

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2026] NZERA 288
3334280

BETWEEN	LYON KAWHAARU Applicant
AND	THE DECK TAHUNA LIMITED First Respondent
AND	DEBBIE MARIE WILKES Second Respondent
AND	KEVIN ROBERT WILKES Third Respondent

Member of Authority:	Alyn Higgins
Representatives:	Miranda Anderson, advocate for the Applicant Kevin and Debbie Wilkes for the Respondents
Investigation Meeting:	10 February 2026 in Nelson
Submissions received:	19 February and 1 March 2026 from the Applicant 24 February 2026 from the Respondent
Determination:	8 May 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Mr Lyon Kawhaaru, says that he was unjustifiably dismissed from his employment with the first respondent, The Deck Tāhuna Limited, which operates a café at the Tāhuna beach holiday park in Nelson. Mr Kawhaaru claims that his dismissal occurred on receiving an email from the second and third respondents on 6 June 2024 following an incident at the café involving a customer. Mr Kawhaaru

claims that his dismissal was both substantively and procedurally unjustified. The second and third respondents are the directors and shareholders of the first respondent.

[2] Mr Kawhaaru is claiming compensation for hurt and humiliation and lost wages. Mr Kawhaaru is also seeking a penalty against the first respondent for alleged breaches of good faith and against the second and third respondents for instigating, aiding and abetting the alleged breaches of good faith and employment agreement terms by the first respondent.

[3] The respondents say that Mr Kawhaaru was not dismissed and abandoned his employment or opted to end his employment when he did not report for work for his next rostered shift following the email on 6 June 2024.

The Authority's investigation

[4] For the Authority's investigation written witness statements were lodged from Mr Kawhaaru and for the respondents from Mrs Debbie Wilkes and Mr Kevin Wilkes. All witnesses answered questions under oath or affirmation from me and the applicant's representative. Written closing submissions were provided after the investigation meeting.

[5] As permitted by s 174E of the Act this determination states findings of fact and law, expresses conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received but all information provided in the course of the investigation has been considered.

The issues

[6] The issues requiring investigation and determination were:

- (a) Was Mr Kawhaaru unjustifiably dismissed?
- (b) If Mr Kawhaaru was unjustifiably dismissed, what remedies should be awarded, considering:
 - (i) Compensation for humiliation, loss of dignity, and injury to feelings;
 - (ii) Lost wages or any other entitlements (including any unpaid wages or holiday pay) lost as a result of any grievance subject to evidence from Mr Kawhaaru to mitigate loss.

- (c) If any remedies are awarded, should they be reduced (under s124 of the Act) for any blameworthy conduct by Mr Kawhaaru that contributed to the situation giving rise to his grievance?
- (d) Has the first respondent breached Mr Kawhaaru's employment agreement and is this a breach of good faith under s4A of the Act?
- (e) Are any of the second or third respondents liable under s134 (2) of the Act for inciting or instigating, aiding or abetting any breach of Mr Kawhaaru's employment agreement?
- (f) Should any penalties be awarded for any breaches and if so, what quantum and to whom?
- (g) Should either party contribute to the costs of representation of the other party?

Relevant Background

[7] Mr Kawhaaru commenced employment with the first respondent as a café assistant on 30 October 2023. Mr Kawhaaru had a written employment agreement with the first respondent.

[8] On 4 June 2024, Mr Kawhaaru was working in the café. A customer, QDM¹, entered the café and proceeded to the counter where Mr Kawhaaru was working.

[9] Upon approaching the counter and ordering, Mr Kawhaaru engaged in conversation with QDM. Mr Kawhaaru stated that he had always had good and friendly relations with QDM who would sometimes confide in Mr Kawhaaru for support and advice with things going on in his life.

[10] Mr Kawhaaru says that QDM became agitated and lunged at Mr Kawhaaru when he tried to calm QDM down during the conversation. Mr Kawhaaru says that he felt shocked by this sudden action from QDM but considered that he was agitated about the matter he was discussing with Mr Kawhaaru and assumed that QDM was probably venting his anger and frustration toward Mr Kawhaaru.

¹ The identification of the individual is not pertinent to determination of the matter and the name has been replaced by three letters chosen at random and does not refer to any initials of other information about the individual.

