

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 309
3327908
3327660

BETWEEN	SASHA LEE Applicant
AND	JNJ MANAGEMENT LIMITED First Respondent
AND	NATIONAL HOLDINGS LIMITED Second Respondent

Member of Authority: Simon Greening

Representatives: Kara Orviss, advocate for the Applicant
Tony Sung, counsel for the Respondent

Investigation Meeting: 27 March 2026 in Auckland

Submissions received: 4 May 2026 from the parties

Determination: 19 May 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

- [1] James Yoong Sun Kwak is the sole director of the JNJ Group (Group).
- [2] JNJ Management Limited (JNJ) is the parent company of the Group and manages operations across various entities within the Group. National Holdings Limited (NHL) is an entity within the Group.
- [3] NHL operates Metro Lanes Bowling and associated retail hospitality businesses including, Aotea House, Pastamago, Sushi Wave, Okonomi Yaki, Bake My Day, and Mini Golf.

[4] Ms Lee was employed in the position of personal assistant to Mr Kwak.

[5] Although, on paper, Ms Lee's job description set out the duties of a personal assistant, Ms Lee says that in reality her role was much broader than the work normally undertaken by a personal assistant. This is because Ms Lee's work involved supporting a range of entities within the Group and, in particular, NHL.

[6] Ms Lee says that she was jointly employed by JNJ and NHL. Ms Lee seeks arrears of wages and outstanding annual leave payments from JNL and NHL on a joint employer basis.

[7] Towards the end of the employment relationship, Ms Lee raised concerns about her treatment at work which led to a personal grievance for unjustified disadvantage being raised with JNJ, on the basis that JNJ did not provide Ms Lee with a healthy and safe work environment.

[8] When JNJ removed some of her duties, Ms Lee raised a further personal grievance for unjustified disadvantage.

[9] Ms Lee commenced employment with JNJ on 12 November 2018. Ms Lee's position was made redundant, and her employment with JNJ concluded on 19 January 2024. Ms Lee says that she was unjustifiably dismissed by JNJ.

[10] Ms Lee seeks remedies from JNJ and NHL for her personal grievances, in the form of compensation for hurt, humiliation and injury to feelings, and reimbursement of wages lost as a result of the personal grievance for unjustified dismissal.

The Authority's investigation

[11] For the Authority's investigation written witness statements were lodged by Ms Lee, Mr Kwak, and Mr Jack Lee. The witnesses answered questions from me under oath or affirmation, and from the representatives.

[12] As permitted by s 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[13] The issues requiring investigation and determination are:

- (a) Was Ms Lee an employee of NHL?
- (b) If so, did Ms Lee raise a personal grievance with NHL?
- (c) Was Ms Lee unjustifiably disadvantaged by JNJ in respect of the removal of some of her duties?
- (d) Was Ms Lee unjustifiably disadvantaged because JNJ did not provide a healthy and safe work environment?
- (e) Was Ms Lee unjustifiably dismissed by JNJ?
- (f) Does JNJ and/or NHL owe Ms Lee wage arrears?
- (g) Does JNJ and/or NHL owe Ms Lee annual holiday pay?
- (h) Does JNJ and/or NHL owe Ms Lee payment for public holidays?
- (i) If any personal grievance is established, then is Ms Lee entitled to the remedies sought, from either JNJ and/or NHL including: compensation pursuant to s 123(1)(c)(i) of the Act and/or remuneration lost as a result of the alleged personal grievance for unjustified dismissal?
- (j) Should any remedy awarded be reduced under s 124 of the Act for blameworthy conduct by Ms Lee which contributed to the circumstances which gave rise to her grievances?
- (k) Is either party entitled to an award of costs?

Was Ms Lee an employee of NHL?

[14] In determining whether Ms Lee was employed by NHL, the Authority must determine the real nature of the relationship between the persons who are said to be employer and employee under a contract of service.¹

[15] In deciding the real nature of their relationship, the Authority must consider all relevant matters, including any matters that indicate the intention of the persons, and is not to treat as determinative any statement by the persons that describes the nature of their relationship.²

¹ *Rasier Operations BV v E TU Inc* [2025] NZSC 162 at [71].

