

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 297  
3292899

|         |   |
|---------|---|
| BETWEEN | ANGUS WILLIAM ALAN<br>JOWITT<br>Applicant |
| AND     | GOKULA MUSIC LIMITED<br>Respondent        |

Member of Authority: Robert Davies

Representatives: Applicant, in person  
Gregory Masson, director of the Respondent

Investigation Meeting: 17 February 2026 at Auckland

Date of Determination: 13 May 2026

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment relationship problem**

[1] Angus Jowitt says that he was unjustifiably dismissed by Gokula Music Ltd (Gokula) after working for “around 500 hours”. He claims wage arrears – being the difference between what he says was agreed and what he was paid – together with entitlements to annual and public holidays, compensation for hurt and humiliation, and penalties against Gokula, a portion of which he says should be paid to him.

[2] Gokula denies Mr Jowitt’s claims. Gregory Masson is its sole director. Mr Masson says Mr Jowitt was initially engaged on a kind of trial basis and while the terms of that engagement were agreed they were never recorded in writing. Mr Masson says that Mr Jowitt refused to provide him with key employment information, like his IRD number, and that he became aggressive before leaving work without permission one day after an argument over coffee. Mr Masson says he took Mr Jowitt’s comments and

actions as his resignation and treated the relationship as having been ended on that basis. Mr Masson now believes Mr Jowitt regrets resigning.

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

[3] The parties did not file written witness statements or provide documents for a common bundle as directed by the Authority. Instead, Mr Jowitt and Mr Masson gave their evidence orally at the investigation meeting. Both also answered questions from me as well as from each other under oath or affirmation.

[4] Mr Jowitt's statement of problem indicated a cap of \$9,000 on all financial remedies sought.<sup>1</sup> He is entitled to frame his application in this way, provided doing so does not also deprive him of any minimum entitlements he may also be owed. This cap was based on Mr Jowitt having worked for Gokula for "around 500 hours" and included a sum of "a couple of thousand dollars" as compensation for his hurt and humiliation.

[5] Because Mr Jowitt was self-represented at the investigation meeting, I confirmed my understanding that he regarded the cap (including the compensatory portion of "a couple of thousand dollars") as a fair resolution of all of his claims and only proceeded on that basis when I received that confirmation from him. The cap is discussed further under remedies in this determination.

[6] As permitted by section 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified any orders made. It has not recorded all evidence and submissions received.

### **Issues for investigation and determination**

[7] The issues requiring investigation and determination are:

- (a) Was Angus Jowitt unjustifiably dismissed by Gokula?
- (b) Is Angus Jowitt owed any monies by Gokula?
- (c) If Gokula's actions were not justified (in respect of dismissal), what remedies should be awarded, considering:

---

<sup>1</sup> The relevant part of the statement read "...I would like to be paid **a total of \$9000** in order to cover lost wages and resulting stress from being treat in such an unfair and what I believe to be illegal manner." (Emphasis added).

- i. Lost wages (subject to evidence of reasonable endeavours to mitigate any loss); and
  - ii. Compensation under section 123(1)(c)(i) of the Act.
- (d) If any remedies are awarded, should they be reduced (under section 124 of the Act) for blameworthy conduct by Angus Jowitt that contributed to the situation giving rise to his grievance?
- (e) Did Gokula breach minimum employment standards in respect of Angus Jowitt? If so, should penalties be awarded and in what quantum?
- (f) Should either party contribute to the costs of representation of the other party?

### **Relevant law**

[8] These proceedings commenced before recent amendments to the Act regarding remedies came into effect. Mr Jowitt's application has therefore been determined on the law as it was at the time his causes of action against Gokula arose.<sup>2</sup>

### **Background**

[9] Gokula was incorporated by Mr Masson on 11 October 2022 and operates a second-hand musical instrument store in Newmarket, Auckland. When Mr Jowitt commenced working for Gokula, and then for the first few months of his employment, the store was still preparing to open so was not yet trading. Ultimately, the store's opening became delayed for different reasons, including two bereavements in quick succession within Mr Masson's immediate family.

[10] Mr Jowitt first became aware of Gokula's store and the role when an advertisement on radio invited "guitar nerds" to apply. Mr Jowitt spoke with Mr Masson by phone, subsequently emailed through his CV, and then met with Mr Masson around late April or early May 2023. At that time, Mr Jowitt was receiving income support from Work and Income New Zealand (WINZ). Mr Jowitt says that Mr Masson was aware of this, although that is disputed now.

[11] Both Mr Jowitt and Mr Masson also disagree on what was discussed at this first meeting, or indeed later:

---

<sup>2</sup> Legislation Act 2019, s 33. See also *McMillan and Anor v Qube Ports NZ Limited* [2026] NZERA 262, from [23].