[11] Mr Kawhaaru says that he raised his hands, opened his palm outwards as to imply that he didn't want any trouble as a non-threatening body gesture. Mr Kawhaaru also placed his hands around QDM's throat and this forced QDM to step back. Mr Kawhaaru says that he immediately apologised and explained that he meant QDM no harm and that he was just trying to help. Mr Kawhaaru says he wished QDM a good day and resumed work and QDM left the cafe. The exchange was recorded on the café's CCTV, which was presented and viewed as evidence but there is no audio component to the recording.

[12] On 5 June 2024, Mrs Wilkes met with QDM who advised her that he wanted to lay a formal complaint about Mr Kawhaaru's actions the previous day.

[13] At 11.30am on Thursday 6 June Mrs Wilkes asked Mr Kawhaaru by text message to email her his account of what happened on Tuesday 4 June 2024. At 12.51pm Mr Kawhaaru emailed Mrs Wilkes his account of the interaction with QDM on Tuesday. Mr Kawhaaru also sent Mrs Wilkes a text message to say that he had emailed his statement of the incident. In a further text message the following minute, Mr Kawhaaru said to Mrs Wilkes "I'll see you on Saturday". Mr Kawhaaru did not receive a reply to this message until the following day, 7 June 2024.

[14] Around 5 hours later, at 4.50 PM on 6 June 2024, Mr Kawhaaru received an email from Mr and Mrs Wilkes, which was also produced as evidence. This email thanked Mr Kawhaaru for his report of the incident. Mr Kawhaaru was also advised of police involvement including requesting a copy of the video footage. The email then went on to say that this drastically changed the situation and comes under serious misconduct in Mr Kawhaaru's employment agreement. The email then included the following clause from Mr Kawhaaru's employment agreement:

Ending employment: serious misconduct

If after following a fair process, the employer concludes that the employee has engaged in serious misconduct, the employee may be dismissed without notice.

Serious misconduct is behaviour that fundamentally compromises the employer's trust and confidence in the employee. Serious misconduct includes but is not limited to:

- theft
- sexual or other assault
- harassment of a work colleague or customer
- use of illegal drugs at work

- repeated failure to follow a reasonable instruction
- deliberate destruction of the employer's property
- actions that seriously damage the employer's reputation
- a serious breach of the employer's policies and procedures

[15] This email further said that the Wilkes understood from QDM that he will be seeking the police to issue Mr Kawhaaru with a trespass notice and with that in mind Mr Kawhaaru was advised that he would not be able to attend the café premises. The email then said that the Wilkes would be happy to meet with Mr Kawhaaru and go through his statement but as it is resulting in a police complaint for assault said "I do believe it will result in instant dismissal effective from 4th of June."

[16] Mr Kawhaaru says from this that he understood that his employment had been terminated, with a termination date being backdated to 4 June 2024. Mr Kawhaaru responded with an email a few minutes later at 4.55 PM saying that is "quite incredible – unbelievable actually" and that he would be seeking employment advice regarding challenging the decision.

[17] By further email at 5.03pm a response from the Wilkes said *inter alia* that they supported Mr Kawhaaru seeking advice but that "Unless QDM changes his mind I have no option". Mr and Mrs Wilkes provided Mr Kawhaaru with the police investigating officer's details and said in a subsequent email "This is completely out of my control now."

[18] Mr Kawhaaru was never charged with any assault, and the investigating officer called Mr Kawhaaru to confirm that. Mr Kawhaaru also provided a copy of the police report as evidence. Mr Kawhaaru also never received a trespass notice. On 13 June 2024 Police provided a case summary report to Mr Kawhaaru with the outcome that no charges would be made but Mr Kawhaaru did not provide this case summary report to the respondents. The respondents made a request on Police for the case summary report and a redacted version was provided to them by email on 5 September 2024.

[19] Mr Kawhaaru says that he was never provided with a copy of the video footage from the incident on 4 June 2024 but was shown this at the investigation meeting.

[20] Mr Kawhaaru says that despite the quoted clause from his employment agreement stating "after a fair process" no such process was followed. Mr Kawhaaru

was never invited to attend any meeting to discuss the employer's proposed way of responding to the situation before deciding that the matter with QDM amounted to serious misconduct and the resulting consequences, namely instant (or summary dismissal).

[21] The respondents' position is that they expected Mr Kawhaaru to approach them to discuss the matter and way forward and that they expected Mr Kawhaaru to come into the workplace and have this discussion. When Mr Kawhaaru did not do so the respondents considered that Mr Kawhaaru had opted to end his employment.

