

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2026] NZERA 280  
3353240

BETWEEN                      ATERIA LESLIE PILE  
Applicant

AND                              KAKARIKI PROTEINS  
LIMITED  
Respondent

Member of Authority:        Sarah Kennedy-Martin

Representatives:              Hayley Johnson, advocate for the Applicant  
Russell Drake and Jana Laxon, advocates for the  
Respondent

Investigation Meeting:        On the papers

Submissions and Other        Up to 16 February 2026 from the Applicant  
Information Received:        Up to 27 February 2026 from the Respondent

Determination:                5 May 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     Mr Pile says he was assaulted at work on 23 June 2024. A statement of problem raising a grievance about the assault was lodged in the Authority on 24 January 2025 which is outside the applicable employee notification period of 90 days for raising a personal grievance.<sup>1</sup> Mr Pile applies for leave to have his personal grievance claims against his employer Kakariki Proteins Limited (KPL) proceed in the event his claims were raised outside the 90 day notification period.

[2]     KPL say Mr Pile did not raise a grievance with it prior to the statement of problem being lodged and it does not consent to Mr Pile proceeding with his grievances

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<sup>1</sup> Employment Relations Act 2000, s 114(1), (3) and (4).

outside of the 90-day time frame. KPL accepts it received an email from Mr Pile that was typed for Mr Pile by his partner Christine Corke immediately after the incident in June 2024 but says there was insufficient information in that email to have raised a personal grievance claim.

[3] KPL says Mr Pile's application for leave based on exceptional circumstances should not be granted. KPL resists the submissions from Mr Pile he was so affected or traumatised by the assault that he was unable to properly consider raising the grievance or that Ms Corke, acting as his agent, was not properly instructed to raise a grievance and unreasonably failed to ensure the grievance was raised within the required time. Because of that KPL say Mr Pile's delay in raising his grievance was not occasioned by exceptional circumstances and it would not be just to grant leave permitting his personal grievances to proceed in the Authority.

[4] KPL notes Mr Pile was dismissed after the assault at work for conduct relating to a separate matter but one which came to KPL's attention as a direct result of the alleged assault. Should the Authority grant leave for Mr Pile to proceed, KPL says the grievance Mr Pile seeks to advance cannot be an unjustified dismissal grievance because Mr Pile had not been dismissed at the time he was seeking to raise his grievance that is the subject of this determination. It says Mr Pile's dismissal was occasioned by a separate matter that was raised with him, investigated and resulted in Mr Pile's employment being terminated and no personal grievance was raised in relation to his dismissal.

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

[5] The parties agreed the 90-day issue and Mr Pile's application for exceptional circumstances could be heard on the papers. Affidavits were received from Mr Pile and Christine Corke, Mr Pile's partner and agent, and on behalf of KPL, from Mark Fussell, manager. Written submissions were also lodged from both parties.

### **Issues**

[6] Mr Pile is applying for leave to raise his personal grievance outside of the applicable employee notification period (90 days) on the basis an agent was instructed to raise his personal grievance and they unreasonably failed to ensure the grievance

was raised in time and/or that Mr Pile was so affected or traumatised he was unable to raise his grievance in time.

### **Mr Pile says he was assaulted at work**

[7] Mr Pile worked 12-hour shifts. During a night shift on 23 June 2024, he says he was assaulted by another employee at work in the locker room over a dispute about tidying up. Mark Fussell, Production Manager at KPL accepts there was an altercation at work involving Mr Pile, who is also known as “Ace”. He also accepts he received an email from Mr Pile’s partner Christine Corke with the subject line “Personal Grievance”. The email had been typed by Ms Corke and she emailed it to Mr Pile for his records. A couple of days later Ms Corke read out the email to Mr Fussell over the phone and hand delivered a hard copy. Mr Fussell says the email went no further than outlining the altercation that happened and it is submitted this is insufficient to have raised a grievance with KPL.

[8] Mr Pile says the assault really affected him and this was the second time he had been assaulted at work. He was particularly upset that his supervisor was there and did not step in to stop the assault or call the Police. Mr Pile subsequently made a complaint to Police. Mr Pile says he instructed his partner to raise a personal grievance with KPL about the assault because he is not good at putting things into words so asked her to handle things as his representative and gave her full authority to communicate with KPL on his behalf. It was the second time he had been assaulted at work and he was fed up and wanted to leave. Ms Corke had previously worked as a union delegate and had some knowledge of employment law.

