

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 307
3371283

BETWEEN SHAOQIANG CHEN
 Applicant

AND WEN HUI LIN
 Respondent

Member of Authority: Robert Davies

Representatives: David Kim, advocate for the applicant
 No appearance by or for the respondent

Investigation Meeting: 12 February 2026 in Auckland

Submissions received: 18 February 2026 from the applicant
 No submissions received from the respondent

Date of Determination: 19 May 2026

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Shaoqiang Chen says that, during the time he was employed by Wen Hui Lin, he suffered unjustifiable disadvantages before he was unjustifiably dismissed, and that he is owed arrears of annual holidays and public holidays entitlements. In addition to these arrears, Mr Chen seeks compensatory remedies and penalties against Mr Lin.

[2] Since an early case management conference on 15 September 2025, Mr Lin has not taken part in these proceedings. I had not been allocated the matter at that point, but notes taken during the teleconference indicate that Mr Lin objected to a direction to mediation and said he would not attend any investigation meeting.

The Authority's investigation

[3] An investigation meeting took place in Auckland on 12 February 2026, commencing at 10am. Advance notices were sent to the parties, including Mr Lin's last known address. Mr Chen attended with his representative, Mr Kim, as well as a Mandarin interpreter provided by the Authority. Mr Lin did not appear, so the meeting was adjourned until 10.30am to ensure he had not been delayed.

[4] When the meeting resumed, Mr Lin was still absent. I was satisfied that Mr Lin had reasonable notice of the investigation meeting and so it proceeded in his absence in accordance with clause 12 of Schedule 2 to the Employment Relations Act 2000 (Act).

[5] Mr Chen lodged and served a witness statement with four attachments in advance of the meeting. One attachment was a letter dated 21 February 2025, apparently sent by a representative then acting for Mr Lin's business, identified in the letter as MH Beached AZ Limited (MH Beached), and in response to Mr Chen's claims.

[6] During the investigation meeting, Mr Chen answered my questions under affirmation through the interpreter. It was also possible to put to him the apparent positions advanced by Mr Lin in the 21 February letter and to take his responses into account in any assessment.

[7] On 18 February 2026, Mr Kim provided written submissions. He submitted that the evidence established that Mr Chen was unjustifiably disadvantaged and dismissed by Mr Lin, and that he is owed arrears of holiday entitlements. Mr Kim confirmed that Mr Chen also sought compensatory remedies and penalties and asked that costs be determined in light of Mr Lin's non-participation.

[8] As permitted by section 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.

Issues for investigation and determination

[9] The issues requiring investigation and determination are:

- (a) Does Mr Chen have a personal grievance for unjustified dismissal?
- (b) Does Mr Chen have a personal grievance for unjustified disadvantages based on:

- i. Failure to provide a written employment agreement.
 - ii. Experiencing bullying behaviour from his supervisor (who, for completeness, is not Mr Lin).
 - iii. Mr Lin's failure to properly deal with Mr Chen's bullying complaint.
 - iv. Failure to pay Mr Chen his public holiday entitlements.
 - v. Cancelling Mr Chen's shifts without written notice.
 - vi. Failure to pay PAYE on Mr Chen's behalf.
 - vii. Failure to pay annual holidays entitlements.
- (c) If Mr Chen does have personal grievance(s), what remedies, if any, should be awarded, including compensation and lost wages?
- (d) Should any remedies be reduced for contribution?
- (e) Is Mr Chen owed public holiday pay and annual holiday pay?
- (f) Should penalties be imposed on Mr Lin (with a portion paid to Mr Chen) for:
- i. Failure to pay public holiday pay.
 - ii. Failure to pay annual holiday pay.
 - iii. Failure to provide written employment agreement.
 - iv. Breach of good faith.
- (g) Should either party contribute to the costs of representation of the other party?

Relevant law

[10] These proceedings commenced before recent amendments to the Act regarding remedies came into effect. Mr Chen's application has therefore been determined on the law as it was at the time his causes of action against Mr Lin arose.¹

Background

[11] Shaoqiang Chen says that he saw an advertisement for a part-time job as a cook at a takeaway premises and, on 23 November 2024, sent a text message in Mandarin to who he now knows was Wen Hui Lin expressing his interest in applying. Brief text correspondence between the pair then followed, and Mr Lin gave Mr Chen a date, time and address to meet for an interview and practical assessment.

¹ Legislation Act 2019, s 33. See also *McMillan and Anor v Qube Ports NZ Limited* [2026] NZERA 262, from [23].

[12] This meeting took place at 'Beached As Takeaways' in Flat Bush, Auckland, on 27 November 2024, from 5.30pm. Mr Chen says that he met Mr Lin for the first time at this meeting and the two discussed his cooking experience as well as his ability to take orders in English.

[13] Mr Chen says that Mr Lin told him he would work as a cook and occasionally on the store's front counter between 11am and 9pm, six days per week (Tuesdays to Sundays, inclusive), and that he would be paid \$1,200 per week "after tax".²

[14] Mr Chen says that he agreed to these terms at the meeting and was told by Mr Lin that he had the job. There was no employment agreement or any mention of working for a company at this meeting and Mr Chen says that he left believing he had been employed by (and to work for) Mr Lin personally.

[15] Mr Chen's first day of work was 10 December 2024. After arriving, Mr Chen says he was told by Mr Lin to write his name, start date, IRD number, and KiwiSaver contributions rate down into a diary kept at the store, which he did. Mr Chen included a photo of what he said was that entry in the store's diary as an attachment to his witness statement.

[16] At the investigation meeting, Mr Chen said he took this photo at Mr Lin's request and that he then sent the photo to Mr Lin for his recordkeeping. I asked to see that exchange at the investigation meeting and Mr Chen confirmed that it would be available. However, I was later advised by Mr Kim that Mr Chen had provided all messages exchanged between him and Mr Lin. I take that to mean there is no message recording any such request.