- a. Mr Jowitt says that it was agreed he would be Gokula's employee from the outset; however, Mr Masson says Mr Jowitt initially agreed to be engaged as a contractor before changing his mind and wanting to become an employee instead.
- b. Mr Jowitt says that he was to be paid \$27 per hour – or \$20 per hour “in the hand” – until the store opened, at which point, he says his pay was to be reviewed; Mr Masson says the \$27 hourly wage is correct, but that \$7 per hour was to be “retained” by Gokula on account of tax, and that there was never a commitment to review or increase Mr Jowitt's wage later.

[12] They do agree that Mr Jowitt did not receive either a written employment agreement or any other documentation, like payslips, from Gokula, and that he was paid in cash for his work by Mr Masson, irregularly but generally on a weekly (sometimes bi-weekly) basis, and at the rate of \$20 per hour. The parties also agree that Mr Jowitt performed substantial work, both preparing the store for opening and then working in it once it was open. Mr Jowitt recorded his hours of work in a diary kept at the premises. Those records indicate that Mr Jowitt worked for 636.5 hours between 20 May 2023 and 4 November 2023. Mr Jowitt's ordinary days and hours of work were Wednesdays to Sundays (inclusive), for around 5.5 hours each day, or 27.5 hours each week.

[13] For whatever reason, many of the arrangements between Gokula and Mr Jowitt were *ad hoc* and never converted into writing. Perhaps unsurprisingly then, it was not long into the relationship before uncertainty and ambiguity led to differing expectations, which grew into interpersonal conflict. Mr Jowitt said that he actively avoided discussing things like his wage with Mr Masson, fearing doing so would jeopardise his employment. Mr Masson says that Mr Jowitt refused to provide key information when asked, like his IRD number, and became “volatile” and “aggressive” around the time he also began demanding \$37 per hour as a wage increase.

[14] Both Mr Jowitt and Mr Masson agree that difficulties within their employment relationship emerged within the first three months. Sometimes they would occur in response to specific incidents, like one involving a heated interaction between Mr Jowitt and the customer of another premises over a car park, and sometimes after Mr Jowitt raised concerns to Mr Masson about his remuneration and working conditions.

[15] By November 2023, the pair's working relationship had become fraught, culminating in several disagreements, including one on 15 November 2023 over coffee. Mr Jowitt accepts that he walked away saying words to the effect of "this isn't working for me anymore" and then left work for the day, but only after feeling confident that he could return the next day. However, at 7.37am on 16 November 2023, Mr Masson sent Mr Jowitt a text:

Hi Angus, it's not working out between us, I need to have good communication between us. When you state you your leaving (sic) I have to accept that. I won't be in today till the afternoon. Give me a time Friday or the weekend suitable to you to come in to square thing up and I'll see you then, Greg.

**Preliminary issue: Did Angus Jowitt resign or was he dismissed?**

[16] Mr Jowitt is adamant he never intended resigning; he simply meant the interaction with Mr Masson was not working for him anymore at the time. During the investigation meeting, Mr Masson said he sent the text because he felt that Mr Jowitt would return the following day and he wanted to avoid that awkwardness as well as any further confrontation: "letting [Mr Jowitt] down gently", in Mr Masson's own words. That suggests even Mr Masson did not believe Mr Jowitt had resigned, notwithstanding that, by this point, he also had not worked at the store since 4 November 2023.

[17] On 21 November 2023, Mr Masson sent Mr Jowitt another text:

Hi Angus, due to our communication issues we won't be continuing with your association with the shop. I noticed you have jackets and coffee machine etc here. Could you let me know when you want to pick them up.

[18] Subsequent text and email exchanges between Mr Jowitt and Mr Masson concerned the collection of Mr Jowitt's personal effects and musical instruments he had ordered. The tone of these communications was civil and cordial. At the investigation meeting, Mr Jowitt said that he believed that he had been dismissed by Mr Masson on 16 November 2023, confirmed again by Mr Masson through the 21 November 2023 text message. For his part, Mr Masson maintained that Mr Jowitt had resigned on 15 November 2023 but later must have regretted the decision and changed his mind.

[19] In *Corcoran v Rogerson & Howell (t/a Dormello Stud)*, the Authority was asked to decide whether an employee had resigned or was dismissed in the context of a heated discussion with their employer but where "...no precise words of resignation or

dismissal [were] expressed...”.<sup>3</sup> As with this case, the circumstances included that key terms of employment were still being negotiated between the parties after the offer of employment had already been made and accepted.