[22] Mr Kawhaaru says that before the emails of 6 June 2024 he was expecting to be at work on Saturday 8 June 2024 being his next rostered shift. In reply to Mr Kawhaaru's text message of 6 June at 10.56am about seeing Mrs Wilkes on Saturday, on Friday 7 June 2024 Mr Kawhaaru received a text message from Mrs Wilkes that said, "I know it's not nice but I do care for you a lot and I feel I have had all my choices removed." Mr Kawhaaru did not attend his Saturday shift. The text message from Mrs Wilkes did not mention anything about a meeting.

[23] On Monday 10 June 2024, Mr Kawhaaru received his final payslip detailing his holiday pay entitlements after this had been requested to occur on 9 June 2024. On 12 June 2024 Mr Kawhaaru requested via text message to Mrs Wilkes a breakdown of his final pay, which was subsequently provided by the first respondent's payroll provider.

[24] Mr Kawhaaru says that he was informed by his representative after his personal grievance was filed that the first respondent had said that he had abandoned his employment but says that he never abandoned his employment and if he knew he still had a job then he would have shown up to work on Saturday 8 June 2024. Mr Kawhaaru says that the respondents also never reached out to find out why he wasn't at work on the Saturday.

Was Mr Kawhaaru dismissed?

[25] The first issue I need to determine for Mr Kawhaaru's unjustifiable dismissal claim is, was he in fact dismissed?

The test for dismissal

[26] Dismissal is the termination of employment at the initiative of the employer, being an unequivocal act that amounts to a sending away from the employment.² The burden of establishing that there was in fact a dismissal rests with Mr Kawhaaru.

[27] In some cases, an employer may say it did not intend to dismiss an employee but the language or actions used in an exchange with an employee can still be a sending away and amount to a dismissal.³ The assessment of whether the employer's statements are a sending away when it may not have been intended to be is a question of fact based on an analysis of not just the statements made but also the circumstances giving rise to them. As stated by Judge Holden in *Cornish Truck & Van Limited v Gildenhuis*:⁴

[45] The test is an objective one: was it reasonable for somebody in Mr Gildenhuis' position to have considered that his or her employment had been terminated?

[28] Applying these two elements, I must determine what was said in the course of the correspondence between the Wilkes and Mr Kawhaaru on 6 June 2024 and decide:

- (a) has Mr Kawhaaru established an unequivocal sending away by the respondents? or, if not
- (b) were the actions of the respondents such that it would be reasonable for a person in Mr Kawhaaru's position to interpret them as a sending away (and therefore termination)?

[29] If a dismissal is found I must then consider on an objective basis whether the employer's actions and how it acted were what a fair and reasonable employer could have done in all the circumstances at the time the action occurred.⁵ This burden is on the employer.

² See for example *Wellington Clerical Union v Greenwich* [1983] ACJ 965 (AC).

³ See for example, *No 1 Autohaus Ltd v Wrigley EmpC* Auckland AEC75/97, 18 July 1997 where the words "Good God, look at you, you can just go" were held to be a dismissal.

⁴ *Cornish Truck & Van Limited v Gildenhuis* [2019] NZEmpC 6 at [45].

⁵ Employment Relations Act 2000 s103A (2)

Was Mr Kawhaaru dismissed?

[30] Mr Kawhaaru claims that he was unilaterally and summarily dismissed by the actions of the respondents by email on 6 June 2024. Mr Kawhaaru further claims that the dismissal was both substantively and procedurally unjustifiable and termination without notice was simply not within the range of outcomes available to a fair and reasonable employer.

[31] The respondents say that Mr Kawhaaru was not dismissed and chose to abandon or end his employment when he did not contact the respondents to meet and discuss the allegation of serious misconduct and did not report for work for a rostered shift on Saturday 8 June 2024.

[32] Whether a dismissal is justifiable is also determined by the Authority inquiring into the employer's actions, both as to whether there were reasonable grounds for the dismissal and whether the process taken to reach that decision was fair (including whether minimum standards of procedural fairness as set out at s 103A (3) of the Act were met). The Authority is required to objectively assess whether those actions were what a fair and reasonable employer could have done in all the circumstances at the time of the dismissal.⁶

[33] A fair and reasonable employer is also expected to comply with its statutory good faith obligations and particularly the requirement for both parties to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are responsive and communicative.⁷ Section 4 (1A) (c) of the Act is also relevant and provides:

without limiting paragraph (b), requires an employer who is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment of 1 or more of his or her employees to provide to the employees affected—

- (i) access to information, relevant to the continuation of the employees' employment, about the decision; and

⁶ Employment Relations Act 2000 s103A (2)

⁷ Employment Relations Act 2000 s4 (1A) (b), *Simpsons Farms Ltd v Aberhart* [2006] 1 ERNZ at [65].