[17] This means the answer that Mr Chen confidently gave under affirmation during the investigation meeting was wrong. It also raises a further question around why Mr Chen took the photo in the first place. Given the photo is not attached to any message, there is now nothing contemporaneous to use to help verify Mr Chen's account that it was sent at the outset of his employment. I return to this point later.

[18] Mr Chen says that he then worked at the store from 10 December 2024 until he was abruptly dismissed by Mr Lin on 24 January 2025. Throughout this time, he says

² Mr Chen also says that from, 27 January 2025, the store's hours were extended, and so he began working until 9.30pm each night from this date but without any change to his remuneration.

he was paid in cash by Mr Lin personally, generally on a Wednesday. Mr Chen said he did not know where Mr Lin obtained this money from but was aware that he operated at least one other takeaway store in Pakuranga, where he also often worked from.

[19] Mr Chen worked at the Flat Bush store every day except Monday, when it was closed. He worked with two other full-time staff, including a “supervisor”, as well as occasional part-time or casual employees. Mr Chen said Mr Lin would open the store each morning, letting the full-time staff in at that point, but would then leave the supervisor in charge as he went to work in the Pakuranga store instead.

[20] When he was dismissed, Mr Chen says Mr Lin simply explained that he had employed someone else and no longer needed Mr Chen’s services. Mr Lin also said that Mr Chen’s supervisor did not like him and thought he was too slow. When Mr Chen raised concerns about the lack of notice, he says that Mr Lin told him he could work for another two weeks while looking for other jobs. Mr Chen’s last day of work at the store was 9 February 2025. He says he received his final pay (but not his holiday pay) and that Mr Lin let him finish his shift 3.5 hours early that day, at around 6pm.

[21] While employed, Mr Chen says that he worked on 26 December 2024 (Boxing Day), 1 January 2025 (New Year’s Day), and 2 January 2025 (Day After New Year’s Day), all of which were public holidays as well as being otherwise working days for him, but that he did not receive either penal rates or the value of any alternative holidays when he was dismissed.

[22] Initially, Mr Chen also claimed that he did not receive any payment from Mr Lin for annual holidays. Instead, his statement of problem referred to “cancelled shifts”. However, by the investigation meeting, and in response to questions, Mr Chen accepted then what Mr Kim submitted later “...that some money was paid to him as annual leave pay”. It was agreed this ‘money’ amounted to five days’ ordinary pay.

[23] Finally, Mr Chen says he sent a text message to Mr Lin on 31 January 2025 with concerns about his supervisor’s bullying behaviour, but that nothing was done. In this text, Mr Chen describes a particular incident with his supervisor when he was accused of badly frying chicken. Mr Chen says he told Mr Lin that, as he tried to defend himself against the supervisor’s claims, the supervisor “...suddenly got angry and came to me wanting to beat me”, at which point, Mr Chen says he left the shop.

[24] I asked Mr Chen during the investigation meeting to describe the bullying behaviours he experienced, from whom he experienced them, and when. He gave five examples: one general example and four specific incidents which he said, when considered together, amounted to bullying by the supervisor against him. Unfortunately, Mr Chen was vague when it came to the timing of each of these incidents, making piecing together a reliable sequence difficult.

[25] Generally speaking, Mr Chen said the supervisor would say things around him which suggested the supervisor at least felt that Mr Chen was after his job. The implication is that the supervisor was antagonistic toward Mr Chen from the outset because of this perceived threat. Mr Chen did not recall the first time the supervisor made comments to this effect, but supposed it must have been shortly after he began.

[26] Mr Chen also spoke about four specific incidents involving the supervisor he said occurred across different days between December 2024 and 31 January 2025. Again, Mr Chen was not clear when these events occurred, though a sequence is possible to piece together by reference to others:

- a. Mr Chen was working at the store's deep fryer. A customer complained to the supervisor about the portion size of chips, which Mr Chen said the supervisor blamed on him. Mr Chen explained that he was working with a part-time employee and had "just fried the portion [he] was given" and that the store was busy. Mr Chen said the supervisor felt that, because he was operating the deep fryer, he was also ultimately responsible for checking things, like correct portion size.
- b. Mr Chen was told by the supervisor to defrost 10 fillets of snapper, which he did. However, when those fillets quickly sold out, Mr Chen says the supervisor then blamed him for not defrosting more. Mr Chen also said that Mr Lin was present at the store for this incident and told him off "instead of telling off [the supervisor]".
- c. Mr Chen was taking a rest break and sitting on a box of cooking oil. The supervisor took a photo of Mr Chen resting and sent it to Mr Lin, complaining about how lazy he was.
- d. The incident on 31 January 2025, when Mr Chen was accused by the supervisor of badly frying chicken. Mr Chen said he felt the incident was "minor" and that he did not believe the chicken in question was

overcooked or too dark, as the supervisor had suggested. When the supervisor persisted, Mr Chen maintained that it was not his problem or his fault.

The 21 February letter

[27] Mr Lin did not attend the investigation meeting. However, after Mr Chen first raised his employment relationship problem, he says Mr Kim received a letter from an employment advocate representing Mr Lin and his company, MH Beached. Mr Chen provided a copy of that letter, which is dated 21 February 2026. It is by an employment advocate and is, overtly at least, sent on behalf of MH Beached, but still often references Mr Lin in a personal capacity. The letter includes a “Background” section which is worth setting out in full:

[Mr Chen] and [Mr Lin] knew each other before the employment relationship began. [Mr Lin] considered [Mr Chen] a friend. [Mr Lin] told [Mr Chen] that he needed a new employee to work in his takeaway shop. [Mr Chen] said he was available to work but that he had to be paid in cash because he was on a benefit. [Mr Lin] always gives his new employees written employment agreements but, because he needed a new employee and because he considered [Mr Chen] a friend, he decided to employ [Mr Chen] for cash, until he could advertise for a permanent employee. He told [Mr Chen] this and [Mr Chen] agreed.

