

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 292  
3397544  
3400385

BETWEEN	LAYTH ABU-LABAN Applicant in 3397544
AND	EVEREST CORPORATION LIMITED Respondent in 3397544
BETWEEN	EVEREST CORPORATION LIMITED Applicant in 3400385
AND	LAYTH ABU-LABAN Respondent in 3400385

Member of Authority:	Simon Greening
Representatives:	Danny Gelb, advocate for the Applicant Abdullah Khan for the Respondent
Investigation Meeting:	9 April 2026
Submissions received:	9 April 2026 from the Applicant 10 April 2026 from the Respondent
Determination:	12 May 2026

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment Relationship Problem**

[1] Layth Abu-Laban commenced employment with Everest Corporation Limited (trading as Direct Tyres & Auto) (ECL) in the position of automotive technician on 10 June 2024.

[2] ECL sells tyres and offers tyre servicing and specialist repairs to its customers.

[3] ECL is a small business. Abdullah Khan is a director of ECL and manages the day-to-day operations of the company.

[4] The employment relationship concluded on 11 June 2025. Mr Abu-Laban says he was unjustifiably dismissed by ECL. In addition to his personal grievance for unjustified dismissal, Mr Abu-Laban says ECL did not provide his wages and time record, or holiday and leave record, upon request.

[5] Mr Abu-Laban seeks compensation for hurt, humiliation, and injury to feelings, and reimbursement of lost remuneration arising from his personal grievance. In addition, he seeks penalties against ECL for breaching s 130(2) of the Employment Relations Act 2000 (the Act), and s 82(1) of the Holidays Act 2003 (HA03).

[6] ECL has also brought employment relationship problems to the Authority for determination. ECL says that Mr Abu-Laban breached s 4 of Act because he did not act in good faith towards ECL, misused company property, demonstrated poor workmanship and solicited customers.

[7] ECL seeks penalties and damages against Mr Abu-Laban on the basis that he breached particular clauses in his employment agreement and ECL sustained losses as a result of these breaches.

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

[8] For the Authority's investigation written witness statements were lodged by Mr Abu-Laban, Mr Khan, Ms Shereen Al-Yacoub, Mr Naveed Khan and Mr Razim Salim. The witnesses answered questions from me under oath or affirmation and from Mr Abu-Laban's representative.

[9] 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**

- [10] The issues requiring investigation and determination are:
- (a) Was Mr Abu-Laban unjustifiably dismissed by ECL?
  - (b) Did ECL comply with s 130(2) of the Act and, if not, should a penalty be issued?
  - (c) Did ECL comply with s 82(2) of the HA03 and, if not, should a penalty be issued?
  - (d) Did Mr Abu-Laban breach s 4 of the Act and, if so, should a penalty be issued?
  - (e) Did Mr Abu-Laban breach clauses in his individual employment agreement, in respect of misuse of company property, poor workmanship, or soliciting customers?
  - (f) If so, should a penalty be issued and/or should damages be granted in favour of ECL?
  - (g) If the personal grievance claim is established, then is Mr Abu-Laban entitled to compensation pursuant to s 123(1)(c)(i) of the Act and/or lost remuneration pursuant to s 128(2) of the Act?
  - (h) If the personal grievance claim is established and a remedy is awarded, should this remedy be reduced pursuant to s 124 of the Act?
  - (i) Is either party entitled to an award of costs?

## **Was Mr Abu-Laban unjustifiably dismissed by ECL?**

[11] The legal test for determining whether a dismissal is justified, is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred.<sup>1</sup>

[12] In applying this test, the Authority must consider:<sup>2</sup>

- (a) having regard to the resources available to the employer, whether the employer sufficiently investigated the allegations against the employee before dismissing the employee; and

---

<sup>1</sup> Employment Relations Act 2000, s 103A(2).

<sup>2</sup> Employment Relations Act 2000, s 103A(3).

- (b) whether the employer raised the concerns that the employer had with the employee before dismissing the employee; and
- (c) whether the employer gave the employee a reasonable opportunity to respond to the employer's concerns before dismissing the employee; and
- (d) whether the employer genuinely considered the employee's explanation before dismissing the employee.

[13] Mr Khan invited Mr Abu-Laban to a meeting on 11 June 2025. At this meeting Mr Khan told Mr Abu-Laban that his employment was concluding on the same day.