[20] In resolving the interpretative impasse, the Authority considered the fact that, irrespective of what had occurred – resignation or dismissal – the employer quickly became aware the employee wrongly believed they had been dismissed but did nothing to assuage the employee of that view. Considering case law at the time, including *Dahl & Knight Train Haulage Ltd*,<sup>4</sup> the Authority said “...this was a classic case where a ‘cooling off period’ should have been allowed...” and on that basis concluded:<sup>5</sup>

... A fair and reasonable employer...would not, being on notice that there existed a different interpretation of the outcome of the discussions..., have relied on the view that [the employee] had resigned his employment...and refused to engage in discussions on the breakdown of the relationship.

[21] In *Vermuelen v Mikes Transport Warehouse Ltd*, the Employment Court considered a purported resignation and whether there might be any obligation on an employer to provide a cooling off period to an employee.<sup>6</sup> In reflecting on earlier decisions in the vein of *Corcoran*, the Employment Court felt the key issue was whether, on an objective assessment, the employee had resigned, even if that resignation was ill-conceived, poorly thought through, or subsequently regretted. I take the Court in *Vermuelen* as saying that, in circumstances where a clear and unequivocal resignation is given by an employee, an employer is not obligated to delay recognising it for fear that doing so too quickly could somehow turn it into a dismissal instead.

[22] This is not a case where Mr Jowitt communicated his resignation in clear and unambiguous terms. Mr Masson accepted this himself. It is why he says he sent Mr Jowitt the text message on 16 November 2023. Correspondence between the pair then quickly confirmed that Mr Jowitt never intended resigning. When that became clear to Mr Masson, he was compelled to deal with it head on and not shy away from it. Instead, when Mr Masson felt it was no longer tenable relying on Mr Jowitt’s purported resignation, he sent the 21 November 2023 text message. Unlike Mr Jowitt’s purported

---

<sup>3</sup> *Corcoran v Rogerson & Howell (t/a Dormello Stud)* AA 328-07, 19 October 2007 (ERA).

<sup>4</sup> *Dahl v Knight Train Haulage Ltd* AA 278-07, 10 September 2007 (ERA).

<sup>5</sup> *Corcoran v Rogerson & Howell (t/a Dormello Stud)* AA 328-07, 19 October 2007 (ERA), at [57].

<sup>6</sup> *Vermuelen v Mikes Transport Warehouse Ltd* [2021] NZEmpC 197.

resignation, the wording of that message at least is clear and unambiguous, and it had the effect of ending Gokula's employment with Mr Jowitt.

[23] Gokula summarily dismissed Mr Jowitt from his employment on 21 November 2023, making that his final day of employment.

### **Was Angus Jowitt unjustifiably dismissed by Gokula?**

[24] The legal test for justification is set out in section 103A of the Act. The Authority must consider whether the employer's actions were what a fair and reasonable employer could have done in all the circumstances. In practice, that requires consideration of whether the employer conducted an adequate investigation, raised any concerns with the employee, provided a reasonable opportunity for them to respond, and genuinely considered any response received. None of those steps occurred here.

[25] I accept that Gokula is a small business with limited resources. However, those circumstances do not excuse the absence of even basic procedural fairness. Although Mr Jowitt was aware of Mr Masson's concerns about aspects of his attitude and manner, I do not consider there was anything further Mr Jowitt could realistically have done to satisfy those concerns once they had crystallised in Mr Masson's mind.

[26] This meant that, by the time Mr Masson sent the 16 November text message, his mind had closed to the prospect of Mr Jowitt continuing in employment. Mr Jowitt was never given a genuine opportunity to respond and could not have influenced the outcome even if he had been. These were not minor procedural defects by Mr Masson on behalf of Gokula; they were failures that resulted in unfairness to Mr Jowitt.

[27] For completeness, I should also address Mr Masson's submission that Mr Jowitt was on a kind of "trial period". During the investigation meeting, Mr Masson confirmed that he did not mean a trial period for the purposes of section 67A of the Act. He accepted that, because the terms of employment were not recorded in writing, no such term could be valid anyway. Instead, Mr Masson confirmed that he was referring to the initial period of employment, which he accepted was of uncertain duration, but he says was intended so the parties could sound one another out and determine whether an ongoing and more permanent relationship was viable.

[28] The obvious problem for Mr Masson is there is no basis for this submission, either in law or even in what I understand of his verbal agreement with Mr Jowitt on behalf of Gokula. Without a written agreement, something like a probationary period could not be certain enough to be enforceable and relied upon. None of the evidence persuaded me their verbal agreement included anything like “trial”, “probationary” or “introductory” terms.

[29] Taking all the circumstances into account and Mr Jowitt’s dismissal by Gokula was unjustified.