The takeaway bar is open six days a week. It is closed on Mondays. [Mr Chen] started work on 10 December, working between 11am to 9.30pm from Tuesdays to Sundays (60 hours per week). [Mr Lin] and [Mr Chen] agreed [Mr Lin] would pay \$200 cash for every full day worked, i.e. \$1,200 cash each week (including the week from 27 January to 2 February).

[Mr Chen] worked on the three Public Holidays (Boxing Day, New Year’s Day and 2nd January). He was only paid his usual hourly rate because he was (at his own request) being paid cash.

[Mr Lin] was ready to recruit for a permanent employee (on the company’s standard employment agreement drafted by my firm last year) so, on Wednesday, 22 January, he told [Mr Chen] that his employment was about to end. He told [Mr Chen] that he could continue to work for two or three weeks while he looked for another job. [Mr Chen] did not dispute [Mr Lin’s] right to end the employment – it was only an informal, temporary arrangement anyway.

[Mr Chen] continued to work until at 6pm on Sunday, 9 February, he picked up his belongings and walked out of the takeaway bar.

[28] The 21 February letter also includes the following:

- a. An acknowledgement that Mr Chen did not receive payment for working on the three public holidays and apparent confirmation “...the company will pay [Mr Chen] the...sum of \$1,175.85 (less PAYE) for these three days.” Mr Chen said this amount has never been paid.

- b. Confirmation that Mr Chen received five days' annual leave in full satisfaction of all holiday pay obligations, also considering the acknowledgement and remedial action above.
- c. Acknowledgement that Mr Lin did not issue payslips or keep wage and time records.
- d. Acceptance that Mr Lin did not follow a formal process before dismissing Mr Chen but, by way of explanation, the author said Mr Lin's actions were in accordance with the informal arrangement the parties entered into at Mr Chen's request.

[29] Finally, and in respect of Mr Chen's bullying complaint, the 21 February letter says the following:

[Mr Lin] says he investigated [Mr Chen's] complaint that [the supervisor] was bullying him. [Mr Lin] spoke to [the supervisor] and he spoke to the other employee, [Employee A]. [The supervisor] said [Mr Chen] used bad language to him and to members of [the supervisor's] family. [Employee A] said [Mr Chen] verbally abused her. [Mr Lin] concluded [Mr Chen] started the unpleasantness and that [the supervisor and Employee A] were frustrated because [Mr Chen] spent so much time sitting down looking at his phone when they were both working hard to cook food and serve customers. [Mr Lin] explained his conclusion to [Mr Chen] who did not challenge it.

[30] The 21 February letter states that Mr Chen's employment was intended to be temporary and that he was assisting his "friend", Mr Lin. It also suggests the unlawful remuneration arrangement was mutually beneficial because Mr Chen was also receiving income support – something he denied at the investigation meeting.³ The implication is also that PAYE was not deducted from his earnings, which appears to be confirmed by information Mr Chen provided regarding his income from the Inland Revenue Department, which is addressed later.

[31] The 21 February letter needs to be treated with some caution as its author was not a witness in these proceedings. However, I do not question its authenticity or its relevance. It likely reflects Mr Lin's position regarding Mr Chen's claims, at least at the time they were first raised, and may also be helpful when dealing with the allied issue of whether Mr Lin, or his company MH Beached, was Mr Chen's employer.

³ For completeness, I note Mr Chen's denial appears to be supported by the income breakdown information he provided from the Inland Revenue Department which did not reveal any income from the Ministry of Social Development or Work and Income New Zealand.

Credibility

[32] Because this matter proceeded in the absence of Mr Lin and without any witness evidence from him, the only direct evidence was Mr Chen's, supported in part by contemporaneous messages and the 21 February letter. I have therefore assessed Mr Chen's evidence with care, testing it against the available documentary material and the inherent plausibility of his account.

[33] Mr Chen's evidence was not without difficulty. His explanation at the investigation meeting that he took and sent a photograph of the diary entry at Mr Lin's request was not borne out given he was later unable to produce any corresponding message. This makes the diary entry appear self-serving and contrived. I have concluded that this aspect of his evidence was wrong. That inconsistency requires caution when assessing his evidence where it is also unsupported by independent or contemporaneous material.

[34] However, this inconsistency does not undermine Mr Chen's evidence as a whole. His account of the core aspects of the employment relationship, including how he was engaged, the hours he worked, the manner in which he was paid, and the circumstances of his dismissal, was consistent, plausible and, in several respects, aligned with the position outlined in the 21 February letter. In the absence of any contrary evidence from Mr Lin, I accept Mr Chen's evidence on those matters, subject to the reservations I have identified.

Who was Mr Chen's employer?

[35] In his application, Mr Chen has identified Mr Lin personally as his employer. However, the 21 February letter also refers to Mr Lin's company, MH Beached. A preliminary issue therefore concerns the employer's identity: is it Mr Lin personally, as is submitted by Mr Kim, or is it Mr Lin's company, MH Beached?

