

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 335  
3358044

BETWEEN BENJAMIN JAMES FULLER  
Applicant

AND SUPER CHEAP AUTO (NEW  
ZEALAND) PTY LIMITED  
Respondent

Member of Authority: Sarah Blick

Representatives: Lawrence Anderson, advocate for the respondent  
Emma Crowley, counsel for the applicant

Investigation Meeting: 29 January 2026 in Auckland

Information and submissions received: 12 February 2026 and 03 March 2026 from the applicant  
26 February 2026 from the respondent

Determination: 2 June 2026

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment relationship problem**

[1] The applicant Benjamin Fuller is employed by the respondent Super Cheap Auto (New Zealand) PTY Limited (SCA) in one of its retail stores. He claims he has been unjustifiably disadvantaged due to a number of alleged unjustified actions, including being given a written warning, and SCA's investigation into concerns he raised about the workplace. He seeks compensation, reimbursement of costs, and penalties.

[2] SCA says a preliminary issue exists as to whether Mr Fuller raised his unjustified disadvantage grievance in relation to the final written warning within the statutory timeframe. SCA says it has not consented to him raising that personal grievance out of time, expressly or impliedly. Without prejudice to that position, SCA otherwise denies Mr Fuller's substantive claims.

## **The Authority's process**

[3] Mr Fuller and his mother Karyl Fuller gave evidence at the investigation meeting. For SCA, Senior Case Manager Andrew Poiner from its workplace relations team, current Area Manager for the Auckland region Dean Rayfield, and store manager Michelle Escandor (to whom Mr Fuller reports), gave evidence.

[4] 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 and considered.<sup>1</sup>

## **Issues**

[5] The issues for investigation and determination are:

- (a) Did Mr Fuller raise an unjustified disadvantage grievance in relation to the warning with the statutory timeframe?
- (b) For those raised in time, does Mr Fuller have any personal grievances on the grounds of unjustified action causing disadvantage?
- (c) If a personal grievance or grievances are established, what remedies should be awarded, if any, and are there issues of contribution?

## **Background**

[6] SCA is a retail business specialising in automotive parts and accessories. Mr Fuller has been employed with SCA since October 2022 as a Part-Time Retail Team Member at one of its retail stores.

### *Employment agreement and health and documentation*

[7] The parties' individual employment agreement includes the following relevant terms:

- (a) that Mr Fuller will comply with the SCA's policies and procedures at all times;

---

<sup>1</sup> As permitted by s 174E of the Employment Relations Act 2000.

- (b) he will comply with all health and safety statutory requirements and policies, procedures, training guidelines and recommendations by SCA; and
- (c) breaches of policies and procedures may result in disciplinary action.

[8] In relation to bonuses, the employment agreement states that bonus schemes are at the discretion of SCA, and staff are responsible for familiarising themselves with and following all policies and procedures.

[9] SCA's company policies and procedures included at the relevant times:

- (a) a Code of Conduct, which in relation to health and safety outlines the obligation to wear personal protective equipment (PPE) and comply with all safety service protocols, and sets out the prohibition of vaping except in designated areas;
- (b) a Wiper Blade Fitment Procedure, which outlines the mandatory PPE for such procedures; and
- (c) a Paint Mixing Procedure, which outlines the mandatory PPE for such procedures.

*Events leading to the issuing of final warning*

[10] On 23 October 2023, Ms Escandor saw Mr Fuller mixing paint without the appropriate PPE. It is common ground Ms Escandor spoke to Mr Fuller about expectations regarding PPE wear. She then advised her manager, Area Manager for Auckland at the time, of the issue and recorded the conversation in a file note.

[11] On the same day, Ms Escandor saw on CCTV footage that Mr Fuller and another staff member from another store vaping in the office/team room and battery area. Ms Escandor also reported this to the Area Manager.

[12] The previous Area Manager for Auckland commenced a disciplinary process in respect of both the PPE issue and the vaping. On 31 October 2023, the Area Manager emailed Mr Fuller a letter outlining the allegations and inviting him to a disciplinary meeting to provide his responses on 6 November 2024.