² Above n 1 at [71].

[16] Ms Lee says that between December 2018 and November 2023, she was employed by NHL as the general manager for various businesses controlled by NHL, including Metro Lanes Bowling.

[17] In determining the real nature of the relationship between Ms Lee and NHL I have considered the following factors:

- (a) Ms Lee was employed by JNJ during this same period.
- (b) JNJ was the parent company of NHL.
- (c) Ms Lee's job description records her position as personal assistant to the chief executive (Mr Kwak).
- (d) Mr Kwak, being the sole director of the Group, was responsible for various entities within the Group, including JNJ and NHL.
- (e) There is a document labelled, "Addendum of Employment Agreement between NHL and Sasha Lee" (Addendum) and signed on 29 August 2022 by Mr Kwak and Ms Lee.
- (f) However, the JNJ logo is on this document, and the varied term of employment recorded in the document refers to JNJ.
- (g) This document also refers to a pay increase, which is reflected in the payslips provided by JNJ from 29 August 2022. Ms Lee was not paid by NHL.
- (h) There was no written employment agreement, before the Authority, between NHL and Ms Lee.
- (i) The job description for Ms Lee's position with JNJ includes facility management, project management, human resources, and supervising staff.
- (j) In her witness statement, Ms Lee confirmed she did not receive separate salary payments from NHL.
- (k) In an organisational chart for JNJ, the positions occupied by Ms Lee are described in the following ways: general manager (NHL), business development manager, and personal assistant to the chief executive.
- (l) In a communication sent by Ms Lee on 19 December 2023, Ms Lee writes:

Even though I am not employed by National Holdings Ltd, I was working as General Manager, Operation manager for Metro Lanes under National Holdings for the last few years.

[18] Ms Lee was employed by JNJ and undertook work for various entities, including NHL, within the Group.

[19] It was not the intention of the parties that Ms Lee would be employed by NHL, but as part of her employment with JNJ, the parent company of NHL, Ms Lee would undertake some work for NHL.

[20] In email correspondence, Ms Lee describes herself as a business development manager, with the email signature referring to JNJ, not NHL.

[21] I accept that Mr Kwak directed Ms Lee to undertake work for NHL. However Mr Kwak was the chief executive and sole director of the Group, Ms Lee's role was broad, and various job titles were used to describe her role. Therefore, I have not given any weight to the control factor in assessing the real nature of the relationship between Ms Lee and NHL.

[22] Ms Lee was integrated into NHL because she undertook work as the general manager for NHL. However, JNJ was the parent company, Ms Lee had a written employment agreement in place with JNJ, and part of her role with JNJ involved undertaking management duties for NHL. Given this context, I have not given any weight to the integration factor in assessing the real nature of the relationship between Ms Lee and NHL.

[23] I have also considered joint employer submission advanced by the applicant. The Employment Court has discussed the concept of joint employment.³ In *E TU Incorporated v Raiser Operations BV*, the court said it would be arbitrary to select only one of the entities as the employer for a given period, because it was clear that each of the respondents were taking on only a portion of the employer's obligations.⁴

[24] This case can be distinguished on the basis that although JNJ and NHL are closely related companies, JNJ was solely responsible for all of the employment obligations.

[25] For these reasons I conclude Ms Lee was not employed by NHL.

³ *E TU v Rasier Operations BV* [2022] NZEmpC 192 at [90].

⁴ Above n 3 at [88].

Was Ms Lee unjustifiably disadvantaged by JNJ in respect of the removal of some of her duties?

[26] A personal grievance for unjustified disadvantage is a claim that an employee's employment, or one or more conditions of the employee's employment, is or are affected to the employee's disadvantage by some unjustifiable action by the employer.⁵

[27] Ms Lee maintains she was unjustifiably disadvantaged by JNJ because the company did not consult with her before unilaterally removing duties from her role.

[28] Ms Lee says she felt humiliated and upset by JNJ's decision.

[29] On 22 November 2023, a meeting took place between Ms Lee, Mr Kwak, and Ms Kerry Jeon, who was employed by JNJ as a human resources administrator.