[9] Ms Corke sent the email to Mr Pile at 8:15pm on 24 June 2024 the day after the alleged assault. Although drafted by Ms Corke it is written in a way the reader would think Mr Pile was the author. Ms Corke also says she telephoned Mr Fussell on 25 June and read him the email and explained what had happened the day of the assault. Mr Fussell does not mention that phone call in his evidence but he accepts he received the email.

[10] Ms Corke notes the email was headed up “Personal Grievance” and it covered the alleged assault, ongoing threats afterwards, the supervisor’s failure to intervene or call Police, KPL’s failure to keep the workplace safe, the stress caused to Mr Pile and

that he was considering resigning because of that and breaches of the employer's obligations to protect an employee's health and safety.

[11] There is a text from Ms Corke to Mr Fussell on Tuesday 25 June saying:

Hi there my name is Christine corke I'm Ateria Piles partner, just tried to make contact regarding a few query's I have around the incident on Sunday 23/06/24. Please give me a call when it suits. Cheers.

Mr Fussell replied on Wednesday 26 June:

Morning Christine sorry to inconvenience you but I won't be on site today. I'm full of COVID and don't think it's wise to be around people. I have statement from [three employees] which I will forward to you today. Please feel free to call me I need be. Thanks

[12] On 26 June 2024, Ms Corke also says Mr Fussell sent her a text stating that he had relayed Mr Pile's personal grievance to the company's lawyers and admitted he should have requested a copy of Mr Pile's statement. The text confirms Ms Corke's statement she spoke on the phone to Mr Fussell:

What you recited to me I relayed to our lawyers as best I could word for word. Not requesting Ace's statement was an oversight on my part. I spoke to [name of employee] following your recital of Ace's statement. I asked him if there was tension prior to the incident between Ace and [name of employee] he replied there was and wrote his statement. My understanding is that the lawyers deem the statement relevant, I'm sure the statement will be withdrawn if deemed irrelevant.

[13] The text messages attached to Mr Pile's affidavit also show additional communications between Mr Pile and Mr Fussell the day of the alleged assault. This conversation was not referred to in either Ms Corke's or Mr Fussell's affidavit but it is relevant to whether or not a grievance was raised. On 23 June 2024, at 7:32 am which was the day of the alleged assault and shortly after Mr Pile's night shift finished, he sent a text to Mr Fussell stating he might be leaving because he had been assaulted at work:

Hey Mark Just letting you know I'll might be leaving all because Thomas decided to hit me a few times for stealing jobs I'll fill incident form out Tuesday or make my own statement up for you. Cheers please call me if U need to.

Mr Fussell replied:

Hey Ace Please don't make any decisions about leaving, I'll get incident reports from both of you. I'm away until Tuesday, thanks for letting me know Ace, Cheers.

Mr Pile responds:

I've put up with the hatred between [names of other employees] towards me for soo long plus the thing with me smoking weed is bothering them. Yes I admit I still do that's me being honest. So it's best if I leave plus this is the second time this has happened to me and U expect me to stay. Next time it might be my life. And I don't want that. Neither do you so we can talk Tuesday morning after I drop my kids off at school.

On Tuesday 25 June Mr Fussell replies:

Hi Ace I'm at home with Covid. Can you pls see me tomorrow morning? Once I get both statements I'll make a decision. You are on full pay until a decision is made. Thanks

[14] Ms Corke says on 27 June Mr Fussell sent her a text asking for Mr Pile's statement which she had read out over the phone. Ms Corke says in response to that text and phone call she hand delivered two copies of the 24 June email she had sent to Mr Fussell. She intended the copies would to be handed to Mr Fussell and Ron Turk because the email had been addressed to them.

[15] Ms Corke says based on Mr Fussell's communications with her she believed the company was dealing with the grievance about the alleged assault she thought was raised in the 24 June email. The investigation then changed and Mr Pile's conduct in relation to use of drugs at work was investigated. His conduct was found to be a breach of policy and he was dismissed on 9 July 2024.

[16] Ms Corke says she made repeated attempts to seek a response or an update on the grievance including an email on 21 July 2024 after Mr Pile's dismissal:

Just following up regarding Kakariki Proteins Limited investigation process as we have not been notified formally of an outcome following Ateria's Personal Grievance dated 23/06/2024, other than his termination for serious misconduct dated 06/07/2024.

What was the company's conclusion or findings following your independent investigation? Has [name of employee] employment been terminated also for the assault on Ateria?

...

Have other employees named during the disciplinary meeting on 02/07/2024 been subjected to random drug testing as per company drug and alcohol policy?

...