[13] At Mr Fuller's request, the meeting was postponed until 10 November 2023. Ms Fuller attended as his support person. Ms Escandor says she was asked to act as a witness to the process for SCA at the meeting. Mr Fuller and his mother say Ms Escandor took an active part in the meeting, which they now raise concern about. At the meeting, Mr Fuller accepted that what was being alleged was true and apologised for vaping in the workplace.

[14] On 17 November 2023, SCA provided Mr Fuller with a letter outlining its preliminary view on the appropriate sanction being a final written warning, and sought his feedback on it. In email feedback, Mr Fuller asked the decision to issue a written verbal warning reconsidered. He accepted SCA's findings, apologised and would adhere to policies. He said he had spoken with an employer lawyer and had been told a "verbal written warning would be sufficient".

[15] On 4 December 2023, SCA issued Mr Fuller with a final written warning.

[16] On 7 December 2023, Mr Fuller emailed an email address for HR saying he deemed the final written warning unfair "as a verbal or written" warning "would have been ok" and said he understood he could appeal the decision but would like to know how to proceed to do that. There is no record of SCA responding, nor of Mr Fuller following the email up in person or in writing at any point, or raising the matter further with Ms Escandor or the Area Manager.

[17] SCA says this final written warning remains on his file for record keeping purposes. However, SCA's approach (although not reflected in a policy at the time) was that it would not be relied upon in further disciplinary processes or to exclude Mr Fuller from bonus eligibility after 12 months. SCA's most recent policy updated in July 2025 now makes clear that warnings older than 12 months are not considered in future disciplinary escalation unless they "show a serious or a deliberate pattern of behaviour".

#### *Mr Fuller not paid bonus due to warning*

[18] In 2024 SCA ran a bonus initiative called the "FY25 Reward Campaign" (the Bonus). SCA says it distributed flyers to participating stores summarising the

eligibility criteria and advising that the Bonus period ran from 4 August 2024 to 7 September 2024 (the Flyers).

[19] Terms and conditions of the Bonus were included in a document called FY25 | Bonus Plan Rules for Participants Store Team Member Variable Pay Plan (the Plan). SCA says this was accessible by SCA staff members via its intranet site. The Plan outlined that employees have no contractual right to bonus or incentive payments.

[20] The Flyers and the Plan stated that an employee would only be eligible for payment of the Bonus if the employee had no recorded breaches of the SRG Code of Conduct during the Bonus period or prior to the campaign being finalised or paid.

[21] Ms Escandor's evidence was that after checking the store's performance, she found the store had qualified for a bonus which would result in a bonus payment to staff members. Ms Escandor says she started telling team members about the achievement and that the team would receive the bonus payment. She remembers around the same time asking Mr Fuller if he had received his bonus, and he advised he had not.

[22] Mr Fuller's written statement stated he heard about the bonus at a team meeting. At the investigation meeting, however, when asked if the bonus was announced at a team meeting or whether he became aware of it through a conversation with Ms Escandor, he responded that he could not remember or that it was "50/50".

[23] Ms Escandor says she then checked with Mr Rayfield about non-payment of the bonus, who advised it was due to the final warning on his file. SCA had determined that Mr Fuller was ineligible for the Bonus, as his final written warning (dated 4 December 2023) was less than 12 months old, and therefore amounted to a recorded breach during the Bonus period.

[24] By 15 November 2024, Mr Fuller had instructed his representative, who wrote to SCA seeking removal of the final written warning from Mr Fuller's file, and payment of the bonus. Mr Fuller argued that the absence of an explicit reference to a "written warning" in the bonus criteria meant the warning could not be relied upon to determine ineligibility.

[25] SCA says despite its view that the bonus was not payable, it in good faith paid Mr Fuller the relevant bonus. Mr Fuller confirmed in oral evidence that he received this payment.

