IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2026] NZERA 282
3361503

	BETWEEN	EMELZA WINTERS Applicant
	AND	RSK FARMING LIMITED Respondent

Member of Authority:	Helen van Druten
Representatives:	Claudia Serra, representative for the Applicant Rupinder Singh-Heer for the Respondent
Investigation Meeting:	3 March 2026 at Hamilton
Submissions received:	17 March 2026 from the Applicant Up to 27 March 2026 from the Respondent
Determination:	06 May 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] RSK Farming Ltd (RSK) operates a dairy farm in the Waikato region. It employs both casual and permanent employees based around seasonal demand and is part-owned by Rupinder Singh-Heer who works on the farm.

[2] Emelza Winter worked at the farm as a Farm Manager from 2021 to May 2023 until she resigned due to injury. In mid-2024, she contacted Mr Singh-Heer about returning to work with RSK. Ms Winter claims that she started work in July 2024 then was unjustifiably dismissed from her employment on 29 November 2024 after equipment went missing from the farm. She further claims that RSK has not acted in good faith in relation to her employment and seeks penalties for its failure to provide both an employment agreement and wage and time records in breach of ss 65 and 130 of the Employment Relations Act 2000 (the Act).

[3] RSK says Ms Winter was a casual employee living at a cottage on the property with a number of other employees including her son. Mr Singh-Heer maintains that her son was responsible for the thefts and he wanted both of them gone to avoid further thefts and problems at the cottage.

The Authority's investigation

[4] For the Authority's investigation written witness statements were lodged from Ms Winter only. Mr Singh-Heer and Noah and Ren Morris as employees of RSK did not provide any witness statements and provided affirmed oral evidence at the investigation meeting. All witnesses answered questions under affirmation from me and the parties and/or representative. Both parties were provided the opportunity to present written submissions.

[5] 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

[6] The issues identified for investigation and determination are:

(i) was Ms Winter unjustifiably dismissed from her employment with RSK?

(ii) was Ms Winter unjustifiably disadvantaged when she was accused of theft?

(iii) If RSK's actions were not justified (by dismissing or disadvantaging Ms Winter), what remedies, if any, should be awarded, considering:

a. Lost wages (subject to evidence of reasonable endeavours to mitigate her loss); and

b. Compensation under s123(1)(c)(i) of the Act.

(iv) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Ms Winter that contributed to the situation giving rise to her grievance?

(v) Was there a breach of s 65 (IEA) and/or s 130 (wage and time record) of the Act? If so, should any penalty/ies be awarded and should any portion be paid to Ms Winter?

(vi) Should either party contribute to the costs of representation of the other party?

[7] Termination of Ms Winter's tenancy was raised during the investigation meeting. This is not within the jurisdiction of the Authority as it was not a term or condition of Ms Winter's employment in 2024.

Relevant background

[8] Ms Winter originally started work at RSK in 2022. At that time, she was employed as a full-time, permanent employee with a signed individual employment agreement (IEA) between the parties. As Farm Manager, Ms Winter lived in a cottage on the farm with various other employees and had a signed agreement with RSK for the cottage tenancy.

[9] Though that employment agreement did not apply to Ms Winter's new period of employment in 2024, the hours of work in that agreement give an indication of the seasonal workflow on the farm. Hours of work were Monday to Sunday with a roster of 12 days on and 2 days off. During milking season normal hours were 100 hours per fortnight. Outside milking season normal hours were 50 hours per fortnight.

[10] Ms Winters' resignation on 1 May 2023 followed an injury she had sustained that prevented her working and secondary issues relating to the cottage tenancy. The remainder of 2023 Ms Winter spent recovering from her injury. She ceased the tenancy on the cottage during that period, though stayed intermittently as her ex-partner had signed a new tenancy under his name with Mr Singh-Heer and was employed on the farm.

Employment in 2024

[11] In July 2024, Ms Winter texted Mr Singh-Heer to enquire about available work. The parties could not remember Ms Winter's start date. She commenced employment as a Farm Assistant, originally for a couple of hours each day and building up gradually as her injury allowed.

