

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2026] NZERA 287
3329381

BETWEEN

SIMRANPREET SINGH
Applicant

AND

SYNLAIT MILK LIMITED
Respondent

Member of Authority: Philip Cheyne

Representatives: Applicant in person
Scott Wilson and Sally Hitchcock, counsel for the
Respondent

Investigation Meeting: 24 September 2025 in Christchurch

Submissions and further
information received: 23 November 2025, 23 December 2025 and 10 February
2026 from the Applicant
12 November 2025 and 2 February 2026 from the
Respondent

Date of Determination: 8 May 2026

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Simranpreet Singh was employed by Synlait Milk Limited (Synlait) as a maintenance engineer from 28 August 2023 until his resignation effective 31 January 2024.

[2] In an email to Synlait on 30 April 2024, Mr Singh raised his personal grievance claim of constructive dismissal and set out details in an attached summary of incidents.

[3] Mr Singh later lodged a statement of problem in the Authority. He described the problem as unfair treatment, bullying, breach of confidentiality and harassment by Synlait resulting in his resignation. Mr Singh sought compensation for his losses and recommendations from the Authority to prevent future instances.

[4] In reply, Synlait denied Mr Singh's allegations of unfair treatment, bullying, breach of confidentiality and harassment. It says it addressed concerns when they were raised and provided appropriate support to Mr Singh throughout his employment.

The Authority's investigation

[5] Despite mediation, matters were not resolved.

[6] The parties provided document bundles and further material was provided during and after the investigation meeting.

[7] Mr Singh and Amanjot Kaur (Mr Singh's wife) provided statements of evidence, confirmed those statements on oath and answered questions.

[8] For Synlait, its Senior HR business partner (Rachel Hyett) and two maintenance team leads (Riki Davis and Troy Williams) similarly provided statements, confirmed them on oath and answered questions. Mr Davis also provided an affidavit later.

[9] Mr Singh and Synlait both lodged and exchanged submissions, as agreed.

[10] In this determination, I will state relevant factual findings, state and explain relevant legal findings, and express conclusions on issues necessary to conclude the matter and make any appropriate orders.

[11] It is helpful to outline how the employment relationship problem developed from the start.

Terms of employment

[12] Mr Singh accepted an employment offer for the position of Maintenance Engineer commencing Monday 28 August 2023, subject to reference checks, him providing Synlait with

a copy of his qualification transcript and several other conditions. Mr Singh met all the conditions.

[13] Mr Singh's work was covered by a collective agreement and he became a union member so the terms in that agreement applied. There was a position description and Synlait has documented policies which also applied.

[14] Synlait has a Red Line Entry policy. It deals with hygiene requirements when entering work areas with direct product contact (hygiene zones). Part of the policy is a requirement to wear a mask if the employee has a beard. The policy also set rules about hand-washing. Mr Singh completed the Red Line Induction course on 2 September 2023.

Initial issues

[15] Mr Davis emailed Mr Singh on the Friday before he was due to start, to say that a course (Synlait 101) he was supposed to attend at the start had been postponed, so he would tail two engineers for the first week on day shift.

[16] Mr Singh started work on 28 August 2023.

[17] On 31 August, Mr Davis messaged Mr Singh about showering before coming to work. Mr Davis said that it was a concern which had been raised with him.

[18] Following the first week, Mr Singh worked alongside other engineers on a standard shift pattern for several weeks – two days, two nights followed by four days off.

[19] On 15 September Mr Davis messaged Mr Singh and another new engineer to ask them to provide copies of their qualifications as soon as practical. Mr Davis explained the request as a requirement of Synlait's "SAMR registration". In the resulting message exchange with Mr Singh, Mr Davis queried whether his qualification met Synlait's minimum qualification requirements.

[20] Mr Davis then messaged Mr Singh on 16 September to say that, as Mr Singh was to attend induction on Monday 25 September and Mr Davis believed that he would benefit from "cross-shift training", Synlait would move him back to day shift only starting Monday 18 September.