[36] In *Pilgrim v Attorney-General (No 2)*, the Employment Court identified a framework for analysis to use when considering an employer's identity.⁴ Essentially, the Employment Court said the exercise was "intensely factual" and found the correct approach was an objective one which involved asking who, on the balance of

⁴ *Pilgrim v Attorney-General (No 2)* [2023] NZEmpC 277, from [18].

probabilities, the employer really was. The Court said this approach “...has the benefit of acknowledging the realities of working relationships..., and aligns with the objectives of the Act”.⁵

[37] In this case, it is more likely than not that Mr Lin was Mr Chen’s employer. I reach this conclusion based on the evidence, including that all of Mr Chen’s interactions regarding his employment were with Mr Lin personally: Mr Lin interviewed Mr Chen; offered him employment; paid him personally in cash; received his concerns (and the concerns of his supervisor); and ultimately dismissed him. I also accept that Mr Chen was unaware of MH Beached until later.

[38] I would have reached this view even without the 21 February letter, although its contents help to reinforce my decision. That letter makes it clear that arrangements regarding Mr Chen’s employment were made between him and Mr Lin personally and that they differed from the ordinary approach apparently preferred by MH Beached (i.e. the lack of an employment agreement and the unorthodox and apparently unlawful approach to remuneration generally and breaches of minimum entitlements specifically).

[39] Mr Lin was Mr Chen’s employer and he was employed on a permanent, full-time basis. There is nothing to suggest this arrangement was only ever intended by the parties to be temporary or for a fixed term.

Unjustified dismissal

[40] The legal test for justification is set out in section 103A of the Act. The test 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. In applying this test, the Authority must also consider those matters in section 103A(3)(a) to (e) (inclusive). The test is an objective one.

[41] I accept Mr Chen’s evidence that his dismissal by Mr Lin on 24 January 2025 was unexpected and perfunctory. The 21 February letter suggests that Mr Chen and Mr Lin were friends, as if that might explain the outcome on the basis the employment was always intended to be short. However, there is no evidence of any such friendship in

⁵ *Pilgrim v Attorney-General (No 2)* [2023] NZEmpC 277, at [18].

the messages exchanged before Mr Chen's employment. Indeed, it does not appear that Mr Lin knew Mr Chen before their initial contact.

[42] The reasons advanced by Mr Lin in the 21 February letter for dismissing Mr Chen were that he had engaged another employee and that Mr Chen's supervisor considered him to be too slow. There is no evidence that these concerns were ever raised with Mr Chen before his dismissal, or that he was given any opportunity to respond. Nor is there any evidence of any investigation into his performance or of any alternatives to dismissal. The concerns were not put to Mr Chen in a manner that would allow a fair and reasonable employer to rely on them.

[43] Mr Lin followed no fair process when dismissing Mr Chen. I do not accept that the employment was intended to be short-term, and there was nothing to alert Mr Chen that he was at risk of losing his full-time job. The concerns about his performance raised at the time of the dismissal had not previously been put to him. Their sudden introduction is also inconsistent with the purportedly informal and friendly arrangement described in the 21 February letter.

[44] Mr Lin unjustifiably dismissed Mr Chen. The dismissal was both procedurally flawed and substantively unjustified.

Unjustified disadvantages

[45] Mr Chen also claims that he was disadvantaged by a number of actions by Mr Lin. A disadvantage arises where an employer's conduct causes detriment to the employee in the employment relationship, including through failure to meet statutory minimum obligations. In this case, the alleged disadvantages largely concern failures to comply with minimum employment standards, namely the failure to provide a written employment agreement, to pay public holiday and annual holiday entitlements, and to account for PAYE.

[46] The Employment Court has previously found that an employer disadvantaged an employee by not providing an employment agreement. In *O'Boyle v McCue*, the Court held that a fair and reasonable employer would follow its statutory obligations and provide an agreement in writing and that, failing to do so, could contribute to

employment relationship problems, particularly concerning entitlements.⁶ It is axiomatic then that the same would apply to an employer's other failures to meet statutory obligations, including indeed around tax.

[47] Mr Lin failed to provide Mr Chen with a written employment agreement. That failure left Mr Chen without clarity as to the terms of his employment, including his entitlements, and contributed to the uncertainty that arose during the course of the employment relationship. Mr Lin also failed to meet his statutory obligations in relation to public holidays, annual holidays, and PAYE. These failures deprived Mr Chen of minimum entitlements to which he was legally entitled and exposed him to legal risk (viz. his obligations to declare and pay tax on any income), and therefore also amount to disadvantages in the employment relationship.

[48] However, these disadvantages are closely connected to the way Mr Chen's employment was conducted and ultimately also brought to an end. The same failures – particularly the absence of a written agreement and the failure to meet minimum standards – also form part of the context in which Mr Chen was unjustifiably dismissed. In those circumstances, it is not necessary to make separate awards of remedies for these disadvantages. It is more appropriate to take them into account when assessing remedies for the unjustified dismissal.

[49] I have also considered whether Mr Chen was disadvantaged by the shifts he says were cancelled by Mr Lin. However, Mr Chen did not pursue this claim at the investigation meeting and so no corresponding finding is made, except that it is more likely Mr Lin was providing five days' annual holidays and not cancelling shifts, something Mr Chen now agrees with. This is dealt with further when considering arrears of minimum entitlements later in this determination.

[50] Finally, Mr Chen alleges that he was subjected to bullying by his supervisor and that Mr Lin failed to respond appropriately when those concerns were raised.

[51] In the absence of any contractual definition agreed by the parties, the commonly accepted description of workplace bullying as repeated and unreasonable behaviour directed at an employee that creates a risk to their health and safety is adopted.⁷ That

⁶ *O'Boyle v McCue* [2020] NZEmpC 175, from [287].

⁷ *Preventing and responding to bullying at work* (WorkSafe New Zealand, March 2017).

definition recognises that not all unpleasant or unfair interactions in the workplace will meet the threshold of bullying.