*Mr Fuller lodges statement of problem*

[26] On 19 February 2025 Mr Fuller's representative lodged a statement of problem (SOP) in the Authority asking it to investigate his personal grievance claims for unjustifiable disadvantage relating to the written warning; SCA's refusal to remove the final written warning from his employment file; SCA's refusal to pay a bonus he was contractually entitled to; and having to incur advocacy expenses in respect of those matters. The SOP also sought an order for penalties under ss 4A and 134 of the Act.

*Ms Escandor receives complaints from staff members in May 2025*

[27] On 7 May 2025, 15 May 2025, and 2 June 2025, Ms Escandor says she received three email complaints from two store team members, raising concerns regarding aspects of Mr Fuller's behaviour at work, which have been provided to the Authority.

*Team safety meeting in May 2025*

[28] On 15 May 2025, the store team held a quarterly safety meeting, at which they also reviewed and discussed customer survey feedback. Mr Fuller says during the meeting, negative feedback from a customer was read out and his name was used. Ms Escandor's evidence is that she did not remember Mr Fuller's name being mentioned.

*Ms Escandor discusses staff complaints with Mr Fuller*

[29] On 4 June 2025, Ms Escandor spoke to Mr Fuller privately regarding the three complaints raised to her. Ms Escandor says she verbally set expectations with Mr Fuller regarding his behaviour moving forward. Ms Escandor recorded this conversation in a file note. On the same day, Mr Fuller asked for a copy of the complaints, which she sent to him the next day.

*Mr Fuller's representative lodges amended SOP and parties attend mediation*

[30] On 6 June 2025, Mr Fuller lodged an amended SOP (ASOP) which raised additional allegations against SCA, including alleged bullying behaviour towards him, citing in particular the conversation on 4 June 2025 and the creation of conflict in the

workplace by encouraging other employees not to speak with him. He further raised the issue of negative feedback identifying him being read out in front of his colleagues the team meeting on 15 May 2025. Under cross-examination, Mr Fuller confirmed that he had not previously raised these issues with SCA.

[31] On 3 July 2025, the parties attended mediation but were unable to reach a resolution. Notwithstanding this, Mr Poiner says he gained a better understanding of Mr Fuller's concerns and subsequently decided to provide him with SCA's template statement form so that his concerns could be properly investigated.

[32] On 21 July 2025, Mr Fuller completed the template statement forms and provided them to Mr Poiner which listed complaints around:

- (a) The 15 May 2025 team meeting;
- (b) Work-related comments made by Ms Escandor during the one-on-one discussion about staff complaints; an allegation she did not greet him at the start of work days, that she told other staff members to not speak to Mr Fuller and had not been rostering him with a particular team member (TM) due to concerns around them talking during work time;
- (c) Colleagues speaking in their first language in front of other staff and customers, which made him feel uncomfortable and excluded; and
- (d) that management repeatedly asked him to finish his shifts early.

[33] While the forms also referred to the bonus issue, Mr Poiner says his understanding was that issue had been resolved and it had been paid. He advised Mr Fuller that the investigation would address the other concerns raised.

#### *Investigation into Mr Fuller's concerns*

[34] In or around July 2025, Mr Poiner instructed Mr Rayfield to speak to staff members at the store to gather more information on the concerns. As part of the investigation, Mr Rayfield spoke to the TM regarding customer feedback read out at the 15 May 2025 meeting. The TM advised he did not recall a team member's name being read out, but a description was read out and he believed this might have been Mr Fuller. Mr Rayfield also says he spoke to the TM about whether he had been told not to speak to Mr Fuller, who responded he had been told to "stop talking" as he

sometimes gets carried away chatting, but was not instructed to not speak to Mr Fuller in general.

[35] Mr Rayfield says he also spoke to the Assistant Manager at the store and Ms Escandor about the team meeting, who both confirmed Mr Fuller was not mentioned during the discussion. Mr Rayfield says he reminded them that when reading survey feedback, they must ensure individual names are not disclosed in a group setting.

[36] Mr Rayfield and Ms Escandor gave evidence that it was a regular occurrence for staff members in stores to speak their first language. Mr Rayfield says when he spoke to the Assistant Manager, he reminded them to be mindful of doing so when other staff members are present.

