr Harris:

- (i) Lost wages of \$13,270.28 under s 128 of the Act;
- (ii) Compensation of \$15,000 under s 123(1)(c)(i) of the Act; and
- (iii) \$2,000 being a portion of the penalty imposed on Astra Construction Group Limited.

[75] By not later than 27 May 2026 Astra Construction Group Limited is ordered to pay a penalty of \$3,000 to the Crown bank account.

Matthew Piper
Member of the Employment Relations Authority

⁴ See www.era.govt.nz/determinations/awarding-costs-remedies.