[52] Mr Chen described four incidents: being blamed following a customer complaint about portion size; being blamed when snapper fillets he had been instructed to defrost sold out unexpectedly; one occasion where the supervisor photographed him resting and then complained to Mr Lin that Mr Chen was lazy; and finally, the incident on 31 January 2025 involving the overcooked chicken. It is this final incident where Mr Chen also said the supervisor became angry and approached him in a threatening manner.

[53] These incidents were all described at a relatively high level and without detail as to their frequency, duration, or surrounding context, even after examination by the Authority. Some of the behaviours, including one-off or occasional instances of rudeness or tactlessness, differences in opinion or personality clashes, or single incidents of unreasonable behaviour, may not amount to bullying, depending on context.

[54] The incident involving the customer complaint about the portion size of chips involved an instruction by the supervisor that Mr Chen was ultimately responsible given he was also operating the deep fryer. This interaction appears to have occurred early into the relationship. On its face, that instruction is not unreasonable, particularly given Mr Chen's experience relative to that of the part-time employee he was working alongside, even if the manner in which it was communicated by the supervisor was also abrupt or critical.

[55] The incident in which the supervisor is alleged to have photographed Mr Chen while he was on a rest break and then described him as "lazy" to Mr Lin, is troubling. That conduct is capable of being characterised as unreasonable. However, there was no evidence that this incident resulted in any disciplinary action by Mr Lin, a formal complaint by Mr Chen, or any further escalation by Mr Lin or repeated conduct by the supervisor at the time. In those circumstances, it is open to being treated as an isolated instance of poor judgment by the supervisor rather than behaviour that, of itself, meets the statutory threshold for bullying.

[56] Similarly, the incident involving defrosting the snapper fillets appears, on Mr Chen's account, to have involved criticism that may have been unfair. Even accepting

that the supervisor's response was unfair, the evidence does not go further. There is no indication of any ongoing criticism of this kind, any formal consequences flowing from it, or any broader course of conduct of a similar nature.

[57] Taking the evidence as a whole, I am not satisfied on the balance of probabilities that the conduct in question directed at Mr Chen by the supervisor amounted to the repeated and unreasonable behaviour required to establish bullying. The incidents identified are limited in number, described at a relatively high level, and lack detail as to frequency, duration, or cumulative effect. While some of the behaviour was inappropriate, unpleasant or unfair, I do not find it was repeated and unreasonable or that it created a risk to Mr Chen's health and safety.

[58] The incidents appear to reflect occasional workplace tension, criticism of performance, and interpersonal conflict in a busy environment, rather than repeated and unreasonable behaviour. Put another way, by mid-January 2025 Mr Chen and the supervisor had worked together for between 252 and 264 work hours, or roughly 25 days. By struggling to recall more than four incidents, and even then, without providing meaningful supporting detail even when questioned, Mr Chen did not describe the kind of workplace where bullying conduct is likely to occur.

[59] The alleged threatening incident by the supervisor on 31 January 2025 is more serious, but it also stands alone and is not supported by further detail or corroboration, occurring after Mr Chen's unjustified dismissal had already taken place and within the effective notice period that he was working out. The 21 February letter refers to this incident but proposes a different version of events where Mr Chen was verbally abusive toward the supervisor and a colleague I have called Employee A.

[60] Without hearing from either the supervisor or Employee A, and given other inaccuracies in the 21 February letter, little weight can be placed on this explanation. However, aspects of it are more plausible than wholly accepting Mr Chen's account. For example, I consider it more likely than not that Mr Chen stood up for himself, including to the supervisor, and would not be backwards in coming forwards about concerns if he held them, as indeed he ultimately did on 31 January 2025.

[61] I do not find that Mr Chen was subjected to bullying. It follows that Mr Lin's response to the complaint, such as it was, also does not give rise to a separate disadvantage grievance. In any event, Mr Chen did not raise his concerns with Mr Lin

until shortly before the end of his employment, leaving limited opportunity for any meaningful response.

Remedies

[62] Mr Chen has established his personal grievance for unjustified dismissal. Connected with that dismissal are other disadvantages relating to the lack of an employment agreement and Mr Lin's non-compliance with statutory obligations – these disadvantages also need to be considered when assessing remedies for that grievance. Mr Chen also seeks compensation, arrears of entitlements, and penalties against Mr Lin.

Arrears of wages and entitlements

[63] In his closing submissions, Mr Kim said that “both parties have calculated that \$1,175.85 was owed for public holiday pay”, presumably in reference to (and reliance on) the 21 February letter. However, this letter needs to be treated with some caution and so the Authority still needs to be satisfied these entitlements are due and owing.

[64] When Mr Chen's working history for Mr Lin is assessed against relevant minimum requirements, an additional non-compliance with the Minimum Wage Act 1983 was identified. This claim was not specifically pleaded by Mr Chen (or identified by Mr Kim), however, the evidence establishes the breach and so it is appropriate to also remedy it in this determination.

[65] The evidence shows that Mr Chen worked from 10 December 2024 until 9 February 2025, a period of approximately nine weeks. For most of that time, he worked six days each week between 10am and 9pm. Allowing for a 30-minute unpaid meal break, this equates to 10.5 hours per day, or 63 hours per week. From 27 January 2025, the store's hours extended to 9.30pm each night, increasing his working hours to 11 paid hours, or 66 hours per week.

[66] Mr Chen was paid \$200 per day or \$1,200 per week. This means his effective hourly rate was approximately \$19.05 per hour during the first period (63 hours per week), dropping to \$17.39 per hour during the second period (66 hours per week). From 1 April 2024, the adult minimum wage in New Zealand was \$23.15 per hour.⁸ Mr Chen was therefore underpaid for all the hours he worked during both periods.

⁸ Minimum Wage Act 1983, s 6.