[30] Ms Lee's role with JNJ, included responsibility for human resources. At this meeting, the arrangements for covering this aspect of Ms Lee's role were discussed. Mr Kwak decided that Ms Jeon would cover this aspect of Ms Lee's role during her period of up-coming annual leave, and Ms Lee was informed accordingly.

[31] On 24 November 2023, Ms Jeon sent a notice to all employees across the Group:

We are pleased to announce the following appointments:

General Manager of Metrolanes
New appointment: James Kwak (Chairman)
HR Manager – Kerry Jeon
New appointment: Kerry Jeon

These appointments will be effective starting from 24 November 2023.
We believe their expertise and dedication will contribute significantly to the success of our companies.

[32] On 27 November 2023, Ms Leon sent an email to Ms Jeon and Mr Kwak explaining how upset and humiliated she felt about the announcement and the lack of consultation with her before the announcement was made.

[33] Undertaking management duties for NHL, and managing the human resources function for JNJ, were key parts of Ms Lee's role. The JNJ organisational chart refers to Ms Lee's role with NHL.

⁵ Employment Relations Act 2000, s 103(1)(b).

[34] In addition, JNJ was initially proposing to organise cover for the human resources related responsibilities, which were part of Ms Lee's role, while she was on leave.

[35] These were not small or insignificant parts of Ms Lee's role. JNJ took steps to announce permanent changes to Ms Lee's role, by distributing these duties to Ms Jeon and Mr Kwak.

[36] Ms Lee was not consulted about permanent changes to her role.⁶ The announcement came as shock to Ms Lee and caused her to experience considerable stress.

[37] Ms Lee was unjustifiably disadvantaged by JNJ in respect of the removal of NHL management related duties, and duties related to management of human resources.

[38] Ms Lee undertook these duties as an employee of JNJ.

Was Ms Lee unjustifiably disadvantaged because JNJ did not provide a healthy and safe work environment?

[39] JNJ owed an implied duty to Ms Lee to provide a healthy and safe work environment. The context of this implied duty is informed by the Health and Safety at Work Act 2015.⁷ Section 36 of this Act provides that employers must ensure, so far as is reasonably practicable, the health and safety of employees while at work.⁸

[40] The requirement to take all practicable steps to ensure an employee's safety only arises where an employer knows, or ought to reasonably know, about the circumstances giving rise to the risk of harm.⁹

[41] On 30 November 2023, Ms Lee says that Ms Jeon shouted loudly at her in front of colleagues and Mr Kwak.

[42] Mr Kwak says he was not present at the time, but was informed about what occurred by Ms Jeon later in the day when he returned to the office.

⁶ Employment Relations Act 2000, s 4(4)(ba).

⁷ *Robinson v Pacific Seals New Zealand Ltd* [2014] NZEmpC 99 at [25].

⁸ Health and Safety at Work Act 2015, s 36(1).

⁹ Above n 7 at [29].

[43] The focus of a disadvantage claim in this context, is on the steps JNJ took after the incident occurred.

[44] Ms Lee says that JNJ did not take any steps to investigate this incident or reassure her that action would be taken to address her concerns regarding what had occurred. Ms Lee did not return to work after this incident. She submitted a medical certificate on 30 November 2023.

[45] Whether JNJ's steps were reasonable, turns partly on whether Mr Kwak was present when the incident occurred. On Tuesday 19 December 2023, Ms Lee emailed Mr Kwak noting:

...On 30 November, I reported to you the event between Kerry Jeon and me, again, you did not reply as of now.

[46] On 30 November 2023 at 8.21pm, Ms Lee emailed Mr Kwak, noting

At around 4.55pm today, just before I left the office, I requested you to take this event seriously on the meeting.

[47] These emails suggest, on the balance of probabilities, that Mr Kwak was not present when the incident occurred.

[48] JNJ did not take steps to specifically address the incident on 30 November 2023. However, in the circumstances, JNJ was limited by what it could do by way of response because on 30 November 2023 Ms Lee took sick leave and did not return to work.

[49] Therefore, Ms Lee has not established this personal grievance claim.