### **Is Angus Jowitt owed any monies by Gokula?**

[30] Mr Masson accepts Gokula agreed to pay Mr Jowitt \$27 per hour for every hour he worked but says that \$7 per hour was “retained”, effectively on account of tax. For his part, Mr Jowitt accepts receiving \$20 per hour for every hour worked. Mr Masson also says there was never any agreement to increase Mr Jowitt’s wage after a set period and, during the investigation meeting, Mr Jowitt also acknowledged this. This issue is therefore dealt with based on an agreed \$27 hourly wage.

[31] I have considered whether the fact Mr Jowitt received only \$20 “in the hand” for each hour he worked also represents a breach of the Minimum Wage Act 1983. At the time Mr Jowitt was working for Gokula, the applicable adult minimum wage was \$22.70 per hour. In the end, I have concluded this is not a breach, but only because both parties agreed the applicable wage was \$27 per hour for the relevant periods of work, with a portion retained on account of tax (and with that tax now payable) and on the expectation that any unused amounts would be returned to Mr Jowitt.

[32] Gokula did not keep the wages and time record required by the Act.<sup>7</sup> Instead, Mr Jowitt kept a record of his days and hours of work in a diary kept at the store, which Mr Masson agreed was accurate and which I have used. Mr Jowitt took photos of relevant entries and included them with his statement of problem, and these totalled 636.50 hours of work between 20 May 2023 and 4 November 2023.

[33] The diary indicates that Mr Jowitt was not paid wages after 4 November 2023 until his final day of employment on 21 November 2023. Based on Mr Jowitt’s account

---

<sup>7</sup> Employment Relations Act 2000, s 130(1).

of his days and hours of work, and the fact that he remained ready, willing, and available to work for Gokula throughout this period, this represents a further 55 hours of work, arrived at by using an average of 5.50 hours work each day.

[34] Additionally, and even in the absence of terms in a written employment agreement, Mr Jowitt was still entitled to “reasonable notice” of the termination of his employment.<sup>8</sup> The fact that his dismissal by Gokula occurred summarily and without notice deprived him of that entitlement and leaves the Authority to establish what a reasonable notice period would have been in the circumstances. Considering the nature of the role, and two weeks’ notice is reasonable.

[35] Mr Jowitt generally worked Wednesday to Sunday each week. During his period of employment, the Matariki public holiday fell on 14 July 2023, which was also an otherwise working day for him. The store’s diary records that he worked 3.50 hours on this day, for which he only received his ordinary \$20 per hour cash in hand. There is no record that Mr Jowitt was provided or received either penal rates or an alternative holiday for working on Matariki, as required by the Holidays Act 2003 (Holidays Act).<sup>9</sup>

[36] The arrangement between Mr Jowitt and Mr Masson was unorthodox and, unsurprisingly, problematic to make sense of now as a result. The Authority is not the appropriate venue to decide income tax or income support disputes. Its role is simply to establish whether Mr Jowitt is owed monies by Gokula in addition to anything he has already received. The parties will need to take care to ensure any related legal obligations are also met.

[37] Taking the above into account, and I find:

- a. Mr Jowitt should have been paid \$17,185.50 gross in wages but only received \$12,730 gross. Gokula therefore owes him a further \$4,455.50. Both amounts are taxable.
- b. Between 5 November 2023 and 21 November 2023, Mr Jowitt should have worked a further 55 hours. Gokula owes him \$1,485 for this period. This amount is taxable.

---

<sup>8</sup> *Liu v Legend International Holdings Ltd et ors* [2025] NZERA 702, at [25].

<sup>9</sup> Holidays Act 2003, ss 50 and 56.

- c. From 21 November 2023, Mr Jowitt should have been entitled to two weeks' notice, which represents another 55 hours. Gokula owes him \$1,485 for this period. This amount is taxable.
- d. Mr Jowitt should have been paid \$40.50 per hour, or \$141.75 gross, for his work on Matariki, but only received \$70 gross. Gokula owes him a further \$71.75 as well as the value of an alternative holiday, calculated as the greater of either Mr Jowitt's relevant daily pay or his average daily pay, assessed as \$148.50. These amounts are taxable.

[38] Mr Jowitt is also entitled to annual holidays in accordance with the Holidays Act.<sup>10</sup> Because the employment relationship lasted less than 12 months, the value of any entitlement to holidays is calculated as being 8 per cent of Mr Jowitt's gross earnings since the commencement of his employment.<sup>11</sup> Mr Jowitt's ordinary wages should have been \$17,185.50 since his commencement. In addition to his ordinary wages, Mr Jowitt was entitled to further wages and two weeks' notice, which also need to be considered. Mr Jowitt's entitlement to holidays is accordingly valued at \$1,635.66. This money is taxable.