[21] Mr Davis's evidence is that, initially, team members had verbally raised with him their concerns about Mr Singh's capabilities and competence as an engineer. Then, on 15 September, he received two emails setting out the writers' concerns about Mr Singh. One writer considered that Mr Singh seemed not to have "any basic knowledge", while the other writer said Mr Singh struggled to perform basic tasks and correctly identify and operate specific machines. The second writer also referred to concerns about Mr Singh's personal hygiene.

[22] The 15 September emails were not disclosed to Mr Singh during his employment. However, the emails informed Mr Davis's decision on 16 September about day shift and "cross-shift training" and his querying whether Mr Singh's qualifications met Synlait's minimum standards.

[23] Ms Hyett is Synlait's Senior Human Resources Business Partner. Mr Davis contacted her to discuss concerns about Mr Singh. They arranged to meet Mr Singh on 22 September. Mr Singh was told that the meeting was to review the first 14 days in his role. He was also told they would discuss his qualifications as they related to a maintenance engineer role, and that "HR" had been invited to the meeting.

[24] Ms Hyett chaired the 22 September meeting. Mr Davis's evidence is that he outlined the feedback he had received about Mr Singh, as the reason for his concern about Mr Singh moving onto night shifts alone. Mr Davis proposed that Mr Singh join central maintenance where he would get additional training and support for a period of no more than eight weeks. Mr Davis says that Mr Singh agreed to the proposal.

[25] Mr Davis also enquired about Mr Singh's qualifications and how they translated to New Zealand standards. Ms Hyett's evidence is that Mr Davis asked and Mr Singh said he had not transferred his maintenance qualifications to New Zealand standards. However, Mr Singh had earlier emailed Mr Davis a copy of his Diploma in Mechanical Engineering and an NZQA recognition statement for his Diploma at Level 5.

[26] Mr Singh says that Mr Davis started by asking him how he was doing. When Mr Singh said he felt confident and that things were going well, Mr Davis raised his voice, questioned how he could feel confident and said Mr Singh's qualifications did not match the role. Mr Singh referred to the NZQA recognition, but Mr Davis said "You barely passed – look at your marks".

[27] Mr Singh sent an email to Mr Davis after the meeting. He referred to receiving only negative feedback at the meeting, feeling humiliated by Mr Davis's comment about barely passing the qualification and having provided qualification details to Synlait during the hiring process. Mr Singh also gave details of some of the work he had done while at Synlait.

[28] In response, Mr Davis thanked Mr Singh for his feedback, which "raised some good points". He said Synlait wanted him to succeed, and if his qualifications were equivalent to company requirements, they were committed to making him comfortable and confident with required tasks. Mr Davis also apologised "if the meeting came off as negative".

[29] On 2 October, Mr Davis spoke to Mr Singh about reports that Mr Singh had twice crossed the Red Line without washing his hands. Mr Davis says that Mr Singh acknowledge that and said he had forgotten to do so. Mr Davis emphasised its importance.

[30] David Wolfe was Synlait's Head of Assets and Engineering. He met with Mr Singh on 6 October to tell him that they would move him to the Central Team. Mr Wolfe also spoke to Mr Singh about personal hygiene, handwashing in the Red Line area, an unrelated incident and training/qualifications. There was an email exchange between Mr Davis and Mr Wolfe following the meeting.

[31] Also on 6 October, Mr Davis received a report from another employee that Mr Singh had not worn a beard mask when crossing the Redline. On 7 October Mr Davis told Mr Singh that he would not be permitted to enter hygiene zones until he had redone the Red Line Induction course.

[32] Mr Singh replied the same day. He explained that others did not wear beard masks, but said he would follow the instructions.

[33] Mr Davis later wrote a letter of expectation to Mr Singh regarding adherence to the Red Line policy and Synlait's Handwashing and Sanitising and Personnel Hygiene and Sickness Standard policies. Mr Singh received it on 24 October.

Transfer to Central Team

[34] Mr Singh was moved to Central Maintenance on 9 October. Mr Davis says this was for a period of no more than eight weeks.

[35] Troy Williams was Maintenance Team lead.

