

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 300
3386725

BETWEEN DEBORAH EYLES
 Applicant

AND BOTTTLERS LIMITED
 Respondent

Member of Authority: Sarah Blick

Representatives: Ronald Jones, advocate for the applicant
 Melanie and John Budge, for the respondent

Investigation meeting: 5 May 2026 in Hamilton

Submissions received: At the investigation meeting

Determination: 15 May 2026

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] For a number of years Bottlers Limited (BL) has been an authorised provider of the Ministry of Justice (MOJ), providing supervised contact sessions between children and family members. Bottlers’ assists families with children with complex needs. Deborah Eyles was employed by as a Supervised Contact Visit Supervisor for over a year, until her employment was terminated by letter on 14 November 2024. The letter gave no reasons for the termination, but Mrs Eyles surmised that it related to an incident with a client (a visiting parent or VP) on 2 November 2024, in which she inadvertently sent a text message about the VP to the VP, rather than to a colleague as intended. The VP complained and BL investigated.

[2] Mrs Eyles is pursuing personal grievances for unjustified disadvantage in relation to BL’s investigation of the complaint, and an unlawful “stand down” period during which she

was not rostered and was paid less than her average work hours. She is also pursuing personal grievance for unjustified dismissal.¹

[3] BL denies the termination of Mrs Eyles' employment related to the incident at all – it says it resulted from a review of its operations and a down-turn in Court-ordered supervised contact referrals, such that it was a redundancy situation.

The Authority's process

[4] The Authority received a witness statement from Mrs Eyles. BL did not provide witness statements, but through its statement in reply and other correspondence from its directors Melanie and John Budge, provided its response. All three individuals gave evidence under oath or affirmation at the Authority investigation meeting, and were given the opportunity to ask questions and make submissions.

[5] As permitted by s 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 orders made. It has not recorded all information received and considered.

The issues

[6] The issues for investigation and determination are:

- (a) Does Mrs Eyles have a personal grievance for unjustified dismissal?
- (b) Does she have a personal grievance for unjustified disadvantage?
- (c) If she does, what remedies should be awarded, if any, and are there issues of contribution?

Background

Employment agreement

[7] The parties signed an individual employment agreement on 9 October 2023, stating Mrs Eyles would start work on 10 October 2023. The agreement stated the employment was

¹ Although the statement of problem also referred to outstanding minimum entitlements, at the investigation meeting Ms Eyles confirmed no entitlements were identified for recovery separate from the "stand down" monies claimed.

“permanent part-time” as a Contact Visit Supervisor and Student Support Mentor/Housekeeping Assistant.

[8] In terms of hours of work, the agreement recorded only that “TOTAL__TBD__HOURS per week up to 10 hours”. The Authority understands ‘TBD’ means ‘to be determined’. Mrs Eyles’ remuneration was stated to be \$32.50 per hour for supervising visits, and \$30 per hour for work-related driving. At the investigation meeting Mrs Eyles gave evidence that she was paid only at the rate of \$32.50 for all work performed, which BL queried but did not dispute.

[9] The agreement contained a clause relating to redundancy stating that if “in the normal course of business, following a reasonable restructuring process” Mrs Eyles was “made redundant”, she would be given two weeks of notice of termination.

VP incident on 2 November 2024

[10] On Saturday 2 November 2024 Mrs Eyles was allocated work supervising a visit with a child and the VP. Due to circumstances around the VP’s arrival, Mrs Eyles says the VP became agitated and they discussed a matter outside prior to the visit. She says the visit then proceeded. She says during the visit she contacted her supervisor by text message informing her of the situation, but that the visit was going ahead as planned. In a message intended for her supervisor, she used a negative word to refer to the VP, which she inadvertently sent to the VP’s number. Mrs Eyles’ evidence is that the VP referred to the text message upon leaving the visit.

[11] Mrs Eyles says on the way home she contacted her supervisor by phone and then called into the supervisor’s home to discuss what had happened during the visit. The supervisor told Ms Eyles she had been in contact with Mrs Budge and that the latter would be in touch, and that she had been taken off the jobs she had been rostered on for the next day. At the investigation meeting Mrs Budge confirmed BL received a complaint from the VP. Mrs Eyles’ evidence was that there was no explanation about why she was taken off the allocated jobs, except that there was a process she needed to go through.