[12] Timesheets and payslips indicate Ms Winter's start date was on 1 August 2024 though there are no hours recorded as worked until 10 October 2024. Ms Winter's bank account shows seven fortnightly payments of varying amounts from RSK to Ms Winter from 18 August 2024 to 22 November 2024 inclusive, though the IRD net earnings for

the financial year 1 March to 1 December 2024 show more earnings from RSK in that same financial year than are reflected in Ms Winter's bank account.

[13] In part, the variance is explained by a Tenancy Tribunal order issued in 2023 establishing a debt of $2,670.44 owed by Ms Winter to RSK for unpaid rent on the cottage. On her return in 2024, both parties agreed that the debt was owed and Ms Winter would work to pay off the full debt first. In the absence of any recollection or documentation from either party on the full repayment date, the Authority accepts the timesheet record that the overdue amount was fully paid on 9 October 2024. From that date onwards, Ms Winter was paid wages for hours worked. Both parties agreed to the arrangement and the money owed was paid off in that manner.

[14] Ms Winter moved back into the cottage in 2024, though the tenancy was not in her name. She lived there initially with her ex-partner and son, along with other employees. By her evidence, various people were coming and going and it was unclear who was employed on the farm as some left and others returned.

Work allocation

[15] Ms Winter says that there was a sign in/out app that all staff used to record hours worked. Mr Singh-Heer would check and sign these off and pay accordingly.

[16] On 19 September 2024, Ms Winter set up a group chat and Mr Singh-Heer would then either email individual employees or put the tasks on the group chat.

[17] The work on the farm was largely predictable, with daily milking and calf feeding. With farm experience, Ms Winter knew what needed to be done to keep the farm running effectively.

Ending of employment

[18] On 24 November 2024, another employee had his vehicle stolen. Ms Winter said that Mr Singh-Heer rang her that evening and accused her of taking the vehicle. He also made allegations about the theft of a quad bike from the farm.

[19] Ms Winter says she was blindsided and affected by that phone call. The employment relationship deteriorated quickly from that point and the parties interactions became (and continue to be) acrimonious.

[20] Over the next few days, Ms Winter did not feel able to work following that phone call. On 29 November 2024, Ms Winter received the following text message:

> "You are to remove all of your belongings from the cottage by the 13th of December….you will vacate the property on the 13th of December by 1300 you will not have consent nor permission to reside in the cottage after this date…you are not fit nor healthy to fulfil the requirements of me farm".

When asked about this email, Mr Singh-Heer described it as a "go away" text.

[21] On 30 December 2024, Ms Winter raised concerns about her dismissal and seeking payment of outstanding wages.

[22] Mr Singh-Heer accepts that he ended Ms Winter's employment by text and without any meeting with her, deciding that she was no longer fit nor healthy to fulfil the requirements of the farm and he had enough of the drugs and thefts at the farm.

[23] A personal grievance letter was sent to RSK on 31 January 2025.

Employment status

[24] The basis of Ms Winter's grievance claims rests on the proviso that she was a permanent employee. Ms Winter says that the way her work was organised, her consistent pattern of work and mutual expectation of ongoing engagement meant that she was a permanent employee.

[25] It is not disputed that Ms Winter was a permanent employee for her first period of employment in 2022 and resigned due to injury. Her employment in 2024 is a separate period of employment and, in the absence of a signed employment agreement, the Authority's investigation focused on determining the nature of Ms Winter's employment.