[36] Mr Williams' evidence is that he was aware from Mr Davis and Ms Hyett about concerns with Mr Singh and the move was to get a better understanding of the issues and to provide support to him. Mr Singh was buddied up with an experienced engineer (Connor Keenan) on day shifts for most of the time in Central Maintenance.

[37] Mr Williams' evidence is that he received feedback of concerns about Mr Singh's knowledge, skills and capabilities, similar to those expressed by Mr Davis. Engineers Mr Singh worked with in Central Maintenance were concerned about his ability to work unsupervised.

[38] Mr Singh also worked alongside a second engineer later when he was at Central Maintenance. The engineer messaged Synlait to say that Mr Singh had coped well in his time with him and to ask that Mr Singh be rostered with him for eight weeks so he could show and train him more.

[39] On 5 December Mr Williams and another manager met with Mr Singh at short notice to review his time in Central Maintenance. There was an email exchange afterwards. Mr Williams summarised his view that there were gaps in Mr Singh's experience with tools and referred to two specific examples, with the next step to move him back to Blending and Canning under Mr Davis from 11 December. Mr Davis would start a performance improvement plan.

[40] Mr Singh gave an explanation to the two examples, stated that some engineers had not allowed him to do jobs and referred to the positive experience with the second engineer.

[41] In return, Mr Williams replied to the explanations and defended the engineers' actions. He repeated his view that there was a gap in Mr Singh's ability, but was positive about his attitude and willingness to learn.

Performance Improvement Plan – Return to Blending and Canning

[42] On 12 December, Mr Davis sent an invite to Mr Singh to meet the following day for Synlait to present a performance improvement plan (PIP). The meeting could only be scheduled for 30 minutes, but Mr Davis said he would be happy to arrange a further meeting if Mr Singh needed clarification.

[43] Mr Davis and Ms Hyett met with Mr Singh at 10.00 am on 13 December. Mr Davis's evidence is that they discussed the "performance gap" which had been identified by Mr Williams' team and whether Mr Singh was meeting minimum requirements for his role. Mr Singh confirmed that he did not feel language was a barrier. Mr Davis went through the proposed PIP. Mr Singh was offered but said he did not require time to consider the PIP. He and Mr Davis both signed it. Ms Hyett's evidence corroborates that of Mr Davis.

[44] Mr Singh's evidence is that he was not assigned to an engineer on the first day of PIP, so he felt this was enough for him and a sham, and he left work at 1.30 pm that day due to stress. Mr Singh did not return to work.

[45] Ms Singh saw his doctor the following day, who certified him as medically unfit for work from 13 December but should be fit to resume work on 21 December. He provided the certificate to Synlait.

[46] On 20 December Mr Singh emailed Ms Hyett, asking for a meeting with her regarding "the employment issues", having received some advice from an employment relations consultant. Mr Singh also said he was not "in the state of working in the blending and canning". His doctor later confirmed that Ms Singh had reported that he was unfit to work but expected to be fit to resume work on 28 December.

[47] Ms Hyett met the next day with Mr Singh and his wife. Mr Singh and his wife spoke about the PIP, his concerns about its technical aspects, discrimination in relation to his qualifications and the comments by Mr Davis regarding Mr Singh's personal hygiene. Mr Singh said he wanted to move from Blending and Canning to either Central Maintenance or Dairy Liquids Plant. They asked to meet the chief executive and to raise a personal grievance of discrimination. The meeting ended with Mr Singh to propose amendments to the PIP and to document his concerns.

[48] Mr Davis was away, so Ms Hyett briefed Mr Wolfe about what had been discussed at the 21 December meeting. Mr Wolfe then emailed Mr Singh on 22 December. He said they could not accommodate a move out of Blending and Canning, but recommended that Mr Singh provide feedback on the PIP plan. Mr Wolfe confirmed that Ms Hyett would attend the PIP

meetings to ensure their “smooth running” and ensure there was no miscommunication between Mr Singh and Mr Davis.

[49] Mr Wolfe noted that Mr Singh’s medical certificate had him returning to work on 28 December, but he should update Mr Davis if that changed.