[14] At the investigation meeting, Mr Khan said he verbally advised Mr Abu-Laban approximately five weeks earlier, that the decision had been made to not renew his contract, and therefore Mr Abu-Laban's employment would come to an end on 11 June 2025.

[15] Mr Khan says he lost trust and confidence in Mr Abu-Laban because he had formed the view that Mr Abu-Laban had solicited customers, promoted his own mechanical services business on Facebook, and demonstrated poor workmanship on several occasions.

[16] Therefore, because Mr Khan had lost trust and confidence in Mr Abu-Laban, he decided to not renew Mr Abu-Laban's one year contract.

[17] Mr Abu-Laban's employment agreement did not need to be annually renewed by ECL, because Mr Abu-Laban was employed on a permanent basis.

[18] Mr Abu-Laban was unjustifiably dismissed because ECL did not put the allegations to Mr Abu-Laban, seek his response, or give Mr Abu-Laban an opportunity to respond to the allegations.

[19] In addition, ECL did not provide evidence to Mr Abu-Laban in support of the allegations it made against him.<sup>3</sup>

---

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

[20] Mr Abu-Laban did not know what the meeting on 11 June 2025 was about, or that his employment would be terminated during the meeting. ECL did not provide him with any information before, or during, the meeting.

[21] ECL did not comply with any of the s 103A(3) tests, and therefore the dismissal is unjustified.<sup>4</sup>

**Did ECL comply with s 130(2) of the Act and, if not, should a penalty be issued?**

[22] Following the meeting on 11 June 2025, Mr Abu-Laban sent a text message to Mr Khan enquiring about payment of wages for the previous week.

[23] Mr Khan replied to this text message noting that because his employment with ECL had now concluded, he was unable to provide any documentation to Mr Abu-Laban.

[24] ECL did provide Mr Abu-Laban with a pay item transaction report. This report set out the payments made to Mr Abu-Laban for salary and statutory entitlements during the period of his employment with ECL.

[25] It is not clear that Mr Khan understood that Mr Abu-Laban, by sending this text message, was requesting his wages and time record. Therefore, I am not satisfied that ECL breached s 130(2) of the Act.

**Did ECL comply with s 82(2) of the HA03 and, if not, should a penalty be issued?**

[26] There is insufficient evidence to establish that Mr Abu-Laban sought his holiday and leave record from ECL. Therefore, I am not satisfied that ECL breached s 82(2) of the HA03.

**Did Mr Abu-Laban breach s 4 of the Act and, if so, should a penalty be issued?**

[27] There is no evidence before the Authority to support a claim that Mr Abu-Laban breached s 4 of the Act. I decline ECL's penalty application.

---

<sup>4</sup> *Angus v Ports of Auckland Limited* [2011] NZEmpC 160 at [26].

**Did Mr Abu-Laban breach clauses in his individual employment agreement, in respect of misuse of company property, poor workmanship, or soliciting customers?**

[28] The allegations regarding poor workmanship, misuse of company property and solicitation of customers were not raised by ECL as disciplinary issues during the time of Mr Abu-Laban's employment with the company. Mr Abu-Laban did not receive any written warnings. Mr Khan maintains that Mr Abu-Laban did receive verbal warnings, especially in relation to poor workmanship.

[29] Mr Khan says that Mr Abu-Laban damaged a steering wheel. Mr Abu-Laban says it was damaged during a routine wheel alignment. The tool Mr Abu-Laban was required to use, had been modified by ECL. When Mr Abu-Laban turned the vehicle off, the steering wheel automatically retracted, and the protruding nut struck it, gouging the surface and leaving visible damage. ECL was not able to conclude Mr Abu-Laban was responsible for the damage to the steering wheel. This is because ECL required him to use a modified tool which caused the situation Mr Abu-Laban found himself in when attempting to undertake the wheel alignment.

[30] ECL fitted a van with modified tyres. Mr Abu-Lan used this van for work purposes. There was a blowout in the tyre. Mr Abu-Laban was not responsible for fitting the tyres; however, he did repair the valve at his own expense. Mr Abu-Lan was not responsible for the blowout in the tyre.

[31] A customer arrived at the workshop with several boxes of tyres in their car. While Mr Abu-Laban was assisting the customer with removing the tyres from the car, a wheel fell out, narrowly missing Mr Abu-Laban's legs and feet. The incident was due to the box not being properly secured by the customer. Mr Abu-Laban was not at fault.