- (ii) an opportunity to comment on the information to their employer before the decision is made.

[34] At the investigation meeting Mrs Wilkes said that the nature of the email was to commence a process over the 4 June incident with QDM and the intention on sending the 6 June email to Mr Kawhaaru was for Mr Kawhaaru to then contact Mrs Wilkes to discuss the incident at the café on 4 June 2024 or, as Mrs Wilkes put it, begin a legal process and that Mr Kawhaaru was not actually ever dismissed.

[35] Mrs Wilkes said that she contacted Employment New Zealand explained the situation that had happened at the café on 4 June and was advised to state the part of the employment agreement that was allegedly in breach. Mrs Wilkes also said that she was advised to suspend Mr Kawhaaru on pay while the matter was being addressed. Mr Kawhaaru's employment agreement does provide for suspension while investigating allegations such as serious misconduct. However, suspension did not happen because she expected Mr Kawhaaru to contact her and meet and discuss the situation.

[36] Mrs Wilkes says that had Mr Kawhaaru made contact he would have been informed fully of the process but because Mr Kawhaaru did not do so she was denied the chance to follow a process. Mrs Wilkes then relied on abandonment when Mr Kawhaaru did not report for work on 8 June 2024 and assumed that Mr Kawhaaru had been trespassed and could not attend work as a result but again the respondents took no action to ascertain whether or not Mr Kawhaaru had actually been trespassed.

[37] If Mrs Wilkes wanted and expected Mr Kawhaaru to meet and discuss the 4 June incident then there may have been an opportunity for explanation in the text sent to Mr Kawhaaru on 7 June at 10.56am regarding Mr Kawhaaru working his rostered shift on Saturday 8 June. For example, Mrs Wilkes could have made it clear that she expected Mr Kawhaaru to meet and discuss the situation. Instead, Mrs Wilkes said in the text message that she has had her "choices removed."

[38] Mr Kawhaaru's employment agreement does provide for abandonment if the employee is away from work for 3 working days in a row without telling the employer. However, the clause also states that the employer is also required to make reasonable efforts to contact the employee to clarify the reason for their absence and whether they intend to return to work. Only then can the employer consider the employment as abandoned. Mr Kawhaaru had not been away from work for 3 working days in a row

and neither did the employer attempt to contact Mr Kawhaaru when he did not report for work.

[39] Mr Kawhaaru did respond to the 6 June email from Mrs Wilkes a few minutes later to say that he would seek employment advice regarding challenging “this decision”. From this it appears that Mr Kawhaaru’s view was that the email from Mrs Wilkes on 6 June at 4.50pm clearly amounted to his summary dismissal effective 4 June 2024. Mr Kawhaaru took the text message he received from Mrs Wilkes on 7 June stating that her choices had been removed, which was in response to Mr Kawhaaru’s text on 6 June saying that he would “see you on Saturday” as confirmation that no other options were then available and that his employment had come to an end.

[40] The respondents also say that Mr Kawhaaru premeditated the whole situation in order to take the respondents to court. I am not convinced of this. Very little evidence to support this claim from the respondents was put forward. Mr Kawhaaru also said that he mostly enjoyed working at the café, took advice on the situation over his employment and experienced a number of personal and financial difficulties following the ending of his employment. In such circumstances it does not seem credible that Mr Kawhaaru schemed up a situation that resulted in the subsequent impacts described.

Conclusion on dismissal

[41] Based on my findings of what occurred, I conclude that:

- (a) Mr Kawhaaru was dismissed by email at 4.50pm on 6 June 2024 when told that he would not be able to return to the premises and that instant dismissal effective from 4 June 2024 will result.
- (b) While the email from Mrs Wilkes stated the part of Mr Kawhaaru’s employment agreement under which the respondent considered that the 4 June 2024 incident with QDM may have sat, the email did not state that the respondents wanted to follow a process and what that process was to be. This is a well established responsibility of an employer running a disciplinary process and the serious misconduct clause itself refers to the employer reaching a conclusion after “following a fair process.”
- (c) If Mrs Wilkes wanted to have a meeting to discuss the allegation with Mr Kawhaaru before deciding whether or not Mr Kawhaaru’s actions actually

amounted to serious misconduct and possible termination of his employment then the notification email sent by Mrs Wilkes at 4.50pm could (and should) have expressly stated this. Mr Kawhaaru would then have been clearly informed of the employer's process and that he was required to attend a meeting to discuss the allegation of serious misconduct and have an opportunity to fully explain himself.