[39] Gokula owes Mr Jowitt a total of \$9,281.41 (before tax), in accordance with Total 2 in Table 1 below.

| <b>Table 1 – Monies payable by Gokula to Angus Jowitt</b> |                      |                     |                          |
|---|----------------------|---------------------|--------------------------|
| <b>Item</b>   | <b>Total payable</b> | <b>Already paid</b> | <b>Total still owing</b> |
| Ordinary wages<br>(20/5/23 – 4/11/23)                     | \$17,185.50          | \$12,730            | \$4,455.50               |
| Further wages<br>(5/11/23 – 21/11/23)                     | \$1,485              | \$0                 | \$1,485                  |
| Reasonable notice<br>(22/11/23 – 6/12/23)                 | \$1,485              | \$0                 | \$1,485                  |
| Public holiday pay<br>(Matariki 2023)                     | \$141.75             | \$70                | \$71.75                  |
| Public holiday pay (Alternative holiday)                  | \$148.50             | \$0                 | \$148.50                 |
| <b>TOTAL 1</b>  | <b>\$20,445.75</b>   | <b>\$12,800</b>     | <b>\$7,645.75</b>        |
| Annual holidays entitlement<br>(8% of Total 1)            | \$1,635.66           | \$0                 | \$1,635.66               |
| <b>TOTAL 2</b>  | <b>\$22,081.41</b>   | <b>\$12,800</b>     | <b>\$9,281.41</b>        |

<sup>10</sup> Holidays Act 2003, s 16(1).

<sup>11</sup> Holidays Act 2003, s 23(2).

## Remedies

[40] Having established a personal grievance for unjustified dismissal, Mr Jowitt is entitled to a consideration of remedies, including compensation for hurt and humiliation and reimbursement of lost wages. These remedies are discretionary, and the assessment of any remedy is a distinct inquiry. The purpose of remedies under the Act is compensatory, not punitive.<sup>12</sup> The Authority must assess the actual loss suffered and any harm that is established on the evidence.<sup>13</sup> For compensation for lost wages under section 123(1)(b) of the Act, evidence of mitigation of loss is also required. For compensation for hurt and humiliation under section 123(1)(c)(i) of the Act, evidence of injury to feelings is necessary.

[41] In this case, there is also the role of Mr Jowitt's own limit of \$9,000 on the financial value of remedies he sought. This has already been exceeded on the basis the evidence showed he worked for longer than the 500 hours his limit was based on. It also did not include the further wages as well as reasonable notice of the end of his employment. During the investigation meeting, Mr Jowitt indicated the total amount he sought included "a couple of thousand dollars" as compensation, an amount he confirmed he regarded was fair in his circumstances.

[42] The Court of Appeal has previously held that it is not permissible for the Employment Court to award more than had been claimed in a statement of claim.<sup>14</sup> However, the Employment Court has determined the Authority is not subject to the same restriction on the basis it is an "...investigative body that is to resolve employment relationship problems according to the substantial merits of the case, without regard to technicalities".<sup>15</sup> Instead, provided the Authority complies with natural justice, it is possible to award more than is claimed.

### *Lost wages*

[43] Mr Jowitt has lost remuneration because of his personal grievance so is entitled to reimbursement of "...a sum equal to the whole or any part of the wages... lost as a result...",<sup>16</sup> also considering the requirements of section 128 of the Act. This section

---

<sup>12</sup> *Paykel Ltd v Ahlfield* [1993] 1 ERNZ 344, at [342].

<sup>13</sup> *Pyne v Invacare New Zealand Limited* [2023] NZEmpC 179, at [41].

<sup>14</sup> *McCulloch and Partners v Smith* CA133/03 (3 December 2003) (CA), at [3].

<sup>15</sup> *Ashby v NIWA Vessel Management Ltd* [2022] NZEmpC 174, at [43].

<sup>16</sup> Employment Relations Act 2000, s 123(1)(b).

provides for the mandatory reimbursement, in the absence of contributory fault, of a minimum of three months lost wages or the actual amount of remuneration lost.<sup>17</sup>

[44] The Court of Appeal has considered the principles applicable to these remedies previously, including in *Sam's Fukuyama Food Services Ltd v Zhang*.<sup>18</sup> The principles include that any award is discretionary and a “full” assessment of the financial loss suffered merely sets the upper limit of any award, but that there is no entitlement to “full” compensation<sup>19</sup> and that moderation is appropriate.<sup>20</sup> Relevantly, the Court of Appeal has said that any assessment:<sup>21</sup>

... must allow for all contingencies which might, but for the unjustifiable dismissal, have resulted in termination of the employee's employment (that is, a counter-factual analysis)

[45] The existence of this remedial discretion has been recognised by the Court of Appeal as making precision in any assessment difficult, meaning any “...award will inevitably involve a broad-brush approach”.<sup>22</sup>

[46] Employees also have a duty to mitigate their loss.<sup>23</sup> The evidence of mitigation in this case was limited. Mr Jowitt said he had applied for at least two jobs since November 2023 (that he could remember), had continued his voluntary work at the student radio station, cared for a family member when they became unwell, and had also carried on selling and trading instruments online, including one to Mr Masson. No other evidence of these efforts, or of other efforts to find alternative employment, was provided.