Legal principles

[26] Casual employment is not defined in the Act, and therefore the factual evidence is of paramount importance in determining whether or not the employment is casual or permanent in nature. A strong indication that the relationship is that of casual

employment is the lack of an obligation on the employer to offer ongoing work, or for the employee to accept it when offered.[1]

[27] Where the parties disagree on employment status, it is for the Authority to "consider all relevant matters, including any matters that indicate the intention of the persons and [the Authority] is not to treat as a determining matter any statement by the persons that describes the nature of their relationship".[2]

[28] The Employment Court in *Jinkinson v Oceana Gold (NZ) Limited* considered the factors relevant to determining whether the real nature of employment is casual or permanent.[3] The court held that the following factors are relevant to determining the real nature of the relationship:

a. the number of hours worked each week;
b. whether the work is allocated in advance by roster;
c. whether there is a regular pattern of work;
d. whether there is a mutual expectation of continuity of employment;
e. whether the employer requires notice before an employee is absent or on leave;
f. whether the employee works to consistent starting and finishing times.

Application of legal principles

[29] Mr Singh-Heer's understanding was that casual employment is defined by working fewer than 30 hours per week, meaning that some weeks Ms Winter was a casual and other weeks she was not. Ms Winter agreed with that definition, though incorrect. I therefore disregard both parties classification of their employment status as determinative on the nature of their relationship.

[30] Ms Winter says that initially she and Mr Singh-Heer discussed her just doing calves and cleaning. There was no discussion about days or hours, she was working doing whatever was needed as she wanted to help Mr Singh-Heer.

[31] Mr Singh-Heer says he would text specific employees to undertake farm tasks and that there was no guarantee of any specific hours or number of hours each week. If

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[1] *Thing v South Pole Holdings (NZ) Ltd* [2025] NZEWRA 142 at [50].
[2] Employment Relations Act 2000, s 6(3).
[3] *Jinkinson v Oceana Gold (NZ) Limited* [2009] NZEmpC 255 at [47].

they were unable to work, they would let him know. Texts presented to the Authority show that most work was allocated as and when it arose, other than milking and calving which were spread across various employees.

Specific hours and pattern of work

[32] RSK's accountant provided evidence of hours worked by Ms Winter for the period 1 August 2024 to 1 January 2025. Specific hours for that period were recorded on an app, allowing the hours worked to be calculated precisely. Based on the payroll and timesheet records and pattern of text messages, Ms Winter worked between 2 and 10.5 hours most days. For 22 of the 33 days worked, work was completed in multiple short periods over the day with variable start and finish times. By way of example:

a. On 16 October 2024, Ms Winter worked 5.30am to 8.40am and 7.00pm to 9.10pm
b. On 8 November 2024, Ms Winter worked 8.00am to 11.25 am, 2pm to 4.15pm and 5.10pm to 7.00pm; and
c. On 14 November 2024, Ms Winter worked 9am-12.05pm.

[33] Based on a Thursday to Wednesday week over that period (being the pay week), Ms Winter's hours varied between 23 and 50 hours per week. Her days not worked varied across all days of the week (except Monday), with some weeks having one day not worked, others having three days not worked. Over such a short period, there was insufficient data to lead me to conclude any regular pattern of work.

[34] There was no indication of a set roster of hours. Ms Winter submits that the calendar in the office operated as a roster, being a schedule of the days and times employees were required to work. For the July and August calendars provided, I interpreted that differently. Ms Winter's hours on those calendars are not on the hour or quarter hour as would be expected for a roster. The start and end times are too precise for a roster (such as 6.55am – 7.40am and 1.50pm to 3.45pm), suggesting that this was a record of hours worked, rather than a roster.

[35] The text messages between Ms Winter and Mr Singh-Heer from 28 August 2024 to 9 November 2024 provide the best documentary evidence of the nature of the arrangement between RSK and Ms Winter. Overall, these create a picture of an 'as needed' work structure. The messages show Mr Singh-Heer regularly asking Ms Winter

to do ad-hoc farm duties including repairs, moving stock and feeds. Similarly, they show Ms Winter regularly updating Mr Singh-Heer on calving and farm issues and a willingness to get jobs done if Mr Singh-Heer needed somebody. The messages show Ms Winter asking if she was needed, what time she was wanted back and helping to cover other staff absences.