[12] Mrs Eyles says on Sunday 3 November 2024 Mrs Budge telephoned her, and they spoke about the visit the prior day. Mrs Eyles says she was assured it was okay but there was a process they had to go through. Mrs Eyles advised she would be fine to carry on working.

[13] Mrs Eyles has transcribed a number of text messages between her and Mrs Budge, which BL has not disputed as accurate, and are outlined below.

[14] On Monday 4 November 2024 Mrs Budge sent a text message to Mrs Eyles advising BL needed to work through some issues arising from the visit and would be in touch before the end of the week. In the meantime, she said BL would not be scheduling any supervised visits to Mrs Eyles, who said to let her know when BL wanted her to come in. Mrs Eyles gave evidence that she felt like she was left hanging not knowing what was coming next.

[15] On Wednesday 6 November 2024 Mrs Budge contacted Mrs Eyles asking her to write an incident report relating to the incident. Mrs Eyles offered to provide one that afternoon, to which Mrs Budge responded that BL to do a safety assessment review, and said the report could be done before the end of the week. Mrs Budge later suggested Mrs Eyles bring the report to the office on Friday 8 November 2024.

[16] On the morning of 8 November 2024, Mrs Budge advised Mrs Eyles by text message that a meeting that day would work through all aspects relating to the incident and there would be another meeting on Friday 15 November 2024. Mrs Eyles attended BL's office and says she looked at the roster board and noticed she had not been scheduled any jobs for the next week.

[17] The meeting on 8 November 2024 took place, at which Mrs Eyles brought a support person. Mr Budge took notes of the meeting. Mrs Eyles' evidence was that they went through paperwork relating to the incident. Mrs Eyles says she asked why she was "stood down" for another week, to which Mrs Budge said it would give her extra time to reflect on the situation and Mr Budge said it was so they could finalise the paperwork.

[18] Upon Mrs Eyles' request, on 11 November 2024 BL sent a copy of the meeting notes to her. She says they contained errors, and she amended them, but they were not a full record of what was discussed. She states she sent them back to BL with amendments.

BL says it conducted review due to provider changes

[19] BL says in July 2024 a significant change for providers of Supervised Contact Services was tabled by the MOJ and a request was made for proposals to deliver such services nationwide. BL says this caused it to review workload, client numbers and staffing levels. It

says it was decided that as workload was reducing and BL was not receiving the number of referrals to sustain Mrs Eyles permanent part-time employment, a decision was made to give her two weeks' notice of termination as per the employment agreement. At the investigation meeting BL advised the selection criteria applied was "last on, first off", with Ms Eyles being the last person it had employed.

Letter of termination emailed to Ms Eyles

[20] It is common ground that BL emailed the letter of termination to Ms Eyles on 14 November 2024. It stated:

John and I have discussed your employment with [BL] and have decided, as per your employment contract, to give you two weeks' notice effective from tomorrow, Friday 15th November 2024

Your employment contract states you are employed for up to 10 hours per week. [BL] will pay you 5 hours per week for the two weeks from 15th November 2024.

You will not be required to supervise any visits or attend the meeting planned for tomorrow.

[BL] will calculate your holiday pay at the conclusion of your notice period.

[21] The letter gave no explanation of the reasons for the termination of employment.

Mrs Eyles raises personal grievances

[22] On 26 November 2024 Mrs Eyles' representative wrote to BL raising personal grievances in relation to unjustified dismissal and unjustified disadvantage. A letter in response from BL dated 9 January 2026 stated its position that it did not "dismiss" Mrs Eyles – rather that she was given two weeks' notice of termination as required by the employment agreement.

The test for justification and good faith obligations

[23] Mrs Eyles' personal grievances have to be assessed against the statutory test of justification set by s 103A of the Act. This test measures BL's actions and how it went about them, against an objective standard. This standard considers what a fair and reasonable employer could have done in all the circumstances at the time.²

[24] A dismissal or an action is not to be found unjustified solely because of defects in the process, if those defects were minor and did not result in the employee being treated unfairly.³

² Employment Relations Act, section 103A (as it read at the time of termination).