[17] On 23 July Ms Corke emailed requesting Mr Pile's wage and time records. On 5 August Ms Corke emailed following up about the official information request she

had made. On 7 September there is a text message from Ms Corke to Mr Fussell trying to make contact and requesting “yet again” Mr Pile’s “employment file and information and timesheets since the commencement to termination of his employment”.

[18] Wage and time records were provided. KPL declined mediation on the basis no personal grievance had been raised with it and Mr Pile’s statement of problem was lodged in the Authority.

### **Mr Fussell’s affidavit**

[19] Mr Fussell’s affidavit recorded he received the email from Ms Corke on 24 June 2024 after Mr Pile was involved in an incident the day before. He says after receiving Mr Pile’s statement (which was recorded in the body of the email) Mr Fussell obtained statements from others. As a result of Mr Fussell’s investigation into the alleged assault, the other employee was subjected to appropriate disciplinary action. He confirmed Mr Pile had no disciplinary action taken against him in relation to the assault but during his investigation Mr Fussell identified that Mr Pile had acknowledged that he had used drugs at work. As a result of a formal disciplinary process with Mr Pile he was dismissed in relation to that.

[20] Mr Fussell says the email he received from Ms Corke did not raise a grievance for unjustified dismissal or unjustified disadvantage and could not be deemed to have raised a constructive dismissal claim because Mr Pile continued to be employed after this date.

[21] Mr Fussell received a request to attend mediation on 9 January 2025 but on the basis KPL say no grievance was raised with it mediation did not go ahead.

### **Time frame for raising personal grievance claims**

[22] Section 114 (1) of the Employment Relations Act 2000 (the Act), provides that an employee who wishes to raise a personal grievance must raise it with the employer within the applicable employee notification period unless the employer consents to the personal grievance being raised after the expiration of that period.

[23] A personal grievance is raised with an employer as soon as the employee has made or has taken reasonable steps to make the employer or their representative aware

that the employee alleges a personal grievance that the employee wants the employer to address (s 114(2)).

[24] More than one communication can be considered to determine whether the totality might also constitute the raising of the grievance. There are several communications to consider. The email of 24 June, Mr Pile's texts to Mr Fussell on the morning after the alleged assault, plus Ms Corke's ongoing communications with KPL form a series of communications about the assault.

[25] Starting with the email drafted on 24 June, it records the date of the incident, the location, the employees involved and the witness who was the shift supervisor. The first part of the email recorded:

To Whom it may concern, my name is Ateria Pile (Ace) I am an employee at Kakariki Proteins Limited, during the early hours of Sunday 23 June 2024 at approximately 4am, I was physically assaulted and verbally threatened by [name of employee] in the locker room onsite. [the employee] acted deliberately and carelessly – offering violence with intentions to cause me physical and emotional harm on multiple occasions – this is serious misconduct. I will not be subjected to such behaviour from a fellow employee and I intend to explore all my rights under the Employment Relations Act and contact outside agencies for support and help navigating this situation, as it has left me feeling as though there's no option but to seek alternative employment. This is the 2<sup>nd</sup> occasion since the commencement of my employment with in your company that I have been physically assaulted within the workplace during my rostered shift. As my employer you have an obligation to keep me safe. Not all cases of violence within the workplace are reported, either people turn a blind eye or the victims themselves are too afraid to speak up. Implementing good business policies and practices to discourage violence and aggression can create a safe work environment.

[26] The next section of the letter was headed up “statement (Ateria Pile) and described what was said and what happened. The email finished in this way:

I have been left with an overwhelming feeling like I have to constantly look over my shoulder and watch my surroundings as there are already multiple hazards within the workplace, without having to worry about being assaulted by another employee. Since the assault I have not been unable [sic] to attend work for my own safety concerns, and I feel as though I should be compensated for these loss of earnings as these would have been my rostered days of work. My partner and young family fear for my safety and the stress of what we do now, and how am I going to support my family.

I look forward to meeting with you to discuss this in person.

[27] The problem raised in the email is not being able to attend work because of safety concerns after an assault at work. It was recorded this was the second occasion

Mr Pile says he had been assaulted at work indicating there was more to this than just the alleged assault on 23 June.

[28] There is no particular formula of words that must be used when raising a grievance. What is required is that the employer must know what it is responding to and to facilitate this there must be sufficient information to allow the employer to respond to the grievance on its merits with a view to resolving it soon and informally in the first instance.<sup>2</sup> The employee does not have to state how they would like the matter resolved but they do have to communicate the substance of the complaint sufficiently to the employer.