[67] Mr Chen also worked on three public holidays, each of which was also an otherwise working day for him. He was therefore entitled under the Holidays Act 2003 (Holidays Act) to be paid at not less than time and a half for the hours on those days, and to receive an alternative holiday for each day worked.⁹ Applying the minimum wage, the appropriate hourly rate for those days is \$34.73. On the evidence, Mr Chen worked 10.5 hours on each of these public holidays, giving a daily entitlement of \$364.66 and a total value for all three public holidays of \$1,093.99.

[68] In assessing the hours Mr Chen worked, I have considered whether any time should be deducted for unpaid meal breaks or whether he worked continuously. I am satisfied that Mr Chen was provided with, and took, statutory rest and meal breaks. One of the incidents relied on by Mr Chen as an example of bullying involved his supervisor allegedly taking a photo of him while he was on one such break. That evidence supports the conclusion that breaks were taken, something Mr Chen did not dispute during the investigation meeting. I have therefore provided for minimum break entitlements (specifically, unpaid meal breaks) in my calculations.

[69] For the purposes of calculating alternative holidays, Mr Chen's relevant daily pay was determined by reference to his usual working day. During the relevant period, he worked 10.5 hours per day. Applying the minimum wage, his relevant daily pay is \$243.08. Had Mr Chen been paid at least the minimum wage for the hours he worked, his gross earnings would have been materially higher than the \$10,800 he received. The Holidays Act requires annual holiday pay for employees employed for less than 12 months to be calculated at 8 per cent of gross earnings.¹⁰ For this purpose, 'gross earnings' must be assessed on a lawful basis, that is, by reference to at least the minimum wage for all hours worked.

[70] When Mr Chen's annual holidays entitlement is assessed on this basis, it equates to \$1,090.36. However, it is also now agreed that Mr Chen received five days' "ordinary" pay, apparently as annual holidays, while still employed by Mr Lin, albeit at an unlawful rate. Mr Chen received \$1,000 for these five days but the correct value of that leave should have been \$1,148.72. Mr Chen is therefore still owed \$148.72 toward his annual holidays entitlement.

⁹ Holidays Act 2003, s 56.

¹⁰ Holidays Act 2003, s 28.

[71] On that basis, Mr Chen's entitlement to arrears of wages and entitlements, including annual holidays, public holidays, and alternative holidays, is calculated in accordance with Table 1 below:

Table 1 – Arrears of wages and entitlements				
Item	Basis	Amount Paid	Correct Amount	Still Owing
Ordinary wages 10/12/23 – 26/1/24	42 days x 10.5 paid hours x \$23.15	\$8,400	\$10,211.25	\$1,811.25
Ordinary wages 27/1/24 – 9/2/24	12 days x 11 paid hours x \$23.15	\$2,400	\$3,053.70	\$635.70
Total gross earnings for work performed at ordinary rate	573 total paid hours x \$23.15	\$10,800	\$13,264.95	\$2,464.95
Public holiday uplift (penal rates)	Additional 0.5 x \$23.15 x 10.5 paid hours x 3 days	\$600 (incorporated by employer into ordinary wages)	\$1,093.99	\$493.99
Total wages that should have been paid (including T1.5 component)		\$10,800	\$14,358.94	\$3,558.78
Alternative holidays	3 days x relevant daily pay of \$243.08	\$0	\$729.24	\$729.24
Annual holidays	8% of lawful gross earnings of \$14,358.94	\$1,000 (incorporated by employer into ordinary wages)	\$1,148.72	\$148.72
TOTAL		\$10,800	\$16,236.90	\$5,436.90

[72] Bringing these threads together:

- a. Mr Lin was required to pay Mr Chen a total of \$14,358.94 in wages for the period of his employment, being the amount payable at the minimum wage and including the additional time-and-a-half component for his work performed on public holidays. Mr Chen was only paid \$10,800. Mr Lin therefore owes arrears of wages of \$3,558.94
- b. Mr Chen was entitled to three alternative holidays arising from the public holidays he worked. The value of these holidays should have been

paid by Mr Lin at the end of Mr Chen's employment. Mr Lin owes Mr Chen \$729.24 for these alternative holidays.

- c. Mr Lin owes Mr Chen \$148.72 as compensation for annual holidays, representing the difference between what he was paid and what he should have received.

[73] Mr Lin should have deducted, and Mr Chen should have paid, income tax on what Mr Chen earned. Mr Chen believed this was occurring. The fact it was not does change his obligations now. Mr Chen should pay the appropriate tax on gross earnings of \$16,236.90.

Reimbursement of lost wages

[74] The Authority must order an 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 section 128(3) of the Act to order an employer to pay a greater sum.¹¹

[75] Mr Chen claims reimbursement for 13 weeks' lost wages. Mr Chen says he obtained part-time work on 21 February 2025, but that his total earnings from this work was only \$2,502.83, whereas had he remained employed, Mr Kim submits he could have expected to have earned an additional \$17,881.17. Mr Kim submits this figure has been calculated based on lawful weekly earnings for Mr Chen of \$1,568. This is slightly more than what the evidence suggests Mr Chen's ordinary weekly earnings were (\$1,527.90). I have proceeded based on the lower calculation.

[76] Employees have a duty to mitigate their loss.¹² The evidence of mitigation in this case comprised six text messages Mr Chen apparently sent in response to online job advertisements between 11 February 2025 and 15 May 2025, including three sent in the same month as his unjustified dismissal; "apparently" because the messages were not provided attached to an affidavit by Mr Chen. The messages were all in Mandarin with a translation provided, presumably by Mr Kim.

[77] Mr Chen's income breakdown from 1 February 2025 until 30 June 2025 from the Inland Revenue Department (IRD) indicates he earned \$2,502.83 from his new

¹¹ *Pyne v Invacare New Zealand Ltd* [2023] NZEmpC 179, at [28]; applied in *Pedersen v Super Vape Store Ltd* [2026] NZERA 108, at [38].