- (d) It would also have been open to Mrs Wilkes to propose, potentially in the same email, that Mr Kawhaaru be placed on paid suspension while the process was underway and to allow time for Mr Kawhaaru to take advice and participate in the employer's process.
- (e) Mrs Wilkes' actions in not explaining what she actually had meant was not consistent with what a fair and reasonable employer could have done in all of the circumstances at the time.
- (f) It was therefore reasonable for Mr Kawhaaru to have concluded that his employment had been terminated by the email and text message correspondence with Mrs and Mr Wilkes on 6 June 2024. This outcome was confirmed when Mrs Wilkes told Mr Kawhaaru in a text message that her choices had been removed.
- (g) Mr Kawhaaru did not abandon his employment and was dismissed from his employment on 6 June, effective from 4 June 2024. Further, the respondents did not follow the employment agreement clause in respect of abandonment. Specifically, the respondents did not attempt to contact Mr Kawhaaru to clarify the reason for his absence.
- (h) Confirmation of the ending of Mr Kawhaaru's employment came with the paying of his final pay on 10 June 2024.

[42] As a result, Mr Kawhaaru has established a personal grievance for unjustified dismissal.

What remedies should be awarded to Mr Kawhaaru in relation to his unjustified dismissal?

[43] As Mr Kawhaaru has been successful with his unjustified dismissal personal grievance, I must turn to consider what remedies he may be entitled to in terms of those provided for under s 123 of the Act.

Compensation

[44] Compensation is awarded pursuant to s 123(1)(c)(i) of the Act and is for the humiliation, loss of dignity and injury to feelings that an employee suffers because of the unjustified actions.

[45] Mr Kawhaaru provided evidence on the impact of being dismissed including distress as a result of losing a job that gave him purpose after arriving in Nelson. Mr Kawhaaru also said that the sudden shock of being dismissed without a full investigation and process had a personal impact on him including Mr Kawhaaru questioning his worth and undermining his overall confidence. Other impacts described included struggles with sleep, loss of appetite and the stress of lost income.

[46] I am satisfied that Mr Kawhaaru was adversely impacted by the ending of his employment and I accept Mr Kawhaaru's evidence of impact. Considering the evidence proffered and in the overall circumstances, I consider that the impact on Mr Kawhaaru in the circumstances warrants compensation under s 123(1)(c)(i) of the Act. I fix that at \$10,000.

Reimbursement

[47] Pursuant to sections 123 and 128 of the Act if an employee has a personal grievance and they have lost remuneration because of that grievance then they are entitled to their actual lost remuneration or 3 months' ordinary time remuneration. This provision is to attempt to restore the employee's loss of wages had the unjustified termination not occurred.

[48] Mr Kawhaaru obtained new employment commencing on 23 September 2024 some 16 weeks after his dismissal and has claimed 13 weeks' lost wages. Mr Kawhaaru claims 30 hours per week at \$23.15 gross per hour for 13 weeks, which amounts to \$9,028.50 gross. On this amount Mr Kawhaaru also claims holiday pay of \$722.28 gross and KiwiSaver contributions of \$292.52.

[49] Mr Kawhaaru produced as evidence proof of his efforts to mitigate his loss and find alternative work. There was no rebuttal of Mr Kawhaaru's efforts to find alternative work and I am satisfied as to Mr Kawhaaru's claim as to wages lost as a

result of his grievance and the actions of the respondents. I order The Deck Tahuna Limited to make payment to Mr Kawhaaru of the sum of \$9,028.50 gross as compensation for wages lost as a result of the grievance.

[50] I further order The Deck Tahuna Limited to make payment to Mr Kawhaaru of holiday pay of \$722.28 and KiwiSaver contributions of \$292.52 pursuant to s 123(1)(b) of the Act which provides for the award of “or other money lost” as a result of the grievance. As Mr Kawhaaru would have received holiday pay calculated at the rate of 8% of gross earnings and his final payslip details KiwiSaver contributions, it is proper that I also award this. Orders are made accordingly.