[29] It is clear the email communicated Mr Pile wanted violence in the workplace against him to stop and in order to achieve that he was explicit he would explore all his rights under the Act and contact other agencies to assist. WorkSafe, New Zealand Police and the Employment Relations Authority were listed at the top of the email under the names of individuals who were to be copied into the email. Compensation for loss of earnings for not working his normal rostered days was explicitly set out as something Mr Pile wanted and he wanted to discuss this with his employer.

[30] In the context of a disadvantage claim arising from the alleged assault in the work place the 24 June 2024 email conveys to KPL Mr Pile has an employment relationship problem about safety concerns arising from an alleged assault in the workplace and he wanted to engage with his employer about it so his safety concerns could be addressed.

[31] Mr Pile's text messages with Mr Fussell sent immediately after the shift finished and before the email informing Mr Fussell he had been assaulted are also relevant. It is clear from the content of those text messages Mr Pile had such serious concerns for his safety in the workplace that he was intending to resign but Mr Fussell asked him not to resign until he had investigated the matter. Mr Pile responded making disclosures about his own conduct but says it is best if he leaves, repeats this is the second time he has been assaulted at work and makes it clear that expecting him to remain under those circumstances is unreasonable and then says "next time it might be

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<sup>2</sup> *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC, 132 at [36].

my life” which underscores how seriously Mr Pile was treating the incident. He says they can talk Tuesday.

[32] Mr Fussell responds saying he was at home with Covid and asks to see Mr Pile the next morning and confirms that once he has statements he will make a decision and confirmed Mr Pile was on full pay until a decision was made.

[33] That text message exchange suggests Mr Pile was expecting an investigation and Mr Fussell confirmed one was going to occur. Mr Fussell’s later communications with Ms Corke confirm an investigation was undertaken and KPL considered Mr Pile’s recollection of the assault set out in the 24 June email to be his statement for the purposes of its investigation.

[34] Employees do not have to state how they would like the matter to be resolved when a personal grievance is raised but they do have to make it clear what the problem is so the employer knows what it is responding to with a view to resolving it at the earliest opportunity.<sup>3</sup> Mr Pile’s text messages with Mr Fussell, the 24 June email and then Ms Corke’s communications with Mr Fussell following up repeatedly about what was happening about the concerns Mr Pile had raised were enough to have raised a grievance with KPL.

[35] There was sufficient information conveyed across those communications to make it clear Mr Pile was concerned about his safety in the workplace because two assaults had not been addressed, he regarded the workplace to be so unsafe for him it was not possible for him to return at this point. He was expecting an investigation into that issue, to be spoken to about it, for his safety concerns to be addressed and compensation for lost wages for time off after the assault.

[36] What appears to have happened was a shift in focus to another investigation into matters Mr Pile was ultimately dismissed for without revisiting the assault on Mr Pile and his concerns about his safety in the workplace. That, however, did not negate the need to have responded to the grievance raised by Mr Pile about being assaulted in the workplace.

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<sup>3</sup> Above n2 at [38].

[37] The statement of problem, lodged and served in the Authority in January 2025, referred to the following claims:

- (a) Mr Pile was assaulted in the workplace
- (b) he reported the assault to management and Police
- (c) he filed a personal grievance and was terminated
- (d) the Company wanted to handle issue internally and Mr Pile was invited to a disciplinary meeting and then terminated
- (e) the Company failed to let Mr Pile respond to allegations made and acted unjustifiably before thoroughly investigating Mr Pile's allegations, and prior to scheduled disciplinary meeting at which they were going to terminate Mr Pile
- (f) the Company did not respond to requests for information
- (g) there were no follow up communications.

### **Conclusion**

[38] In the course of the investigation it became clear that the totality of the communications from Ms Corke and Mr Pile to Kakariki Proteins Limited were sufficient to have raised a personal grievance about the alleged assault and Mr Pile's safety in the workplace. Having reached that finding there is no need to address the application for exceptional circumstances.

[39] Having raised a grievance about safety in the workplace within the required timeframe, that has not been addressed, Mr Pile is entitled to pursue that in the Authority.

### **Next steps**

[40] As parties have not been to mediation, they are directed to attend mediation in 2 months of this determination. In the event they are not successful in reaching an agreed settlement of their differences they can contact the Authority to arrange a further case management conference call.

**Costs**

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

[42] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Ateria Pile 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 Kakariki Proteins Limited 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.

[43] 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>4</sup>

Sarah Kennedy-Martin  
Member of the Employment Relations Authority

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<sup>4</sup> [www.era.govt.nz/determinations/awarding-costs-remedies](http://www.era.govt.nz/determinations/awarding-costs-remedies)