[36] As Ms Winter's representative suggested, there was an increase in her hours when another staff member stopped attending work. No evidence was provided that Ms Winter was asked whether she wished to take on those additional hours. In his evidence, Mr Singh-Heer simply stated that her hours increased because the other employee had gone "AWOL", treating it as a given that Ms Winter would pick up those hours. I accept that Mr Singh-Heer expected Ms Winter to pick up those hours but not because there was an obligation on her to do so. Her text messages show that she was always willing to pick up extra work when it was available to give Mr Singh-Heer a rest. The extra work was an expectation that Ms Winter placed on herself, not what Mr Singh-Heer placed on her.

[37] Ms Winter was paid an hourly rate and got paid for the hours she worked. Eight per cent holiday pay was paid each pay period for hours worked. Payslips indicate she was paid T1.5 for the public holiday worked. No other public holidays fell in the employment period. There was no indication that Ms Winter applied for annual or sick leave if she was unavailable.

[38] With specific reference to Ms Winter's evidence, she submits that her set tasks included feeding calves twice daily and milking at the same time each day. This created an established and predictable routine and a regular pattern of work characteristic of ongoing employment. Timesheet records dispute that account, showing 30 per cent of the total days worked, Ms Winter only worked one short period of employment in the day. The text messages show that milking duties were shared across multiple employees. I do not accept that, for that particular role in that particular industry, one can conclude that regular milking tasks automatically imply permanent employment status.

[39] Importantly, October to December 2024 covers milking season. Based on the 2022 employment agreement, there is more work for everybody at that time, with

regular milking and calving occurring, requiring normal hours to double compared to other times of the year.

[40] Ms Winter was an experienced farm assistant and her employment status did not change that. While submitted that her ability to train others indicated permanent employment, I consider that her ability to train others is more indicative of her experience than her employment status.

Expectation of continuity

[41] I rely on the evidence provided by Mr and Mrs Morris to determine Mr Singh-Heer's usual practices with work allocation and employee expectations of continuity. Their oral evidence was consistent. They were both employed by RSK as farm assistants in October 2024, working during the busy milking season. In their evidence, they were not guaranteed any specific hours. They were given a casual contract with the opportunity to go permanent if it worked out. Practically by their account, Mr Singh-Heer would text the night before if he needed work done and you would reply if you wanted it. They would tell him if they did not want to work a particular day. Initially, there was no discussion about ongoing work specifically through the dairy season.

Conclusion

[42] Having considered the written and oral evidence of both parties, the balance of the evidence weighs in favour of Ms Winter's employment being on a casual basis in 2024 rather than any regular, ongoing employment. Applying the factors in *Jinkinson*,[4] I do not accept Ms Winter's work met the indicators of permanent employment.

Unjustified dismissal

[43] While employment can be of a casual nature, dismissal may still occur during a period of employment. This was confirmed by the Employment Court in *Rush Security Services Limited v Samoa* where a security officer was offered and accepted work for a four-day period starting on a Monday. On that Monday he was told there was no more work for him. The Court held that ending the assignment during its course was a dismissal and the same questions of justification for that action arose whether the employment at the time was casual or ongoing.[5]

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[4] Above at n. 3.
[5] *Rush Security Services Limited v Samoa* [2011] NZEmpC 76 at [32] – [33] and referenced in *Chen v Zhang and Anor* [2022] NZERA 349 at [45].

[44] Ms Winter drew parallels here with the Authority decision in *Harrison v Boyte & Anor* where Ms Harrison was also a casual employee and yet the Authority found that she was unjustifiably dismissed.[6] I distinguish that case from these circumstances. Mrs Harrison was employed along with her husband and had an expectation that she was employed on a casual basis for the entire 2016/2017 dairy season. I found no such expectation in the information presented to the Authority in Ms Winter's situation.

[45] For Ms Winter, she was dismissed when the "go away" text was sent to her from Mr Singh-Heer at 1.09pm on 29 November 2024. At that point the employment relationship was terminated. Ms Winter was not working on that day.