[37] In around late August 2025, Mr Rayfield relayed his factual findings to Mr Poiner. Mr Poiner says he considered these, made findings in terms of the investigation, and provided the outcome of the investigation to Mr Fuller on 1 October 2025. He found the allegations were unsubstantiated except for his concerns regarding other staff speaking in another language.

[38] In the outcome letter sent to Mr Fuller on 1 October 2025, SCA advised Mr Fuller that recommended actions had been endorsed and would be actioned in light of its findings. In his witness statement, Mr Fuller, stated that the investigation felt incomplete, one-sided and dismissive, yet when asked by the Authority at the investigation meeting whether or not he thinks his concerns had been resolved given a number of recommendations were provided, he stated that the concerns had not been as prevalent since he has raised it and that he thought it had been “okay”.

[39] Additionally, when asked whether he had ever taken the opportunity to go home early when offered, he stated that he had done so on occasion. Mr Fuller also acknowledged in his oral evidence that, since raising the issue, he has not been asked to go home early as frequently.

#### *Refusal to provide information in relation to the investigation*

[40] On 2 October 2025, Mr Fuller’s representative made a request for information relating to the investigation conducted by SCA. Initially, Mr Poiner says he thought in balancing confidentiality obligations to others involved in the investigation, he

decided to provide this information. Once Mr Fuller's representative asserted that the request was being made pursuant to the Privacy Act 2020, SCA responded to this and provided the requested information on 31 October 2025, within the statutory timeframe allowed under the Privacy Act 2020.

**Did Mr Fuller raise his personal grievance for unjustified disadvantage in relation to the final written warning within the statutory timeframe? If not, did SCA consent to him raising it out of time?**

*Relevant law*

[41] Section 114 of the ERA 2000 governs the raising of a personal grievance. A personal grievance must be raised within a period of 90 days beginning with the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee, whichever is later. If not within 90 days of the act or omission, an employee must obtain consent from the employer to file the grievance late.

*Discussion*

[42] The Authority is not satisfied Mr Fuller's email communications in early December 2023 put SCA on notice of a personal grievance for unjustified disadvantage.

[43] At the investigation meeting, Mr Fuller acknowledged having received legal advice about the warning (referred to in his feedback to the warning sanction).

[44] At the most, Mr Fuller was seeking reconsideration of the disciplinary sanction. An assertion of unfairness in that context did not, without more, amount to raising a personal grievance. Noting this was an ongoing employment relationship, Mr Fuller's conduct after the email communications in December 2023 was inconsistent with having raised a grievance. He did not follow it up or raise it with management. Notably, Mr Fuller's representative's communication on 15 November 2024 stated the final written warning excluded Mr Fuller from receiving a bonus and thereby caused disadvantage. Prior to that, SCA had no indication that either the warning or its impact on the bonus was being alleged as a disadvantage. The communication did not assert that he had raised a grievance at any point earlier, including in his December 2023 emails.

[45] The Authority agrees with SCA that it was only in the 15 November 2024 correspondence that any alleged unjustified disadvantage was articulated, and that SCA could not reasonably have understood the earlier December 2023 email correspondence as raising a personal grievance. It follows that the personal grievance, first raised on 15 November 2024, was out of time.

[46] SCA did not expressly consent to a grievance relating to the process around the warning, or warning itself, being raised out of time. When Mr Fuller lodged his SOP in the Authority, SCA made clear it did not consent to raising the grievance out of time. While SCA agreed to pay the bonus amount when the bonus issue was raised, I am not satisfied this amounted to conduct from which consent to the grievance being raised out of time could be implied.

[47] Given these findings, the Authority does not have jurisdiction in relation to the process leading to the warning, or the decision to issue a warning.