[47] I am also not satisfied for the purposes of assessing reimbursement for lost wages that Mr Jowitt's employment was likely to continue for another three months, or indeed, that he has taken reasonable steps to mitigate his loss. The evidence makes it clear that, by the time of his unjustified dismissal, Mr Jowitt's relationship with Mr Masson (and thus, Gokula) had broken down and become dysfunctional. During the investigation meeting, Mr Jowitt acknowledged this himself, as well as the role he

---

<sup>17</sup> Employment Relations Act 2000, s 128.

<sup>18</sup> *Sam's Fukuyama Food Services Ltd v Zhang* [2011] NZCA 608.

<sup>19</sup> *Telecom NZ Ltd v Nutter* [2004] 1 ERNZ 3105 (CA), at [70]-[75].

<sup>20</sup> *Sam's Fukuyama Food Services Ltd v Zhang* [2011] NZCA 608, at [25].

<sup>21</sup> *Sam's Fukuyama Food Services Ltd v Zhang* [2011] NZCA 608, at [26].

<sup>22</sup> *Sam's Fukuyama Food Services Ltd v Zhang* [2011] NZCA 608, at [36].

<sup>23</sup> *Argosy Imports Ltd v Lineham* [1998] 3 ERNZ 976.

played in it. Had events not come to a head over coffee in November 2023, it is likely they would have come to a head over something else in December 2023.

[48] On the evidence, Mr Jowitt has lost the equivalent of one month's ordinary time remuneration because of Gokula's actions. Anything beyond that was the result of his own decision not to actively seek alternative work, meaning the causal link between the personal grievance and any lost remuneration had been broken then.<sup>24</sup>

[49] To reimburse that loss, Gokula must pay Mr Jowitt one month's ordinary time remuneration as lost wages under section 123(1)(b) of the Act.

#### *Hurt and humiliation*

[50] The evidence of hurt and humiliation and injury to Mr Jowitt's feelings was similarly limited. Although any unjustified dismissal will be inherently distressing, the Authority cannot make assumptions in this regard. During the investigation meeting, Mr Jowitt said he had found the dismissal "pretty tough" and indicated that it had also affected his self-confidence.

[51] Despite that, Mr Jowitt continued corresponding civilly with Mr Masson, including after his dismissal in respect of shared business, and appeared philosophical about the role he played in the interpersonal conflict which led to his employment ending. This evidence suggests any distress was minor and only short-term.

[52] There is also Mr Jowitt's self-imposed cap which, although already exceeded, included provision for only "a couple of thousand dollars" as compensation for hurt and humiliation. During the investigation meeting, Mr Jowitt was clear that he considered this amount, including the compensatory portion, as fair for what he had been through.

[53] On that basis, an award of \$2,000 fairly and reasonably compensates Mr Jowitt for the hurt and humiliation he has experienced. This accords broadly with the compensatory approaches taken in other cases where harm was assessed as falling within a low or modest range.<sup>25</sup>

---

<sup>24</sup> *Onesource Ltd v Hjorth* BC200562071 (Anderson P, JJ Glazebrook and Hammond) (CA).

<sup>25</sup> See for example: *Corporaal v Catley* AA136/09 (30 April 2009); *Courtney v Major Motors Ltd* [2021] NZERA 71; and *Rosantina v Hospitality Partners Ltd* [2024] NZERA 535.

[54] Gokula must pay Mr Jowitt \$2,000 as compensation under section 123(1)(c)(i) of the Act.

### **Contribution**

[55] The Authority is also required to consider whether any remedies should be reduced, under section 124 of the Act, for blameworthy conduct by Mr Jowitt that contributed to the situation giving rise to his grievance. The key principles around contribution can be summarised as follows:

- a. Firstly, the Authority must be satisfied that the actions of the employee contributed to the situation that gave rise to the personal grievance; and, if so
- b. Secondly, the Authority must assess whether the employee's actions require a reduction in the remedies that would otherwise have been awarded.