[46] As a casual employee, each period of employment is treated as a separate period of employment and the employer is not obliged to offer ongoing work to the casual employee, nor is the casual employee obliged to accept it. Applying this to Ms Winter, she accepted work daily as it was offered and therefore it follows that each day was a separate period of employment.

[47] The relevant point for this determination was that the action leading to the termination of employment occurred during a period when Ms Winter was not working. At that point, unlike in *Chen* or *Rush Security Services*, there was no mutual obligation existing between the parties to offer and carry out an agreed period of work.[7]

[48] It is very clear to me in written and oral evidence, including multiple police reports, that activity at the cottage was a source of friction on the farm. With employees and non-employees, alleged thefts and multiple police complaints laid by RSK it was those events that caused Mr Singh-Heer to call an end to the problems, end Ms Winter's employment and send her and those associated with Ms Winter off the property. There is no evidence that she was personally responsible for the thefts on the farm (as reported to the police), though living at the cottage, she was held responsible along with others for ongoing issues occurring relating to the farm equipment and supplies.

[49] On that basis, Ms Winter's claim for unjustified dismissal is declined and it is not necessary for the Authority to consider her further claims regarding notice or provision of contracted hours.

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[6] *Harrison v Boyte & Anor* [2017] NZERA 222.
[7] Above at n 5.

Was Ms Winter disadvantaged in her employment

[50] Ms Winter's claim for unjustified disadvantage results from the actions of RSK on 29 November 2024. Mr Singh-Heer says that he had reached his breaking point regarding ongoing thefts on the farm by one or more of those living in the cottage or associates. He did not wish to offer Ms Winter any further work and he was entitled to do so. No unjustified disadvantage claim is established.

Breach of good faith

[51] Despite Ms Winter being a casual employee, the parties good faith obligations under the Act remain.[8] The well recognised duty that is now statutorily recognised as a component of 'good faith', is that an employer should not without proper cause, act in a manner calculated to or likely to destroy or seriously damage the relationship of trust and confidence between the parties to the employment relationship.[9] Egregious bad faith is not required under s 4A of the Act before a penalty can be awarded and the Authority must be satisfied the failures were deliberate, serious and sustained, or that it was intended to undermine the employment relationship.[10]

[52] Both parties claim a breach of good faith. Based on oral evidence, RSK's decision not to offer Ms Winter further work was not about the quality of her farm work or commitment to RSK, it was about alleged thefts on the farm and problems at the cottage.

[53] RSK had an opportunity to discuss these with Ms Winter and be communicative and constructive about the potential impact of those concerns on its willingness to offer her further work. The failure to do so misled Ms Winter into thinking that all was well and she could continue picking up any available work. By its inaction, RSK breached its obligations under s 4(1A)(b) of the Act during the periods of employment of Ms Winter up to 24 November 2024.

[54] Many allegations were made against Ms Winter by RSK, but none of these were substantiated by Mr Singh-Heer.

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[8] Employment Relations Act 2000, ss 4 (1A)(a) and 4(1A)(b).
[9] *Auckland Shop Employees Union v Woolworths (NZ) Ltd* [1985] 2 NZLR 372 as recently referenced in *Devine v Health New Zealand – Te Whatu Ora* [2025] NZERA 206 at[78].
[10] Employment Relations Act 2000, s 4A and *Pyne v Invacare New Zealand Ltd* [2023] NZEmpC 179 at [60].

[55] By Ms Winter's evidence, the parties had a normal working relationship in mid-2024. It declined quickly as Mr Singh-Heer struggled to manage the cottage tenancy issues. The threshold for a breach of good faith is a high one even if they were serious and I am not satisfied in this case that the breaches by RSK were deliberate or intended to undermine the employment relationship. No penalty is awarded for the breach.