Was Ms Lee unjustifiably dismissed by JNJ?

[50] The legal test for determining whether a dismissal is justified, is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred.¹⁰

[51] JNJN advised Ms Lee that her position had been made redundant on 21 December 2023. Ms Lee was paid four weeks in lieu of working her notice period.

¹⁰ Employment Relations Act 2000, s 103A(2).

[52] In *Grace Team Accounting Limited v Brake* the Court of Appeal explained the legal basis for making a position redundant and the process an employer is required to follow.¹¹

[53] Applying the legal principles in *Brake*, JNJ's decision to dismiss Ms Lee was unjustified because:

- (a) Although JNJ endeavoured to consult with Ms Lee between 7 December and 21 December 2023, Ms Lee was on sick leave during this period, and JNJ did not pause the restructuring process.
- (b) Two weeks prior to the start of the consultation process, JNJ had unilaterally and without consultation with Ms Lee, removed key aspects of her role, which suggests the decision to disestablish Ms Lee's role was predetermined from the outset.
- (c) Evidence in support of predetermination is supported by the documents included in the consultation pack, which outline a proposal to disestablish aspects of Ms Lee's role, which had already been removed from her job description two weeks prior to the announcement of the restructure.
- (d) The documents included in the consultation pack do not explain why JNJ was proposing to make the position held by Ms Lee, redundant.
- (e) The documents do not explain the savings that JNJ needed to make or why making Ms Lee's position redundant would assist JNJ.¹²
- (f) The proposal refers to a "notable 500% profit decrease compared to the previous year", however JNJ did not provide any financial information in the consultation pack to explain this decrease in profit, what that meant for the company or why it was necessary to disestablish Ms Lee's position as a consequence.¹³
- (g) There is no mention in the consultation documents about alternatives to redundancy, what other costs savings could be made by JNJ, or given the

¹¹ *Grace Team Accounting Limited v Brake* [2014] NZCA 541 at [85].

¹² *Simpsons Farms Limited v Aberhart* ARC 52/06 at [62].

¹³ Employment Relations Act 2000, s 4(1A)(c).

significant decrease in profit, why other positions were not also being considered for potential redundancy.

[54] Ms Lee was unjustifiably dismissed by JNJ.

Does JNJ owe Ms Lee wage arrears?

[55] Ms Lee signed the first permanent employment agreement with JNJ on 12 November 2018 (First IEA).

[56] Ms Lee resigned on 11 October 2019 but was re-employed on a fixed term basis between 28 April 2020 and 28 August 2020.

[57] Ms Lee signed the second permanent employment agreement with JNJ on 29 August 2020 (Second IEA).

[58] Clause 4.1.2 in the Second IEA states:

You also agree to work any reasonable and mutually agreed additional hours required to fulfil the responsibilities of your position and extra payment will be made for those additional hours.

[59] Clause 5.1 in the Second IEA states:

Your pay rate is specified in appendix 1. This rate includes all hours worked to complete the responsibilities of your position, except if requested to work on a public holiday.

[60] Ms Lee was a salaried employee.

[61] For the period 27 August 2020 to 19 January 2024, Ms Lee seeks the sum of \$145,043.28 in wage arrears from JNJ, on the basis of additional hours she worked but was not paid for in accordance with clause 4.1.2 in the Second IEA.

The relevant clauses in the employment second individual employment agreement

[62] The first submission for JNJ is that clause 5.1 in the Second IEA makes it clear that all hours worked, including additional hours, were fully compensated by way of the fixed salary Ms Lee received.

[63] JNJ accepts that clause 4.1.2 in the Second IEA provides that Ms Lee is entitled to additional payment for working any reasonable and mutually agreed hours.

[64] However, JNJ submits that Ms Lee never sought approval from Mr Kwak before working the additional hours she now claims.

[65] On the face of it, clause 5.1 and clause 4.1.2 are in conflict. This is because clause 5.1 suggests all hours are paid for by way of Ms Lee's salary. In contrast, clause 4.1.2 suggests additional hours worked by Ms Lee would be paid in addition to her normal salary payments.