³ Employment Relations Act 2000, s 103A(5).

[25] In a redundancy situation, the Authority normally assesses the reasons given to the employee by the employer, including the business reasons and decides on an objective basis, whether the employer's actions were reasonable. If an employer can show the redundancy was genuine and that notice and consultation requirements have been met, the s 103A test may well be satisfied.

[26] A fair and reasonable employer is expected to comply with good faith statutory obligations. Failure by an employer to comply with these obligations may fundamentally undermine its ability to justify a dismissal or other action "because a fair and reasonable employer will comply with the law."⁴ The duty of good faith requires, among other things, that an employer proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of an employee's employment, to provide the affected employee with:⁵

- (a) access to information, relevant to the continuation of the employee's employment, about the decision; and
- (b) an opportunity to comment on the information to the employer before the decision is made.

Unjustified dismissal grievance

Mrs Eyles was unjustifiably dismissed

[27] Mrs Eyles' dismissal was unjustified on both procedural and substantive grounds.

[28] BL followed no restructuring process with Mrs Eyles whatsoever. While the parties' employment agreement was vague in terms of process, it stated it would follow a "reasonable restructuring process". It clearly did not.

[29] Mr and Mrs Budge gave evidence before the Authority that a request for information from the MOJ on how it could contract for Supervised Contract Services in July 2024 prompted BL to review of its operations. They further say there was reduction in Court-ordered supervised visits. However, it was accepted Mrs Eyles was not put on notice of those matters at any point nor was she consulted with about them, nor about any selection criteria. Mrs Eyles

⁴ *Simpsons Farms Ltd v Aberhart* [2006] ERNZ 825 (EmpC) at 842 [65].

⁵ Employment Relations Act 2000, section 4(1A)(c)(i)-(ii).

was given no notice her employment was in jeopardy. Given that void, understandably she believed her dismissal was related to the incident.

[30] The evidence showed BL failed to comply with its statutory obligations toward Mrs Eyles, apparently due to a misunderstanding of them. With its good faith obligations activated, BL failed to give her access to relevant information and an opportunity to comment on it before the decision to terminate employment was made. It breached its good faith obligation to be active, constructive, responsive and communicative in its employment relationship with Mrs Eyles.⁶

[31] Ultimately it is not possible to conclude on the evidence presented that the reasons BL now gives for the termination were genuine and were the predominant motive or reason for the termination. If the predominant motive was in relation to the incident, BL has not shown it reached the decision to dismiss after sufficiently raising its concerns with Mrs Eyles, nor that it gave her a reasonable opportunity to respond the concerns or that it genuinely considered her explanation(s). Whatever the motive, or mixed motives, the termination was both substantively and procedurally unjustified when assessed against s 103A of the Act. BL's actions and how it acted in the lead up to termination were not what a fair and reasonable employer could have done in the circumstances. Mrs Eyles has established she has a personal grievance for unjustified dismissal.

Unjustified disadvantage grievances

Mrs Eyles was unjustifiably disadvantaged

[32] To establish a disadvantage grievance, it is necessary to show that the employee's employment, or one or more conditions of the employee's employment, is or was affected to the employee's disadvantage by some unjustifiable action by the employer.⁷

[33] Mrs Eyles says she was unjustifiably disadvantaged in her employment by not being paid correctly while on "stand down", nor being properly consulted about BL's decision in relation to standing her down, and by way of its acts and omissions during its investigation of the incident. I agree her employment was affected to her disadvantage, caused by unjustifiable actions by BL.

⁶ Employment Relations Act 2000 s 4(1A)(b).

⁷ Employment Relations Act 2000, s 103(1)(b).

[34] BL has pointed out that it was Mrs Eyles who named the two-week period prior to her termination a “stand down”. That appears to be the case, but what is important is what the evidence shows. It demonstrates that BL decided not to roster Mrs Eyles as it normally would have the first week after the incident, and it remains unclear why that was considered necessary. BL did not consult Mrs Eyles prior to making that decision. While Mrs Eyles responded that she was willing to work, the decision not to roster her on had already been made. It again made that decision in relation to the second week without consulting her.