[32] There is no evidence in support of the allegation that Mr Abu-Laban was soliciting customers. Mr Abu-Laban does not operate his own business. Mr Abu-Laban was an apprentice automotive technician who was also studying at Unitec at the time of his dismissal.

[33] Mr Abu-Laban worked on Mr Khan's motorbike, which was based at the workshop. Mr Abu-Laban was accused of theft by Mr Khan, because he removed parts from the motorbike. Mr Abu-Laban removed the rear-brakes, which were not working.

Mr Abu-Laban did not remove these parts from the workshop. The rear-brakes were removed from the motorbike because Mr Abu-Laban wanted to show Mr Khan they were worn and required replacement.

[34] Mr Abu-Laban says that from time to time, Mr Khan told him that his work rate was too slow. Mr Abu-Laban was an apprentice mechanic. ECL did not put in place a performance improvement plan or take any form of disciplinary action in relation to Mr Abu-Laban's performance.

[35] In summary, Mr Abu-Laban did not breach any of the relevant clauses in his individual employment agreement. Mr Abu-Laban did not misuse company property or solicit customers. He did not engage in theft. None of ECL's allegations can be substantiated.

## **Remedies**

### *Compensation for humiliation, loss of dignity and injury to feelings*

[36] An award of compensation is for the impact on the employee of the personal grievance and not intended as a punitive action to signal disapproval of the employer's conduct.<sup>5</sup>

[37] In considering an award of compensation, the assessment required is the nature and extent of harm caused to the employee by the employer's breach.<sup>6</sup>

[38] I listened carefully to Mr Abu-Laban's evidence at the investigation meeting. He has not been able to carry on his study at Unitec because he could not secure a new apprenticeship opportunity. Mr Abu-Laban provides financial support to his mother and sister. The dismissal came as a huge shock to Mr Abu-Laban. He felt very embarrassed about losing his job. The dismissal caused Mr Abu-Laban significant stress, because his family depended on him for financial support. The dismissal also took a negative mental toll on Mr Abu-Laban.

[39] I have also considered similar cases.<sup>7</sup> Taking all of these factors into account, an award of \$15,000 pursuant to s 123(1)(c)(i) of the Act is appropriate in this case.

---

<sup>5</sup> *Paykel Ltd v Ahlfield* [1993] 1 ERNZ 344 at [342].

<sup>6</sup> *Pyne v Invacare New Zealand Limited* [2023] NZEmpC 179 at [41].

<sup>7</sup> *Macfarlane v Lavros Lodge Ltd* [2004] EMHNZ 39.

[40] Within 28 days of the date of this determination, I order ECL to pay Mr Abu-Laban the sum of \$15,000 pursuant to section 123(1)(c)(i) of the Act.

*Reimbursement of lost wages*

[41] The Authority must order the employer to pay the lesser of a sum equal to that lost remuneration or to three months' ordinary time remuneration, subject to contribution and the discretionary power in s128(3) of the Act to order an employer to pay a greater sum.<sup>8</sup>

[42] Following his dismissal, Mr Abu-Laban undertook some casual work for an electrical company. Between 30 June 2025 and 31 August 2025, he received \$2,888.

[43] Mr Abu-Laban has provided the Authority with evidence supporting his attempts to find new employment within the three-month period following his dismissal. The steps Mr Abu-Laban took during this three-month period were reasonable, therefore he is entitled to the sum equivalent to 3 months' ordinary time remuneration, less the sum of \$2,888.

[44] Within 28 days of the date of this determination, ECL is ordered to pay Mr Abu-Laban the sum of \$13,258 pursuant to s 128(2) of the Act.

**Should any remedy be reduced under s 124 of the Act?**

[45] Mr Abu-Laban did not contribute to the situation that gave rise to the personal grievance he has established. Accordingly, no reduction in remedies is made under s 124 of the Act.

**Summary and orders**

[46] Within 28 days of the date of this determination ECL is ordered

(a) to pay Mr Abu-Laban the sum of \$15,000 pursuant to s 123(1)(c)(i) of the Act; and

(b) to pay Mr Abu-Laban the sum of \$13,258 (gross) pursuant to s 128(2) of the Act.

---

<sup>8</sup> Employment Relations Act 2000, s 128(2).

## **Costs**

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

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

[49] On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[50] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual daily tariff basis unless circumstances or factors, require an adjustment upwards or downwards.<sup>9</sup>

Simon Greening  
Member of the Employment Relations Authority

---

<sup>9</sup> For further information about the factors considered in assessing costs see:  
[www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1).