[50] Mr Singh attached “detailed concerns regarding [his] employment issues with Synlait”, to his email to Mr Wolfe on 26 December. In summary, Mr Singh challenged the reasons relied on by Synlait for the PIP.

[51] On 29 December Mr Singh provided a further medical certificate, certifying him as medically unfit for work but should be fit to resume work on 13 January 2024.

[52] Mr Wolfe acknowledged the medical certificate the same day. He repeated that Synlait could not accommodate a transfer out of Blending and Canning, but said that they could review the PIP and work through changes to it that Mr Singh wanted. He asked Mr Singh to mark up changes and said he would set a meeting for 8 January when Mr Singh would be back on site.

[53] On 5 January Mr Singh asked Mr Wolfe to arrange a meeting for 8 January, noting that he was not able to come to work until the matter had been resolved. Mr Wolfe responded that a meeting would be booked once Mr Singh was back on site in accordance with the medical certificate. Mr Singh replied late on Sunday 7 January, saying that he did not feel safe to work in Blending and Canning and requested the meeting before he returned to work. Mr Wolfe acknowledged that early on Monday morning.

[54] On Monday 8 January Mr Singh emailed Ms Hyett’s direct manager, asking her to hold a meeting. The manager responded soon after, confirming that Mr Wolfe and Ms Hyett were managing the matter. By that time, the Dairy Workers Union Organiser (Mr Needham) acting for Mr Singh, had contacted Mr Wolfe as well as Ms Hyett about a meeting.

[55] Ms Hyett emailed Mr Needham on 10 January confirming an agenda for the meeting set for 16 January. Ms Hyett also noted that Mr Singh had said that he could not work under Mr Davis, and if he was not transferred to another department he would resign and pursue a personal grievance.

[56] On 12 January Mr Singh was certified medically unfit for work, but expected to resume on 19 January.

[57] Mr Wolfe and Ms Hyett met Mr Singh supported by his wife and Mr Needham on 16 January 2024. Mr Needham requested a transfer for Mr Singh to another team, but Mr Wolfe declined the request and gave reasons. Mr Needham requested replacing the PIP with training. Mr Wolfe and Ms Hyett spoke about running retraining and onboarding in Blending and Canning and were open to including that in the PIP. The meeting ended without agreement.

[58] Matters were not resolved through later exchanges between Mr Needham and Ms Hyett.

Mr Singh resigned

[59] Mr Singh sent a resignation email on 31 January 2024. Mr Singh referred to the following issues: a the lack of effective work assignments in the first three months; needing a work environment where clarity, collaboration and respect were priorities; repeated shifts in management decisions and the lack of effective work assignments impacted his ability to execute his duties effectively; and his request to move to another department due to a few issues with the team leader in Blending and Canning. Mr Singh acknowledged the opportunity to work at Synlait.

[60] There were some exchanges between Mr Needham and Synlait managers about the effective date of the resignation. It was agreed that Mr Singh's resignation was effective as of 31 January 2024. He did not need to return to work.

Mr Singh raised a personal grievance

[61] On 30 April 2024 Mr Singh sent Synlait an email in which he said he wanted to raise a constructive dismissal personal grievance. In support, he attached a summary of incidents during his employment at Synlait. I will summarise those matters.

[62] Mr Singh said that his induction and orientation was inadequate and he had mostly been assigned menial tasks, not what a maintenance engineer would expect so as to become familiar to move onto shifts. He was then transferred to Central Maintenance. As part of that Mr Davis criticised Mr Singh's qualifications. The transfer meant that Mr Singh did not receive training

for his original role in Blending and Canning. Synlait referred to Redline breaches as part of justification for the move, but Mr Singh disputed the truth of some of the alleged breaches.

[63] In Central Maintenance, other Maintenance Engineers were openly discussing his qualification status according to Mr Singh, causing him to believe that Mr Davis had breached confidentiality of their discussions. Mr Singh was not directly assigned jobs, but was instructed to shadow other engineers while in Central Maintenance. His work mostly consisted of menial tasks. There was then the performance improvement plan meeting and arrangements. Mr Singh went off work sick thereafter.