[35] Additionally, BL’s investigation of the incident lacked clarity and notice around the process being followed and potential outcomes of that process. When asked about its outcome by the Authority, Mr and Mrs Budge advised the complaint was closed after reporting requirements were met. Despite a second meeting having been set to take place on 15 November 2024 in relation to the incident, Mrs Eyles’ employment was terminated the day prior, without explanation or comment on the outcome of the investigation into the incident.

[36] BL’s actions affected Mrs Eyles’ terms and conditions of employment to her disadvantage because there was no consultation, she was prevented from working and received five hours pay for each of the weeks when on average she worked more hours than that. BL has not been able to justify its actions for doing so. Mrs Eyles has also established grievances for unjustified disadvantage.

Remedies

[37] Mrs Eyles is entitled to a consideration of remedies.

Reimbursement of lost wages

[38] Mrs Eyles made clear at the investigation meeting that she is seeking to recover what she sees as a shortfall in wages paid during the “stand down” period and, as I understand it, what was paid during her notice period. She was paid five hours for each week during those periods.

[39] It was submitted for Mrs Eyles that the employment agreement did not comply with the requirements of s 65(2)(iv) of the Act, which states an individual employment agreement must include:

[any agreed hours of work specified in accordance with section 67C or, if no hours of work are agreed,] an indication of the arrangements relating to the times the employee is to work;

[40] The agreement did not specify any agreed hours of work meeting the requirements of s 67C of the Act, nor did it provide an indication of the arrangements relating to the times Mrs Eyles was to work. In the absence of either, and of wages and time records from BL, the Authority accepts Mrs Eyles' evidence that she worked on average 17 hours per week in the three weeks prior to the incident. In settling her disadvantage grievance, she is entitled to recover the shortfall of 12 hours per week at the hourly rate of \$32.50 for the stand down period and the notice period, being four weeks. She is further awarded annual holiday pay on that gross amount, calculated at 8 per cent.

Compensation for humiliation, loss of dignity and injury to feelings

[41] Mrs Eyles says she was stressed that she had lost her job with no prior warning or fully understanding what happened the previous two weeks during the stand down period. With no explanation about why she was dismissed, she recalls being totally devastated especially as she had been reassured previously that everything was okay. She had never gone through an employment issue like this in her working life. Mrs Eyles reported struggling to sleep, self-doubt and overwhelming feelings in the weeks that followed her dismissal.

[42] The Authority is satisfied Mrs Eyles' experienced significant harm under each of the categories in s 123(1)(c)(i) of the Act. Considering the evidence in this matter and awards made by the Authority and Court in similar circumstances and surveying cases, I consider Mrs Eyles' evidence warrants compensation of \$16,000 attributable to the dismissal grievance, and \$4,000 attributable to the disadvantage grievances.

Contribution

[43] Personal grievance remedies may be reduced where the employee contributed to the situation giving rise to their grievance.⁸ No deduction from the remedies awarded is to be made under s 124 of the Act. The unjustifiability of BL's actions has been established by its failure to follow minimum statutory requirements. These obligations were not Mrs Eyles and there is to be no deduction from the monetary remedy for reasons of contribution.

⁸ Employment Relations Act, section 124.

Outcome

[44] Mrs Eyles established personal grievances of unjustified dismissal and disadvantage. Within 21 days of the date of this determination, BL Limited is to pay Deborah Eyles:

- (a) \$1,560 gross plus 8% holiday pay on that amount, under s 123(1)(b) of the Act; and
- (b) \$20,000 in compensation under to s 123(1)(c)(i) of the Act.

Costs

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

[46] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mrs Eyles 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 BL will then have 14 days to lodge any memorandum on costs in response. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted. Mrs Eyles will need to provide a breakdown of costs and expenses incurred in relation to the Authority application, including any relevant supporting invoices.

[47] 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.⁹

Sarah Blick
Member of the Employment Relations Authority

⁹ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1