**For those raised in time, does Mr Fuller have a personal grievance(s) for unjustified disadvantage?**

*Unjustified disadvantage grievances generally*

[48] 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 are or was affected to the employee's disadvantage by some unjustifiable action by the employer.<sup>2</sup> The Authority is required to consider the actual effect of the employer's decision by focusing on what has occurred and then assessing the impact on the employee's employment.<sup>3</sup>

*Disadvantage claim 1: issuing final written warning*

[49] For the avoidance of doubt, if the Authority was wrong in its finding that a grievance relating to the warning was out of time/not consented to, the Authority would not have found a grievance established. In the circumstances, SCA was entitled to promptly bring disciplinary action where an earlier, informal response was deemed inadequate, and a more senior manager promptly took a different view about the seriousness of the conduct. The decision to propose and later confirm the final written

---

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

<sup>3</sup> *Wiles v The Vice Chancellor of the University of Auckland* [2024] NZEmpC 123 at [98].

warning as opposed to any other outcomes, was also proportionate in the circumstances and was open to a fair and reasonable employer. This is so having regard to the health and safety matters at issue, the clear policies and procedures in place, and Mr Fuller's admissions around the conduct while supported by his mother.

*Disadvantage claim 2: SCA keeping the final written warning on Mr Fuller's record*

[50] Mr Fuller says the warning remains permanently on his file, causing him anxiety about his future employment with SCA. The evidence showed Mr Fuller was made aware that the final written warning generally applies for disciplinary escalation purposes for 12 months in mid-2025, and through SCA's updated disciplinary policy issued on 1 July 2025. He confirmed this understanding at the investigation meeting. In those circumstances, it has not been shown how the continued existence of an expired warning on file affected or affects him to his disadvantage. SCA's actions in keeping the final warning on file as a record was and is justified and within the range of reasonable responses open to a fair employer.

*Disadvantage claim 3: SCA excluding Mr Fuller from the Bonus*

[51] This allegation is directed at SCA's initial decision not to pay Mr Fuller the Bonus because he was considered ineligible for it. Mr Fuller's interpretation of the Bonus' eligibility criteria is narrow and disregards the fact that the final written warning he received expressly records his breach of the Code of Conduct, which is the relevant criterion that disqualified him. Terms in the Flyer and the Plan were also clear.

[52] In his evidence, Mr Fuller said he was unjustifiably disadvantaged due to feeling humiliated upon learning he was not included in the bonus and having to explain to colleagues why he did not receive it. However, the evidence did not show SCA disclosed information about Mr Fuller's bonus entitlement (or lack thereof). While Mr Fuller may have had discussions with other team members about his bonus it is not clear how that constituted a disadvantage caused by SCA's actions or inaction (whether justified or unjustified).

[53] In any event, SCA's later payment of the bonus was sufficient to rectify his concern about its non-payment. SCA's actions were justified in all the circumstances.

*Disadvantage claim 4: SCA bullying and unreasonable treatment against Mr Fuller*

[54] Mr Fuller has taken issue with Ms Escandor's treatment of him around complaints from other staff members. Several concerns were brought to her attention, and it was appropriate that she speak to him about them. During cross-examination, Mr Fuller accepted that some of the concerns could be legitimate, responding "sure" when he was asked. It has not been shown how the raising of these matters with Mr Fuller, particularly when no disciplinary outcome followed, amounted to a disadvantage.

[55] In relation to the customer survey feedback, the evidence did not establish Mr Fuller was named during the meeting. Accounting for the possibility that staff may have recognised Mr Fuller as the team member referred to in the feedback, while this may have caused some embarrassment to Mr Fuller, it is not clear how this amounted to a disadvantage. In any event, Mr Rayfield's action in reminding the relevant managers about not identifying staff members in survey feedback appears to have addressed this concern.

[56] In relation to staff speaking their first languages in store during the investigation meeting, Mr Fuller was asked whether he had ever known staff speaking in their own language to be about him directly, and Mr Fuller stated that he did not. He also confirmed, when asked whether this issue improved after August 2025, he said that the situation had been "pretty good". Mr Rayfield's reminder about being mindful around this issue also appears to have adequately addressed this concern.