[64] At the meeting on 16 January, Mr Singh referred to his reluctance to work under Mr Davis, given the comments and conduct towards Mr Singh. A transfer to another maintenance engineer role was requested, but Synlait did not agree. Mr Singh was expected to return to Canning and Blending at the end of January.

[65] In summary, Mr Singh said that Synlait did not take steps to rectify issues with him until 3 months after they had arisen, the working relationship with Mr Davis was damaged in September but Synlait did nothing to resolve that, then pushed to return him to his original role. Mr Singh felt he could not return to that role.

Constructive dismissal

[66] Constructive dismissal can include where a breach of duty by the employer causes the worker to resign.¹ It is the only potential type of constructive dismissal that needs to be considered here.

[67] For this type of constructive dismissal claim, the first issue is whether the resignation was caused by a breach of duty by the employer. Then if so, whether the breach was sufficiently serious to make it reasonably foreseeable that the employee would not be prepared to work under the prevailing conditions.²

Induction, orientation and training – no relevant breach of duty

¹ *Auckland Shop Employees Union v Woolworths (NZ) Ltd* [1985] 2 NZLR 37 (CA) at 374.

² *Auckland Electric Power Board v Auckland Provincial District Local Authorities Officers IUOW Inc* [1994] 1 ERNZ 168.

[68] Mr Singh says that he was not provided proper induction or effective training especially in EAM and plant specific equipment and processes initially, and was removed from the standard induction pathway early and placed on day shifts without adequate explanation.

[69] Synlait has shown it approached Mr Singh's initial induction and training in a standard and supportive manner, as one might expect of a large and complex manufacturing business. Despite that, other staff who Mr Singh worked with in the first two weeks of his employment expressed concerns about his competence. Synlait later decided to move Mr Singh from Blending and Canning to Central Maintenance temporarily, in response to those concerns.

[70] Mr Singh was not aware of the two emails that informed Synlait's decision to move him to day shift in mid-September and then to Central Maintenance in early October. Assuming that was a breach of duty by Synlait, such breach could not have caused Mr Singh's resignation because he was unaware of the emails until after his resignation.

[71] Synlait appropriately raised concerns about Mr Singh's non-compliance with its Red Line Entry policy, Mr Singh acknowledged breaches and he was required to redo the training. Synlait followed up with a letter of expectation. Mr Singh now does not accept all the claimed breaches and says other employees did not follow the policy or they misinformed him, but that is not significant. Synlait's policy was clear, Mr Singh received the necessary training at first and Synlait was entitled to take the non-disciplinary steps it took to ensure Mr Singh adhered to the policy.

[72] Mr Singh was also appropriately supported in his work with Central Maintenance from 9 October. Mr Singh is critical that several other engineers only assigned him menial tasks. However, as the new staff member it was for Mr Singh to demonstrate to work colleagues that he could competently perform assigned tasks. Mr Singh was able to build that relationship with only one of the engineers in Central Maintenance.

Qualifications – no relevant breach of duty

[73] Mr Singh refers to the message exchanges with Mr Davis between 15 September and 19 September about his qualifications as incidents of humiliation. However, Mr Davis was entitled to ask Mr Singh about his qualifications and whether they matched New Zealand equivalents. This led to the 22 September meeting.

[74] Mr Singh was supported at the meeting by a Union delegate and Ms Hyett chaired it for Synlait. Given that, it is not likely that Mr Davis bullied Mr Singh at the meeting. But I do accept that Mr Davis again questioned the qualifications and commented that Mr Singh had barely passed.

[75] After the meeting, Mr Singh wrote to say he was disappointed, humiliated and felt there was not any positive reinforcement. He pointed out that it was the employer's responsibility to check qualifications before employment. He said he did not like to be pushed into the situation which forced him to leave the job. In response Mr Davis acknowledged Mr Singh's points and apologised.

[76] I agree with Mr Singh's point that Synlait accepted his qualifications and their equivalence to the New Zealand qualification standards at the point it employed him. While Mr Davis was entitled to ask Mr Singh about his qualifications, it was inappropriate for him to do that in a way that was critical of Mr Singh's attainments, as he did on 22 September.