Contribution

[51] As I have awarded remedies to Mr Kawhaaru, I must also consider whether he contributed to the situation that gave rise to his grievance.⁸ This assessment requires me to determine if Mr Kawhaaru behaved in a manner that was culpable or blameworthy, and whether this behaviour contributed to his grievance and if so to reduce remedies awarded.⁹

[52] Mr Kawhaaru detailed his work history in customer service roles, and while this was his first role in a hospitality environment, accepted that his actions when confronted with a clearly agitated customer could have been better and particularly in an aggravated situation and when the café was open for business and others were present. I was not satisfied that Mr Kawhaaru needed to touch QDM’s throat during the incident and had he not done so then this situation may very well not have arisen. Taking this into consideration I consider that a reduction in remedies for contribution to the situation by Mr Kawhaaru is appropriate and I fix that at 25 percent. As a result, all financial remedies awarded are reduced by 25%.

⁸ Employment Relations Act 2000, s 124

⁹ See for example *Xtreme Dining Ltd v Dewar* [2016] NZEmpC 136

Should any penalties be awarded for any breaches and if so, what quantum and to whom?

[53] Mr Kawhaaru is also seeking a penalty against the first respondent for alleged breaches of good faith and against the second and third respondents for instigating, aiding and abetting the alleged breaches of good faith and employment agreement terms by the first respondent pursuant to s134 of the Act. Mr Kawhaaru also seeks that any penalties be paid to him personally instead of the Crown.

[54] The alleged breaches attract a maximum penalty of \$20,000.00 against a company and up to \$10,000 in the case of an individual.¹⁰

[55] Section 135(5) of the Act provides the timeframe for a penalty action to be commenced. Recovery of a penalty must be commenced within 12 months after the earlier of either the date when the cause of action first became known or the date when the cause of action should reasonably have become known to the person bringing the action.¹¹ Mr Kawhaaru notified the respondents of their liability for a penalty in the amended Statement of Problem dated 2 April 2025 and is within the timeframes for recovery of penalties under the Act.

[56] Even though a penalty might technically be available, I also have to be satisfied that the imposition of any penalty would meet the purposes and principles of penalties generally. In summary, the purpose of penalties is punitive. They are not imposed to remedy a loss, but to punish the person who has breached a duty under the Act and to deter and condemn that behaviour.

[57] The breaches of the employment agreement were also aspects relied upon by Mr Kawhaaru for his personal grievance. I have already found that Mr Kawhaaru was unjustifiably dismissed by the actions of his employer, the first respondent, and I have awarded remedies accordingly. As Chief Judge Inglis said in the Employment Court case of *Pyne v Invacare New Zealand Ltd*:

¹⁰ Employment Relations Act 2000 s 135 (2)

¹¹ Employment Relations Act 2000 s135 (5)

there would need to be a special facet of the breach that calls for punishment of the employer on top of compensation to the employee.¹²

[58] No such grounds were made out in evidence. A penalty against the first respondent is not appropriate.

[59] The claim that a penalty be imposed on the second and third respondents was also not well made out. What Chief Judge Colgan said in *Strachan v Moodie* is applicable:

To render someone who is not the employer liable for aiding and abetting an employer's breaches, a high standard of proof is required.¹³

[60] Mr Kawhaaru has not put forward any actual grounds to support the notion that the second and third respondents instigated, aided and abetted the alleged breaches of good faith and employment agreement terms. The second and third respondents acted on behalf of the first respondent, which was necessary as the first respondent is a limited liability company and their actions were undertaken as agents of that first respondent company.

[61] Stepping back to look at the matter objectively and considering I have already made an award of compensation to Mr Kawhaaru for his personal grievance against the first respondent, I decline to impose any penalties in this case. Mr Kawhaaru's claim for penalties is not made out.

Summary of orders

[62] Mr Kawhaaru has a personal grievance in that he was unjustifiably dismissed from his employment with The Deck Tahuna Limited.

[63] The Deck Tahuna Limited is ordered to pay to Lyon Kawhaaru within 28 days of the date of this determination:

- (a) Lost wages of \$6,771.38 gross;
- (b) Holiday pay of \$541.71 gross and KiwiSaver contributions of \$219.39

¹² *Pyne v Invacare New Zealand Ltd* [2023] NZEmpC 179 at [63] and [64]

¹³ *Strachan v Moodie* [2012] NZEmpC 95 at [150]

- (c) Compensation for the humiliation, injury to feelings and loss of dignity of \$7,500.00;

Costs

[64] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. The investigation meeting took a full day.

[65] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Kawhaaru may lodge, and then should serve on the respondents, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum the respondents will then have 14 days to lodge any reply memorandum.

[66] 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.¹⁴

Alyn Higgins
Member of the Employment Relations Authority

¹⁴ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1