[66] I have taken an objective approach in ascertaining the meaning of these clauses.¹⁴ There is a consistent meaning that can be arrived at when reading these clauses together.

[67] Clause 5.2 suggest that Ms Lee's salary would normally cover all hours worked to "complete the responsibilities of the position", which includes additional hours of work.

[68] However, any additional hours worked would not be on the basis of a request by JNJ for Ms Lee to work additional hours.

[69] In contrast, clause 4.1.2 allowed JNJ to ask Ms Lee to work additional hours to "fulfil the responsibilities of your position", and if that occurred, then these additional hours would be compensated by JNJ.

[70] Therefore, if Ms Lee worked additional hours, on a reasonable and mutually agreed basis, then JNJ would compensate Ms Lee for the additional hours worked.

The additional hours of work – Mr Kwak's approval

[71] The second submission for JNJ, is that Ms Lee never sought approval from Mr Kwak before working the additional hours she now claims.

[72] Ms Lee was not required to obtain Mr Kwak's express approval to work additional hours.

¹⁴ *Supercity Towing Ltd v Huch* [2023] NZEmpC 205 at [18].

[73] Ms Lee worked closely with Mr Kwak. For a period of time during the employment relationship they lived together. Mr Kwak sometimes referred to himself as the chairman of the Group. The Group was an extensive network of business entities controlled by Mr Kwak.

[74] This context helps explain how the employment relationship worked in practice and is a fundamental and important consideration when determining what “mutual agreement” means, in clause 4.1.2 of the Second IEA.

[75] The concept of mutual agreement, in the context of Ms Lee’s position and her relationship to Mr Kwak, is established on the basis that Mr Kwak must have known about the additional hours of work that she was working and did not take steps to stop Ms Lee working these additional hours.

[76] There is no evidence before the Authority to suggest that Mr Kwak did not want Ms Lee working any additional hours.

[77] Therefore, Ms Lee worked additional hours, which were reasonable and at least mutually agreed, by implication, between Ms Lee and Mr Kwak.

Section 132 of the Employment Relations Act 2000 – wages and time record

[78] I now consider the obligation arising under s 130 of the Act requiring JNJ to maintain a wages and time record.

[79] The wages and time record must include detail as to the number of hours worked each day in a pay period and the pay for those hours.¹⁵

[80] JNJ did not comply with s 130(1)(g) of the Act because the additional hours worked by Ms Lee were not recorded in the Second IEA or a wages and time record.¹⁶

Analysing Ms Lee’s evidence in support – payment for additional hours worked

[81] I now consider the evidence provided by Ms Lee in support of her claim for wage arrears.

¹⁵ Employment Relations Act 2000, s 130(1)(g).

¹⁶ Employment Relations Act 2000, s 130(1C).

[82] Ms Lee's claims for additional hours worked, are set out in the table below:

28 August 2020 – 31 March 2021	\$23,105.77
1 April 2021 – 24 July 2024	\$11,942.32
25 July 2021 – 31 March 2022	\$30,048.08
1 April 2022 – 28 August 2022	\$19,139.42
29 August 2022 – 31 March 2023	\$29,826.92
1 April 2023 – 19 January 2024	\$30,980.77
Total claimed	\$145,043.28

The nature of Ms Lee's role

[83] Ms Lee's position as personal assistant to Mr Kwak was multifaceted in nature.

[84] There were multiple entities and businesses within the Group. There were at least seven hospitality businesses with approximately 70 employees employed by various entities within the group.

[85] Ms Lee maintained business work diaries. In her evidence, Ms Lee described the nature of work she did which went beyond that of a personal assistant. For example, Ms Lee's responsibilities included management of tenant related matters, coordination of a Korean hospital project, management duties involving NHL, the Waiwera Hot Pools project and other related projects.

[86] Additional work undertaken by Ms Lee included management related work for residential projects, the centre refurbishment project, and site management duties in the weekend for NHL related businesses.

[87] Ms Lee was involved in weekly governance meetings with project architects and project managers, and she initiated and coordinated the OnQ project. Ms Lee was also involved in business sale projects, which involved working with various agents and business brokers.