[77] After Mr Singh raised his concerns about the 22 September meeting, Mr Davis acknowledge them, apologised and stated Synlait's support. That response should have been sufficient to resolve Mr Singh's legitimate concerns about what had been said during the meeting.

[78] Even if the apology had not resolved Mr Singh's concerns at the time and the critical comments were a breach of duty, it was not sufficiently serious so as to make a resignation reasonably foreseeable then or months later.

Working relationship with Mr Davis – no relevant breach of duty

[79] I do not accept that Mr Davis bullied Mr Singh. However, his comment about the qualifications was discourteous and demeaning and the tone of the September meeting was not supportive.

[80] Assuming there was a breach of duty by Synlait arising from Mr Davis's comments about the qualifications and the tone of the meeting, it would have been minor. Resignation was not a reasonably foreseeable outcome.

[81] Mr Singh later expressed offence about the 31 August message from Mr Davis that he should shower before coming to work. However, even if the comment amounted to a breach of duty by Mr Davis, resignation was not a reasonably foreseeable outcome at the time or later.

[82] Mr Davis appropriately responded to reports to him about Mr Singh's non-compliance with Synlait's Red Line policy.

[83] Mr Singh says that Synlait breached confidentiality about the concerns over his qualifications, because colleagues referred to him as a "uni student". He says this could only have occurred if the qualifications concern, discussed in the September meeting with Mr Davis, had been shared with his colleagues. There is no evidence that Mr Davis, Ms Hyett or other Synlait managers disclosed the 22 September discussion to Mr Singh's colleagues. I do not accept that, if colleagues were referring to Mr Singh as a "uni student", it probably means that Mr Davis or Ms Hyett breached confidentiality.

[84] Mr Singh was employed to work in Blending and Canning with Mr Davis as team leader. There was no breach of duty by Synlait insisting that he return to that department under Mr Davis's leadership.

Performance Improvement Plan – no relevant breach of duty

[85] Synlait's policy provides for a performance improvement plan (PIP) as a formal way of identifying performance issues, establishing expectations and documenting ways to fill any gaps.

[86] Synlait engaged reasonably with Mr Singh about the content of the proposed PIP. First, Mr Williams had some exchanges with Mr Singh. That was followed by a meeting on 13 December with Mr Davis and Ms Hyett, when Mr Singh signed the PIP. That was followed by further meetings on 21 December and 16 January where Mr Singh had an opportunity to raise concerns about the PIP.

[87] In early January, Mr Singh sought to escalate his concerns to higher levels of management. However, the more senior managers decided to leave matters with Mr Davis and Ms Hyett and gave that answer to Mr Singh. Synlait acted reasonably by leaving matters with Mr Singh's direct manager, supported by Ms Hyett, to manage the implementation and

operation of the PIP as its response to concerns with Mr Singh's work. There was no breach of duty.

[88] Mr Singh now is critical of the short notice of the 13 December meeting. However, he knew the week beforehand that a PIP was proposed and then at the meeting he decided to sign it. Mr Singh also had a reasonable opportunity afterwards to raise issues about the PIP. No unfairness was caused by the short notice for the meeting.

[89] Mr Singh says that when he attended work the day after signing the PIP, there was no engineer assigned to him. He says that it confirmed that the process was a sham. He then went off work and was certified medically unfit for work. However, the evidence does not support Mr Singh's contention that the PIP was a sham. It was a reasonable response to identified performance issues.

[90] In January Mr Singh sought to transfer to another team and to replace the PIP with a month-long orientation programme. Synlait considered but declined both requests. It breached no duty in doing so.

[91] Mr Singh resigned before the PIP had any substantive effect, given he was absent from work from the day after he signed it. In *DBM Medical Ltd v Gaarkeuken*,³ the Court observed that a resignation to avoid an upcoming PIP is not likely to be grounds for a constructive dismissal.

[92] Overall, Synlait did not breach any duty owed to Mr Singh by its decision to place him on a PIP.