Compliance with s 65 and s 130 of the Act

[56] Section 65 of the Act requires that an individual employment agreement must be in writing. The parties agree that when Ms Winter was re-employed in July 2024, no written employment agreement was signed. Ms Winter says that she was never provided with an employment agreement, despite asking several times for one. Mr Singh-Heer says that he asked Ms Winter several times to sign the agreement he gave her, but she kept making excuses not to sign it. Although Mr Singh-Heer asserts that Ms Winter made excuses not to sign the agreement he supplied (and that may well be the case), he had a duty to discuss that with Ms Winter prior to her commencement of employment, and if necessary, delay her start date until the document was signed.

[57] In the absence of information to support Mr Singh-Heer's assertions, I conclude that an employment agreement was not provided to Ms Winter as he suggests and therefore RSK was in breach of s 65 of the Act.

[58] Section 130 of the Act imposes an obligation on an employer to keep a wages and time record for each of its employees. As evidenced by its accountant, RSK used an app where its employees could record their hours and access timesheets. Time and wage information presented from 10 October 2024 to 23 November 2024 was detailed down to a total hours per day and included all relevant information.

[59] There is no information provided to evidence the number of hours worked by Ms Winter prior to 9 October 2024 despite requests for these to be provided.

[60] RSK's failure to keep or produce wage and time records for work undertaken prior to 10 October 2024 is a breach of s 130 of the Act.

Penalties

[61] Having established a breach of both s 65 and s 130 of the Act, Ms Winter seeks penalties in respect of RSK's failure to keep and provide a wages and leave record and its failure to keep and provide her with a written individual employment agreement.

[62] Employers failing to comply with statutory requirements are liable to a penalty.[11] In relation to a breach of s 65 and s 130 of the Act, the maximum penalty for any breach for a company is $20,000. It falls on the Authority to determine the quantum of each penalty imposed for a breach of the Act.

[63] The Employment Court set out a four-step process which is to be adopted when a penalty is being assessed by the Authority to ensure that there is a consistent and reasonably predictable result with penalties across the board.[12] These factors have been considered by me when assessing penalties in this matter.

[64] Applying those principles, I consider the following points relevant in considering the appropriate penalty for these breaches:

a. Mr Singh-Heer knew there was a requirement to provide an employment agreement to his employees. Despite oral evidence that he tried to get Ms Winter to sign one, there was no evidence provided to support that account. I am satisfied Mr Singh-Heer had sufficient time to provide that information if it existed.
b. Looking at the severity of the breach, no evidence was provided to suggest that this breach affected multiple employees. Both other witness employees provided oral evidence that they received an applicable, relevant employment agreement as required.
c. RSK did not provide any evidence to indicate his ability or inability to pay any penalty.
d. The breach of s 130 of the Act relates only to work undertaken between 1 August and 10 October 2024. After that date, effective wage and time records were maintained.
e. There was no evidence to suggest any deceptive motive, though Mr Singh-Heer presented a casual approach to his employment obligations during the investigation meeting.

[11] Employment Relations Act 2000, s 133A.
[12] *Borsboom v Preet Pvt Ltd* [2016] NZEmpC 143.

f. Much of the current dispute could have been easily resolved if RSK had signed a written employment agreement with Ms Winter agreeing terms of employment.

[65] Standing back and assessing the proportionality of the outcome for RSK, I conclude an appropriate penalty for breach of s 65 of the Act in the circumstances to be a penalty of $750 to be paid to Ms Winter, with a penalty of $500 for the breach of s 130 of the Act to be paid to the Crown.

[66] I am satisfied that Ms Winter and Mr Singh-Heer came to their own mutual ad-hoc arrangement regarding hours worked prior to 9 October 2024 relating to the debt owed. On that basis alone, it is not appropriate for any penalty for breach of wage and time records to be paid to Ms Winter. It remains appropriate that there are consequences for the legislative breach of s 130 and that amount is paid to the Crown.

Order

[67] Within 21 days of the date of this determination, I order the penalty of $750 to be paid by RSK to Ms Winter, and a further penalty of $500 to be paid to the Authority for transfer to a Crown bank account.

Costs

[68] As Mr Singh-Heer was self-represented, costs are to lie where they fall.

Helen van Druten
Member of the Employment Relations Authority