[88] Mr Kwak says that Ms Lee was involved in various projects but says that Ms Lee's involvement was limited to support or administrative functions. Although Mr Kwak characterises Ms Lee's involvement in these projects as limited, it does not necessarily follow that Ms Lee's duties did not extend beyond those set out in the job description.

Business work diaries

[89] Mr Kwak does not dispute that tasks were recorded in Ms Lee's business diaries. However, Mr Kwak says that the recording of a task in a diary does not mean that the task was time-consuming or that it occupied a full day.

[90] Ms Lee provided the Authority with copies of the business diaries she had in her possession. The business diaries provided to the Authority covered various periods in 2021 and 2022.

[91] Ms Lee accepts that she has done her best to reconstruct the additional hours of work over a period of approximately three and half years.

[92] Ms Lee says the Authority should accept as proved all the claims she has made in respect of the hours, days and time worked.¹⁷

[93] Although JNJ did not comply with s130(1)(g) of the Act, the Authority can exercise its discretion in determining whether an employee has proved all claims made in respect of the hours, days and time worked by the employee.¹⁸

[94] I have taken an objective approach in determining whether all the additional hours claimed to be worked by Ms Lee, have been established on the balance of probabilities.

[95] I have taken the following factors into account:

- (a) Only some of the pages in the business diaries record the start and finish times for a particular day.
- (b) Ms Lee provided a spreadsheet to the Authority which listed each week, the additional hours claimed, and a single line describing the additional work undertaken that week.
- (c) Mr Kwak's evidence that Ms Lee undertook work of a personal nature from time to time during her office hours.
- (d) The nature of the tasks recorded in Ms Lee's business diaries, which provide helpful contemporaneous evidence of the work she did which went beyond the scope of her job description.

¹⁷ Employment Relations Act 2000, s 132(2).

¹⁸ *Rainbow Falls Organic Farm Limited v Rockell* [2014] NZEmpC 136 at [29].

(e) The Covid-19 period and the Level 4 lock down period between 17 August and 21 September 2021.

(f) The check-in/out record from JNJ's vistab system.

[96] I assessed the hours claimed by Ms Lee and have made the following finding in respect of hours claimed and proven in the table below. I note that if a business diary was provided for part of the period in question, I have indicated this by recording BD alongside the hours claimed. The business diaries do not cover an entire period, but only limited parts of the period. The business diaries generally do not record start and finish times. My findings are set out in the far-right column of the table:

28 August 2020 – 31 March 2021	\$23,105.77	534	420
1 April 2021 – 24 July 2021	\$11,942.32	262BD	207
25 July 2021 – 31 March 2022	\$30,048.08	625BD	450
1 April 2022 – 28 August 2022	\$19,139.42	398BD	260
29 August 2022 – 31 March 2023	\$29,826.92	517	380
1 April 2023 – 19 January 2024	\$30,980.77	537	384
Total claimed	\$145,043.28	2873	2101

[97] I have set out the sums payable for each period based on the hourly rate (which is not in dispute between the parties):

28 August 2020 – 31 March 2021	\$18,173.40
1 April 2021 – 24 July 2021	\$8,956.89
25 July 2021 – 31 March 2022	\$21,636
1 April 2022 – 28 August 2022	\$12,500.80
29 August 2022 – 31 March 2023	\$21,922.20
1 April 2023 – 19 January 2024	\$22,152.96
Total determined	\$105,342.25

[98] For completeness, I note for the pay periods ending 13 August 2023, 27 August 2023, and 10 September 2023, Ms Lee was paid for additional hours worked. I have deducted twenty-six hours from the hours claimed for this period, as part of my analysis.

[99] Within 60 days of the date of this determination, I order JNJ to pay Ms Lee the sum of \$105,342.25 (gross) in wage arrears.

Does JNJ and/or NHL owe Ms Lee annual holiday pay?

[100] JNJ does not dispute that Ms Lee is owed 378 hours of accrued annual leave.

[101] The parties dispute the value of this accrued annual leave balance because of the different approach taken by each party in determining Ms Lee's average weekly earnings.¹⁹

[102] On the basis of additional hours worked by Ms Lee, I have concluded the figure for average weekly earnings for the pay period 29 January 2023 to 14 January 2024 was \$2,733.71.