¹² *Argosy Imports Ltd v Lineham* [1998] 3 ERNZ 976.

employer, Chefway Limited (Chefway). Bank statements suggest Mr Chen was paid by Chefway in \$200 amounts, generally weekly. However, these statements were only for the period 24 December 2024 until 23 June 2025, and I could only see \$2,000 in payments in the statements provided and not the \$2,502.83 reported to the IRD.

[78] I take from these pieces of information that Mr Chen was unsuccessful in finding alternative full-time work. Using the applicable minimum wage rate at the time, and \$200 represents roughly 8.5 hours of paid work, or around one day. It is not clear what prevented Mr Chen from also working during in the remainder of the week. Both his bank statements and IRD income breakdown show that he was also receiving regular rental payments throughout this time, although the breakdown suggests this was partnership income and not his alone.

[79] There are no text messages by Mr Chen applying for work in either March or April 2025. Payments from Chefway were also sporadic during this period,¹³ and suggest that Mr Chen worked the equivalent of 68 paid hours across these two calendar months. On the evidence, I am not satisfied that Mr Chen made reasonable efforts to mitigate his losses. After obtaining the role with Chefway, his efforts at securing alternative employment appear to have dropped off, despite still having sufficient time to pursue them.

[80] The causal connection between Mr Lin's unjustified action in dismissing Mr Chen without cause or process, and Mr Chen's ultimate losses in terms of his wages, was broken in March 2025. From that date, it is not possible to reliably establish what loss was caused by Mr Lin's conduct versus that sustained through Mr Chen's efforts around mitigation.

[81] Mr Chen is awarded four weeks' ordinary wages, or \$5,833.80, as reimbursement for lost wages under section 123(1)(b) of the Act. This amount is taxable.

Compensation for hurt and humiliation

[82] Where a personal grievance is established, the Authority may award compensation for humiliation, loss of dignity, and injury to feelings.¹⁴ The assessment

¹³ 7 March 2025, 14 March 2025, 21 March 2025, 28 March 2025, 4 April 2025, 10 April 2025, 22 April 2025 and 28 April 2025.

¹⁴ Employment Relations Act 2000, s 123(1)(c)(i).

is necessarily evaluative and must be made in light of all the circumstances of the case. Such awards are compensatory, not punitive, and should be kept within reasonable bounds. The focus should be on the actual impact on the employee, assessed objectively and without overstatement.

[83] Mr Chen experienced some degree of hurt and distress arising from the abrupt manner of his dismissal and the conditions in which he was employed. He worked long hours for remuneration below the statutory minimum, without the protection of a written employment agreement, and his employment came to an end without warning or fair process. These matters would have caused uncertainty and frustration.

[84] However, the evidence of impact and extent of loss was limited. During the investigation meeting, Mr Chen's evidence was suggestive of only low-level loss and harm. The incidents he described, including his concerns about his supervisor, were not of a sustained or serious nature and there was no evidence of lasting consequences beyond the immediate period of his employment. The evidence indicated Mr Chen treated these incidents as "water off a duck's back".¹⁵ In these circumstances, any compensable harm sits toward the lower end of any range.

[85] Taking these matters into account and a modest award is appropriate to recognise the harm and extent of loss suffered without overstating it. The purpose of the award is to acknowledge the loss of dignity and the upset caused by the unjustified dismissal, and its allied disadvantages, rather than to punish Mr Lin or duplicate other remedies awarded in this determination. Mr Chen is awarded compensation of \$8,000 under section 123(1)(c)(i) of the Act, which is consistent with other Authority determinations involving broadly similar circumstances.¹⁶

Contribution

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

¹⁵ *Richora Group Ltd v Cheng* [2018] NZEmpC 113, at [42].

¹⁶ See for example *Wong v NZAT Construction Ltd* [2026] NZERA 193, at [53]; *Kumar v IPG Corporation Ltd* [2025] NZERA 760, at [48]; and *Feng v Yoga Ltd* [2025] NZERA 709, at [20].

- 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.

[87] The Employment Court has previously held the primary consideration when determining whether conduct should result in a reduction for contribution are causation and proportionality.¹⁷ There must also be a causal connection between the employee's contributory conduct and the situation which gave rise to the dismissal.¹⁸

[88] Mr Lin did not follow any kind of process when dismissing Mr Chen. The evidence in this case does not indicate that Mr Chen contributed in any blameworthy way to the circumstances giving rise to his grievance. On that basis, no reduction in remedies is made under section 124 of the Act.

Penalties

[89] Mr Chen seeks penalties against Mr Lin for his breaches of employment standards and asks that a portion of any penalty be paid to him. The Authority has full and exclusive jurisdiction to deal with all actions for the recovery of penalties under the Act.¹⁹ In determining the amount of any penalty, the Act sets out seven relevant matters the Authority must have regard to.²⁰

[90] The purpose of a penalty is not compensatory but to hold the employer to account, mark the breach, and deter future non-compliance. In assessing the penalty, the Authority takes a broad evaluative approach, having regard to matters such as the nature and extent of the breach, the degree of culpability, any loss or damage caused, and the need for deterrence. Where there are multiple related breaches arising out of the same course of conduct, it may be appropriate to adopt a global approach rather than artificially disaggregating them.

¹⁷ *Keighran v Kensington Tavern Ltd* [2024] NZEMpC 28, at [41].

¹⁸ *Salt v Fell* [2008] NZCA 128, at [78].

¹⁹ Employment Relations Act 2000, s 133(1).

²⁰ Employment Relations Act 2000, s 133A.