[56] The primary consideration when determining whether conduct should result in a reduction for contribution are causation and proportionality.<sup>26</sup>

[57] The unorthodox arrangements regarding Mr Jowitt's employment and remuneration were not solely his actions and, in the circumstances, not blameworthy conduct by him. Additionally, these arrangements were not sufficiently proximate to the unjustified dismissal to amount to contribution for the purposes of section 124.

[58] In other words, it was not because of, or as a consequence of, those arrangements the dismissal was unjustifiably effected by Gokula. Instead, Gokula, through Mr Masson, dismissed Mr Jowitt because the pair's working relationship had become fraught and dysfunctional. Accordingly, Mr Jowitt's remedies are not reduced for contribution under section 124 of the Act.

### **Did Gokula breach minimum employment standards and should penalties be awarded?**

[59] The Authority has jurisdiction to impose penalties for breaches of employment standards. That jurisdiction arises under Part 9 of the Act. Where a person has failed to

---

<sup>26</sup> *Keighran v Kensington Tavern Ltd* [2024] NZEMpC 28, at [41].

comply with the provisions of the Act, or other employment-related legislation like the Holidays Act, the Authority may order that person to pay a penalty.

[60] The purpose of the penalty regime is not compensatory. It is directed to accountability for non-compliance and the protection of minimum statutory standards governing employment relationships in New Zealand. Those standards include, among others, obligations relating to wages, holidays and leave, and recordkeeping.

[61] Penalties serve both a punitive and deterrent function. They are intended to mark the seriousness of the breach and to deter both the particular employer – but also others – from similar non-compliance in the future. In assessing an appropriate penalty, the Authority generally considers a range of factors, including:

- a. The nature and seriousness of the breach/es.
- b. The extent of harm caused.
- c. Whether the breach/es were deliberate or inadvertent.
- d. The period over which any breach/es occurred.
- e. The employer's past compliance history (or history of non-compliance).
- f. Any steps taken to remedy the breach/es once identified.

[62] The Authority must also ensure that any penalty is proportionate to the offending and consistent with the statutory framework. The maximum penalty is prescribed by statute, but the Authority retains a broad discretion as to any appropriate quantum within that range. In exercising that discretion, the Authority typically adopts a principled approach that identifies the seriousness of the breach, considers aggravating and mitigating factors, and then determines a figure that appropriately reflects the objectives of denunciation, deterrence, and the promotion of compliance with minimum employment standards.

[63] Where multiple breaches arise out of the same or closely related conduct, the Authority may adopt a global approach when fixing any penalty.<sup>27</sup> In these circumstances, the Authority may assess the overall seriousness of the offending and fix a global penalty that reflects the totality of the conduct, rather than simply aggregating separate penalties for each individual statutory breach.

---

<sup>27</sup> *Borsboom v Preet PVT Limited and Anor* [2016] NZEmpC 143, at [100].

[64] Penalties imposed for breaches of employment standards are generally payable to the Crown. However, the Authority also has the discretion to order that all or part of a penalty be paid to “any person”, including an affected employee instead.<sup>28</sup>

[65] The Employment Court has set out a four-step approach to considering penalties.<sup>29</sup> Step one is to identify the nature and number of breaches. In this case, Gokula breached the following minimum employment standards (by failing to):

Under the Employment Relations Act 2000:

- a. provide an employment agreement in writing.<sup>30</sup>
- b. keep a wages and time record.<sup>31</sup>

Under the Holidays Act 2003:

- c. keep a holiday and leave record.<sup>32</sup>
- d. pay Mr Jowitt for work on a public holiday.<sup>33</sup>
- e. provide Mr Jowitt an alternative holiday.<sup>34</sup>

[66] It is appropriate to consider Gokula’s breaches of the Act and Holidays Act separately, but to deal with each statutory penalty on a global basis. This is because the breaches form part of a consistent pattern of conduct and arise exclusively from Mr Jowitt’s employment. Each breach carries a maximum penalty of \$20,000,<sup>35</sup> so a total of \$100,000.

[67] Step two asks the Authority to assess the severity of the breach in each case to establish a provisional starting point for each penalty. Failing to keep employment records is serious as is failing to pay minimum entitlements. However, the breaches were not deliberate or wilful, affected Mr Jowitt only, were limited to a fixed duration, and did not lead to significant harm or affect the Authority’s investigation, given both the existence of, and Mr Masson’s ready acceptance of the accuracy of, the diary entries.

---

<sup>28</sup> Employment Relations Act 2000, s 136(2).

<sup>29</sup> *Borsboom v Preet PVT Limited and Anor* [2016] NZEmpC 143, from [139].

<sup>30</sup> Employment Relations Act 2000, s 65(1).

<sup>31</sup> Employment Relations Act 2000, s 130(1).