[103] Therefore, the sum payable to Ms Lee in respect of annual leave owing at the conclusion of her employment with JNJ is \$25,844.55 (gross). This sum is based on 9.45 weeks of accrued annual leave, which is agreed by the parties.

[104] Ms Lee also seeks 8% of her gross earnings for the final year of her employment with JNJ. This period commenced on 1 May 2023 and concluded on 19 January 2024.

[105] On the basis of additional hours worked by Ms Lee during this period, I have concluded the sum owed to Ms Lee is \$8,529.20.

[106] Within 60 days of the date of this determination, I order JNJ to pay Ms Lee the sum of \$34,373.75 (gross) in respect of annual holiday pay owing to Ms Lee.

[107] JNJ has asked the Authority to offset the sum of \$19,177.71 (gross), and the sum of \$720.60 (gross), already paid to Ms Lee pursuant to s 28 of the HA03, against the annual holiday pay owed to Ms Lee.

[108] The purpose of the HA03 and the text of s 28B(2), requires an employee's annual holiday entitlement to be restored as if the payment had not been made, however JNJ may decide to bring a new application to the Authority to recover what they perceive to be mistaken payments made to Ms Lee.²⁰

¹⁹ Holidays Act 2003.

²⁰ *Smart Sushi Northwest Limited v A Labour Inspector of the Ministry of Innovation and Employment* [2025] NZEmpC 236 at [45].

[109] I therefore decline JNJ's application to offset payments made already to Ms Lee, against the annual leave entitlement owing to Ms Lee.

Does JNJ and/or NHL owe Ms Lee payment for public holidays?

[110] Ms Lee accepts in her submissions that she was not able to establish the hours worked on various public holidays.

[111] Accordingly, Ms Lee resolved to not make a claim in respect of public holidays worked, although she maintains she worked some hours on some public holidays.

[112] Therefore, I find this claim is not established.

Remedies

[113] Ms Lee has established a personal grievance for unjustified disadvantage in respect of the removal of some of her duties, and a personal grievance for unjustified dismissal. She is entitled to a consideration of the remedies sought.

Compensation for humiliation, loss of dignity and injury to feelings

[114] An award of compensation is for the impact on the employee of the personal grievance and not intended as a punitive action to signal disapproval of the employer's conduct.²¹

[115] In considering an award of compensation, the assessment required is the nature and extent of harm caused to the employee by the employer's breach.²²

[116] Firstly, I will consider the personal grievance for unjustified disadvantage. It was clear from Ms Lee's evidence that she felt humiliated and shocked by the sudden removal of key aspects of her role. The announcement by JNJ, without consultation or warning, that certain parts of her role were being taken over by other people, felt to Ms Lee like she had been dismissed. She felt very hurt and embarrassed.

[117] Secondly, I will consider the personal grievance for unjustified dismissal. In her evidence Ms Lee described the significant emotional and mental toll the dismissal took on her. Ms Lee has limited family support in New Zealand. Therefore, Ms Lee had very

²¹ *Paykel Ltd v Ahlfield* [1993] 1 ERNZ 344 at [342].

²² *Pyne v Invacare New Zealand Limited* [2023] NZEmpC 179 at [41].

little emotional support following termination of her employment with JNJ. Following the dismissal, Ms Lee withdrew socially and emotionally. Ms Lee struggled with depression. The dismissal affected her sleep, caused anxiety, and poor physical health followed.

[118] Taking all of these factors into account, an award of compensation under s 123(1)(c)(i) of the Act is appropriate in this case:

- (a) \$8,500 for the disadvantage claim arising from the removal of duties.
- (b) \$17,000 for the dismissal claim.

Subsequent allegation of misconduct

[119] Following the conclusion of Ms Lee's employment with JNJ, Mr Kwak became aware of conduct which is the subject of ongoing investigation.