[57] In relation to Mr Fuller being asked to go home earlier than his rostered shift, Ms Escandor explained that going home early is optional and that no staff members are required to go home early if they did not want to. In the investigation meeting, Mr Fuller conceded that he had on occasion taken the opportunity to go home early. Once raised, the issue again appears to have adequately addressed this matter.

[58] None of these actions have been shown to amount to an action (or inaction) by SCA that caused any disadvantage (unjustified or otherwise) to Mr Fuller.

*Disadvantage claim 5: SCA's failure to investigate Mr Fuller's employment concerns*

[59] Mr Fuller claims SCA's investigation of his complaints was incomplete, one-sided, and dismissive. However, the evidence showed Mr Poiner conducted a fair and impartial process. He invited Mr Fuller to provide further information about his concerns, and upon receipt of that information, commenced an investigation by commissioning a senior person to investigate, who spoke to witnesses and gathered information. Mr Fuller was provided with an opportunity to clarify matters, and conclusions were reached.

[60] While there appears to have been an inadvertent delay in providing Mr Fuller with the outcome of the investigation, there is no indication Mr Fuller was affected by that. Mr Fuller accepted in oral evidence that, since the investigation outcome was issued on 1 October 2025, the issues he had raised were not as prevalent. As SCA submits, that is not the response of a person disadvantaged by an inadequate investigation. In all the circumstances, SCA's actions in relation to the investigation process were justified in all the circumstances at the time.

*Disadvantage claim 6: SCA's refusal to provide information related to the investigation*

[61] Mr Fuller has not provided any evidence of any disadvantage (unjustified or otherwise) as a result of the delay in providing the information requested in October 2025. Mr Poiner explained he initially declined to provide the information due to perceived confidentiality obligations to others involved in the investigation. This withholding was rectified when the information was provided to Mr Fuller through his representative on 31 October 2025.

[62] Following this, as SCA points out, Mr Fuller amended his application in the Authority claiming it amounted to an unjustified disadvantage, but did not articulate the reasons for this. Submissions for Mr Fuller said these actions were humiliating and undermined the trust and confidence in the employment relationship, but this was not supported by Mr Fuller's evidence. No disadvantage has been established.

*Disadvantage claim 7: SCA's refusal to correct information held on Mr Fuller's file*

[63] This claim was raised in closing submissions for Mr Fuller and appears to be directed at Mr Poiner's evidence during cross-examination by his representative. If Mr

Fuller wishes to request correction of information held in SCA's records, it remains open for him to do so. In relation to file notes and how they are treated, Mr Poiner clarified in his evidence that file notes are an informal means of addressing conduct concerns - they are not considered to be disciplinary in nature. If an employee repeats the same conduct, the conduct addressed would be the repeated behaviour, not the earlier matter recorded in a file note. The exception to this is the example in this case. However, the escalation of that file note to a disciplinary process happened shortly after the initial event (for the reasons already outline above). The evidence demonstrates this is not a regular occurrence, given the previous file note Mr Fuller received did not lead to further disciplinary action. As submitted by SCA, Mr Fuller's submission that "manager-generated notes can be relied upon in future discipline" creating emotional harm, is not a reasonable inference to draw based on the evidence.

### **Penalty claims**

[64] Pursuant to s 4A(b)(iii) of the Act, a penalty for a breach of good faith is available if the failure was deliberate, serious, and sustained, or the failure was intended to "undermine an employment relationship". No such breaches of good faith have been established, so there is no basis for a penalty to be imposed.

### **Outcome**

[65] Mr Fuller has not established any personal grievances, such that no personal grievance remedies are available. His breach of good faith claims have not been established so his penalty claim is therefore declined.

### **Costs**

[66] Costs are reserved.

[67] The parties are encouraged to resolve any issue of costs between themselves. If they are not able to do so and an Authority determination on costs is needed SCA may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination.

[68] From the date of service of the costs memorandum Mr Fuller would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted. If the Authority is asked to

determine costs, the parties can expect the Authority to apply its usual daily rate unless particular circumstances or factors require an upward or downward adjustment of that tariff.

Sarah Blick  
Member of the Employment Relations Authority