Summary – a resignation, not a constructive dismissal

[93] I accept that Mr Singh was unhappy with Mr Davis personally and Synlait's response to and proposed management of concerns about his ability. He resigned because he was not happy to return to Blending and Canning under Mr Davis. However, as the Employment Court noted in *DBM Medical Ltd*:⁴

³ *DBM Medical Ltd v Gaarkeuken* [2025] NZEmpC 209 at [38].

⁴ At [38].

While employees can be unhappy with matters within their workplace, and resign as a result, that does not necessarily mean the resignation is a constructive dismissal.

[94] The matters relied on by Mr Singh, separately or together, are not grounds for a constructive dismissal.

Other claims

[95] Mr Singh says that Synlait did not deal with him in good faith and he has a personal grievance of unjustified disadvantage under s 103(1)(b) of the Employment Relations Act 2000.

[96] In his 22 September email, Mr Singh criticised the conduct of the meeting and disputed the concerns raised with him about his work. As set out above, the concerns in part were based on undisclosed emails to Mr Davis. However, I accept that Mr Davis referred to the substance of the concerns during the meeting.

[97] The email of 22 September was sufficient to raise Mr Singh's personal grievance about the conduct of the meeting.⁵ I do not accept Synlait's submission that Mr Singh did not raise a grievance about the meeting conduct in time.

[98] The defect in Synlait's process with Mr Singh in the meeting was to outline the concerns in the emails but not provide him with copies. However, that was a minor defect, and it did not result in Mr Singh being treated unfairly. Synlait sufficiently outlined all its concerns and Mr Singh had a reasonable opportunity to respond.

[99] Synlait changed Mr Singh's shift pattern before the 22 September email, but he did not raise any concern about that change in his email. In any event, there is no evidence to suggest that Mr Singh suffered any disadvantage due to the change in shift pattern. Mr Singh did not raise a personal grievance about the shift change and, in the absence of a proven disadvantage, it could not support a grievance claim.

[100] Mr Singh was later transferred to Central Maintenance. He never raised a personal grievance about that transfer, nor was he disadvantaged by it.

⁵ *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC 132.

[101] Ms Singh is critical that Synlait raised Red Line hygiene issues with him. He did not raise a personal grievance claim about it at the time. In any event, the description in the 24 October letter of expectation accurately sets out the Red Line issues raised with him and Synlait's actions in response. Synlait dealt with those and other hygiene matters in a reasonable manner at the time.

[102] Mr Singh says that Synlait was selective about the information it relied on for the PIP, without investigating conflicting information. He says this undermines the reliability of Synlait's assessment and was inconsistent with good faith obligations. He says that the PIP was initiated without prior warnings and he was not given a meaningful opportunity to succeed under it.

[103] The PIP was not a disciplinary process and it was reasonable for Synlait to initiate the PIP without a prior warning.

[104] In any event, the difficulty with Mr Singh's complaints now is that the process of finalising then working under the PIP ended by his resignation. The documents show that Synlait considered and responded reasonably to the points raised by Mr Singh about the PIP.

[105] Mr Singh is critical about the lack of training and induction he received, together with Synlait making an early judgment about his skills and qualifications. This has been dealt with above.

[106] Mr Singh says that Synlait failed to follow up, investigate or take any remedial action in response to the 21 December meeting with Ms Hyett. I accept the notes made by Ms Hyett accurately summarise the meeting. Ms Hyett appropriately responded at the time.

[107] The notes record mention of Mr Singh's concerns about discrimination in relation to comments by Mr Davis about Mr Singh's qualifications and hygiene. Ms Hyett reassured Mr Singh and his wife that the hygiene issues were about adherence to critical hygiene policies in the food manufacturing environment. There is no evidence to support the view that Mr Singh was treated differently with respect to the hygiene issues for any unlawful reason. I have already addressed the qualification point.

Conclusion

[108] Mr Singh's employment ended by his resignation and he was not constructively dismissed.

[109] Mr Singh's claims to the extent they are properly before the Authority fail.

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

[111] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Synlait may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. Mr Singh then has 14 days to lodge any reply memorandum.

[112] 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.⁶

Philip Cheyne
Member of the Employment Relations Authority

⁶ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1