<sup>32</sup> Holidays Act 2003, s 81(2).

<sup>33</sup> Holidays Act 2003, s 50(1).

<sup>34</sup> Holidays Act 2003, s 56(1).

<sup>35</sup> Employment Relations Act 2000, s 135(2) and Holidays Act 2003, s 75(1).

[68] Given these factors, an appropriate provisional starting point for penalties under the Act is \$10,000 and penalties under the Holidays Act is \$15,000.

[69] Step three asks the Authority to consider the means and ability of Gokula to pay. Mr Masson gave evidence that Gokula had limited resources given the store's delayed opening. Although no additional financial records were provided to support this, Mr Masson was otherwise a credible witness, so an allowance of 25 per cent is deducted to recognise this, leaving potential penalties of \$7,500 for breaches of the Act and \$11,250 for breaches of the Holidays Act.

[70] Finally, step four asks the Authority to consider whether the provisional penalty reached after the first three steps is proportionate to the seriousness of the breaches and the harm occasioned by them. This step is intended as a check that adopting a staged approach to penalties does not overshadow the need to ensure both the imposition of a penalty, as well as the amount, is just in all the circumstances.

[71] Considering the related and isolated nature of the breaches and the fact they sit toward the lower end of the range of seriousness, including evidence of other Gokula workers having written employment agreements as well as the lack of evidence of deliberately exploitative conduct by Gokula or Mr Masson, and awarding penalties of \$7,500 and \$11,250 respectively is not proportionate or just.

[72] Instead, Gokula is to pay \$1,500 for its breaches of the Act and \$2,000 for its breaches of the Holidays Act. Gokula is to pay total penalties of \$3,500, with \$1,000 paid to Mr Jowitt to recognise that what he has already been awarded has not also compensated him for performing the public duty of bringing Gokula's non-compliances to the Authority's attention.<sup>36</sup>

[73] Gokula is ordered to pay total penalties of \$3,500, with \$1,000 paid to Mr Jowitt and the remaining balance paid to the Crown.

---

<sup>36</sup> *Borsboom v Preet PVT Limited and Anor* [2016] NZEmpC 143, at [150].

## Summary of result

[74] Table 2 below sets out the financial remedies ordered against Gokula from this determination, including specifying any amounts payable to Mr Jowitt.

| <b>Table 2: Summary of financial remedies</b>  |                     |                                    |
|--|---------------------|------------------------------------|
| <b>Item</b>                                    | <b>Total amount</b> | <b>Amount payable to Mr Jowitt</b> |
| Amount from Table 1                            | \$9,281.41          | \$9,281.41                         |
| Compensation for lost wages (one month)        | \$2,970             | \$2,970                            |
| Compensation for hurt and humiliation          | \$2,000             | \$2,000                            |
| Penalties for breaches of employment standards | \$3,500             | \$1,000                            |
| <b>TOTAL</b>                                   | <b>\$17,751.41</b>  | <b>\$15,251.41</b>                 |

## Orders

[75] I make the following orders:

- a. Gokula is to pay Angus Jowitt \$9,281.41, less any applicable tax, deductions, or withholdings, within 28 days of the date of this determination as arrears of wages and annual and public holidays (including alternative holidays).
- b. At the same time as the payment in paragraph [75](a) above is made, Gokula is to provide Mr Jowitt with a final pay slip by email which details:
  - i. Gokula's name, NZBN or company number, IRD number, and the company's contact details.
  - ii. Mr Jowitt's name, IRD number, and employment period.
  - iii. Mr Jowitt's gross earnings, broken down into each relevant component (e.g. wages, public and annual holiday payments, alternative holiday payment, etc), including his total gross earnings.
  - iv. Any deductions or withholdings, including for PAYE, ACC, KiwiSaver, student loan, etc, with each deduction and/or withholding separately identified.

- v. The amount of any nett payments to Mr Jowitt and what each payment was on account of (if not already identified above).
- c. Gokula is to pay Angus Jowitt \$2,000 without deduction within 28 days of the date of this determination as compensation for hurt and humiliation.
- d. Gokula is to pay total penalties \$3,500 within 28 days as penalties for its breaches of the Act and Holidays Act. \$1,000 is to be paid to Angus Jowitt with the balance paid to the Crown. The Authority will provide Mr Masson with the necessary details to make this payment with this determination.

### **Costs**

[76] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If they are not able to do so and a determination on costs is needed, Angus Jowitt may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum, Gokula would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[77] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff. Further information about the factors considered in assessing costs is available on the Authority's website.<sup>37</sup>

Robert Davies  
Member of the Employment Relations Authority

---

<sup>37</sup> [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)