[120] On 21 June 2024, JNJ discovered that Ms Lee was still in contact with a tenant who occupied an apartment, which the Authority understands is owned by JNJ, and Ms Lee was holding herself out as a property manager for that apartment. Payments were made by this tenant to Ms Lee. The Authority was provided with bank statements in support of this allegation, showing the payments from the tenant to an account: "*Lee – Parking*".

[121] Misconduct of a truly significant nature, discovered by an employer following the conclusion of an employment relationship, can be taken into account when determining remedies under s 123 of the Act.²³

[122] This matter has been reported to the police. No criminal charges have been laid to date. Mr Kwak says the tenant emailed JNJ request immediate refund of carpark fees totalling \$7,560.

[123] On the face of it, this is a serious allegation. If this information was known to JNJ when the employment relationship was on foot, it could have potentially resulted in Ms Lee being dismissed.

²³ *Salt v Governor of Pitcairn and Associated Islands* [2008] NZCA 128 at [83].

[124] It is appropriate to reduce the awards made under s 123(1)(c)(i) of the Act by \$8,000, taking into account comparable cases.²⁴

[125] Within 28 days of the date of this determination, I order JNJ to pay Ms Lee the sum of \$17,500 pursuant to s123(1)(c)(i) of the Act.

Reimbursement of lost wages

[126] Lee has provided evidence to the Authority in support of her search for alternative employment from September 2024 onwards. Ms Lee also sought the assistance of the Ministry of Social Development in October 2024.

[127] Based on the evidence before the Authority, I am not satisfied that Ms Lee took steps to find alternative work in the 13-week period following her dismissal. The question I have to consider is whether that was reasonable in all the circumstances?²⁵

[128] I accept the relationship between Ms Lee and Mr Kwak was complicated, and a number of issues which involved the police and family court proceedings arose, following the termination of Ms Lee's employment. It was a stressful and difficult time for the parties. This personal situation impacted on Ms Lee's ability to contemplate taking steps to secure new employment.

[129] The question of whether or not an order should be made reimbursing an employee for remuneration lost as result of a personal grievance, needs to be considered in context.

[130] Mr Kwak is the sole director JNJ. JNJ knew about the complicated issues involving Ms Lee's relationship with Mr Kwak at the time of the dismissal. Ms Lee sought third party government assistance and was referred to a psychiatrist.

[131] I find Ms Lee's decision to not seek alternative employment immediately following dismissal, was reasonable in the circumstances.

[132] Ms Lee is entitled to the sum equivalent to 13 weeks' wages for remuneration lost as a result of the personal grievance for unjustified dismissal.

²⁴ *Evans v Manuka Mountain Limited* [2021] NZERA 572.

²⁵ *Maddigan v Director-General of Conservation* [2019] NZEmpC 190 at [64].

[133] Although Ms Lee was unemployed for a much longer period than the first 13 weeks following her dismissal, I decline to award a sum greater than 13 weeks for lost remuneration because the evidence before the Authority establishes that Ms Lee did not seek alternative employment until September 2024.

[134] Within 28 days of the date of this determination, I order JNJ to pay Ms Lee the sum equivalent to 13 weeks' wages pursuant to s 128(2) of the Act.

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

[135] Ms Lee did not contribute towards the situation that gave rise to her personal grievance for unjustified disadvantage or her personal grievance for unjustified dismissal.

[136] Therefore, the remedies are not reduced under s 124 of the Act.

Summary and orders

[137] I make the following orders:

- (a) within 60 days of the date of this determination, I order JNJ to pay Ms Lee the sum of \$105,342.25 (gross) in wage arrears; and
- (b) within 28 days of the date of this determination, I order JNJ to pay Ms Lee the sum of \$17,500 pursuant to s123(1)(c)(i) of the Act; and
- (c) within 60 days of the date of this determination, I order JNJ to pay Ms Lee the sum of \$34,373.75 (gross) in respect of annual holiday pay owing to Ms Lee; and
- (d) Within 28 days of the date of this determination, I order JNJ to pay Ms Lee the sum equivalent to 13 weeks' wages pursuant to s 128(2) of the Act.

Costs

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

[139] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Ms Lee 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, JNJ then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[140] 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.²⁶

Simon Greening
Member of the Employment Relations Authority

²⁶ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.