[91] 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.²¹

[92] In this case, Mr Lin breached the following minimum employment standards:

- a. failing to pay Mr Chen at least the minimum wage (breaching section 6 of the Minimum Wage Act 1983),
- b. failing to meet obligations in respect of public holidays and annual holidays (breaching sections 50(1) and 56(1) of the Holidays Act 2003); and
- c. failing to provide a written employment agreement (breaching section 65(1) of the Employment Relations Act 2000).

[93] Each breach carries a maximum penalty of \$20,000, so a total of \$80,000.²² These breaches resulted from a single course of conduct, namely, the operation of an informal, cash-based employment arrangement that did not comply with statutory requirements. It is appropriate to consider Mr Lin’s breaches of the Minimum Wage Act 1983, Holidays Act 2003, and Employment Relations Act 2000 separately, but to deal with each statutory penalty on a global basis.

[94] The Employment Court has set out a four-step approach to considering penalties.²³ Having identified the nature and number of breaches above, the second step asks the Authority to assess the severity of each breach to establish a provisional starting point. The breaches are not trivial. Failing to pay at least the applicable minimum wage as well as Mr Chen’s minimum entitlements is serious. The evidence also suggests the breaches by Mr Lin were deliberate and intentional and not accidental. Given these factors, an appropriate provisional starting point is \$10,000 for penalties under the Minimum Wage Act 1983 and Employment Relations Act 2000, and \$15,000 for the penalty under the Holidays Act 2003.

[95] Step three asks the Authority to consider the means and ability of Mr Lin to pay. Because Mr Lin did not participate in the proceedings, there is no evidence to suggest

²¹ Employment Relations Act 2000, s 136(2).

²² Minimum Wage Act 1983, s 10(1); Employment Relations Act 2000, s 135(2); and Holidays Act 2003, s 75(1).

²³ *Borsboom v Preet PVT Limited and Anor* [2016] NZEmpC 143, from [139].

he would be unable to pay penalties if they were awarded. Accordingly, there is no reason to adjust the provisional starting point of \$35,000 in penalties.

[96] 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.

[97] The evidence in this case of actual impact beyond the underpayments themselves (which are addressed through arrears and holiday pay) was limited. There was also no evidence the issues affected other workers. This means penalties of \$35,000 would not be proportionate or just. However, maintaining the integrity of New Zealand's minimum wage system and its minimum employment entitlements is important, so any penalties must also appropriately denounce the conduct in question and deter others from committing it.

[98] Mr Lin is ordered to pay the following penalties:

- a. \$8,000 for his breach of the Minimum Wage Act 1983.
- b. \$2,000 for his breach of the Employment Relations Act 2000.
- c. \$2,000 for his breaches of the Holidays Act 2003.

[99] Mr Lin is to pay total penalties of \$12,000, with \$1,000 paid to Mr Chen to recognise that what he has already been awarded has not also compensated him for performing the public duty of bringing Mr Lin's non-compliances to the Authority's attention.²⁴

Costs

[100] The Authority's discretionary power to award costs is found in clause 15 of Schedule 2 of the Act. The Employment Court has described the principles governing the Authority's costs discretion in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*.²⁵ Those principles include that the Authority must exercise discretion according to principle, having regard to its equity and good conscience jurisdiction; that costs will

²⁴ *Borsboom v Preet PVT Limited and Anor* [2016] NZEmpC 143, at [150].

²⁵ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808.

usually follow the event; that awards should remain modest; that the Authority often measures costs against a notional daily rate (the notional tariff); and that the Authority may take account of conduct that unnecessarily increases costs.

[101] Mr Chen has asked that I determine the matter of costs as part of this determination because of Mr Lin's non-engagement to date. However, no evidence of Mr Chen's actual costs was provided. The only reference I could find regarding Mr Chen's costs was a reference in one of his bank statements to "Migrant Employment" with the reference "era fee" in the amount of \$71.55 on 15 April 2025. Among other things, the absence of this evidence constrains any proportionality assessment but also risks offending against the principle that, irrespective of what a party might be able to claim under the notional tariff, their actual costs will always form the upper limit of what can be awarded.

[102] The investigation meeting was short, lasting only around two hours. Mr Kim acknowledged this in his submissions. Because there was no responding party, the progress of Mr Chen's application from lodgement to determination has also not been unduly complex or onerous for him or indeed Mr Kim. Mr Chen's witness statement was brief, with most key information only revealing itself through the Authority's questioning. It was also only as a consequence of the Authority's investigation that the minimum wage breach was identified and through that investigation that arrears of minimum entitlements correctly quantified.

[103] In the absence of any evidence of, or even of submissions meaningfully addressing, Mr Chen's actual costs, and given the factors identified above, I cannot see how the exercise of my discretion to award costs in this case would be principled unless any award was modest, even having regard to the notional tariff. I award costs to Mr Chen of \$1,000.

Orders

[104] Within 28 days of the date of this determination, Wen Hui Lin is ordered to:

- a. Pay Shaoqiang Chen:
 - i. \$2,829.56 as arrears of wages, less any lawful deductions, including on account of tax.
 - ii. \$729.24 as the value of three alternative holidays, less any lawful deductions, including on account of tax.

- iii. \$215.40 as the value of annual holidays, less any lawful deductions, including on account of tax.
 - iv. \$5,833.80, as reimbursement for lost wages under section 123(1)(b) of the Act, less any lawful deductions, including on account of tax.
 - v. \$8,000, as compensation for hurt and humiliation under section 123(1)(c)(i) of the Act, without deduction.
 - vi. \$1,000, as a contribution toward his costs.
 - vii. \$1,000 as a portion of the overall penalty amount of \$12,000.
- b. Pay into the Crown's account:
- i. \$11,000 as a penalty under section 135(2)(a) of the Act for his breaches of employment standards.

Robert Davies
Member of the Employment Relations Authority