

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2026] NZERA 344  
3381603

BETWEEN                      CAMERON KEEN  
Applicant

AND                              PRESTIGE PAVING NZ  
LIMITED  
Respondent

Member of Authority:        David G Beck

Representatives:              Dee Peterson and Hayley Johnson, advocates for the  
Applicant  
No appearance for the Respondent,

Investigation Meeting:       8 April 2026, by audio visual link

Submissions Received:       9 April 2026, from the Applicant  
None from the Respondent

Date of Determination:       3 June 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     Cameron Keen was employed by Prestige Paving NZ limited (Prestige), as a labourer from 5 August 2024, until his employment ended in disputed circumstances on 14 February 2025.

[2]     Mr Keen alleges he was unjustifiably disadvantaged while employed by Prestige and then unjustifiably (constructively) dismissed and is seeking remedies of compensation; unpaid wages and lost wages. In addition, Mr Keen has asked the Authority to impose

penalties on Prestige for a failure to keep and provide wage and time records; failure to pay wages when due and a failure to pay accrued annual leave payments.

[3] Prestige has not engaged in the Authority process either prior to or during the investigation meeting, but I am satisfied they were served and aware of the progress of the investigation. Prestige is no longer trading but, the Registrar of Companies has suspended actions to remove the company from the NZ Companies Register due to an objection from Mr Keen's advocate. The Authority was provided with a letter of 21 April 2026 indicating the Registrar of Companies will review this decision in six months' time.

[4] Jason Emanuelle Devine and Levi Jai Devine, the two Prestige directors and equal shareholders, are believed to be currently residing in Australia. Mr Keen says he dealt exclusively with Jason Devine who interviewed/appointed him; directed his day to day work and dealt with all queries about remuneration.

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

[5] At the investigation meeting of 9 April 2025 Mr Keen and his advocate attended by AVL. The investigation meeting was of one hour duration. Unfortunately, Jason Devine did not participate and gave no reason for not attending so I am, apart from very limited correspondence, unable to hear his perspective of the dispute and must decide this employment relationship problem based on available documentation; written and oral evidence provided by Mr Keen who also answered questions I had during the investigation meeting.

[6] Pursuant to s 174E of the Employment Relations Act 2000 ("the Act"), I make findings of fact and law and outline conclusions to resolve the disputed issues and make orders, but I do not record all evidence.

### **Issues**

[7] The broad issues to be decided are:

- (a) In all the circumstances, was Mr Keen unjustifiably disadvantaged by Prestige's actions/omissions and then unjustifiably dismissed?

- (b) If an unjustified dismissal and/or unjustified disadvantage grievance is made out what, if any, remedies should Mr Keen be awarded.
- (c) If Mr Keen is successful in all or any elements of his personal grievance, should the Authority reduce any remedies granted because of any contributory conduct?
- (d) How costs are to be dealt with.

### **What caused the employment relationship problem?**

[8] At the outset of the employment relationship in July 2024, Mr Keen says he was labouring and Jason Devine initially paid him in cash (\$20 per hour) for full time hours between Monday and Friday. The work involved preparing driveways for tarmac paving. Mr Keen says he would leave Christchurch on a Sunday, travel to Timaru then work his way back to Christchurch by the end of the week. Typically, Mr Keen says he worked between nine to twelve hour days, sometimes without standard meal and tea breaks.

### **The employment agreement**

[9] Mr Keen produced a copy of an individual employment agreement, that he says was provided to him by Jason Devine on 5 August, and from that date as specified, he was to be paid the then applicable minimum wage rate of \$23.15 per hour.

[10] Despite at cl 9.1 (Hours of Work) indicating the attached employment agreement schedule outlined the “normal span of hours of operation”, the attached schedule described: “Business normal hours of operation Monday to Sunday. 24 Hours”. Cl 9.2 of the employment agreement was of little assistance, stating:

Your hours and days of work shall be set by the Employer in advance in accordance with a roster. You will be required to work [blank] hours per week within the business’ normal hours of operation. The Employer may offer you additional hours from time to time.

[11] The employment agreement contravenes s 67C of the Act as no number of guaranteed hours is specified; the days on which work is to be performed is absent and the start and finish times of work are not evident.

[12] The schedule also noted the location of the work was at “various third-party client sites within the Canterbury region as reasonably directed by the employer”. At the time of the employment agreement being provided, Mr Keen resided in Timaru.

### **Closedown**

[13] Mr Keen says he was working regular hours up until 13 December, when the company closed and told workers that it would recommence work on 6 January 2025. Mr Keen says Jason Devine went to Australia, but he maintained contact, texting Jason Devine socially on 3 January and receiving a vague response after asking how he was, of: “Hey mate not to good how about you”. Over the next few days up to 7 January, Mr Keen sought and was provided no update on his work re-commencing.

[14] On 7 January, Jason Devine indicated he had not been in contact as he had been involved in a car accident on 5 January on the way to the airport to return to New Zealand. The following day Jason Devine indicated he had sustained a back injury “and it could be 6-8 weeks before I’m back at work”. In response, on 8 January, Mr Keen asked whether he and others would be put off work for the same time. Jason Devine did not respond to the latter query but after being asked to advance Mr Keen a personal loan to tide him over, he advanced \$250 asking Mr Keen if he could “pay me back asap that would be great”.

[15] I was provided with no evidence of further contact between the parties until 16 January when Jason Devine responded to a “how’s it going’ with “Hey mate how are u”. Mr Keen in response, explained he was waiting to get back to work and earn some money indicating he had sought a WINZ benefit in the interim, but this was not available for a further two weeks. Mr Keen asked a question: “Is there any work that I can do for you just so I can make some money?”. Jason Devine responded on 18 January, with no firm assurance other than ‘hopefully it shouldn’t be too long before we’re back at work”.

[16] On 4 February, Mr Keen says he saw an advert for an Australian business involving Jason Devine seeking workers. On 15 February, Mr Keen messaged Jason Devine asking him to urgently get hold of him.

[17] On 24 February, Jason Devine confirmed Mr Keen’s leave request for leave without pay had been approved for the period 14 February to 13 March, via an unmanned email

account that instructed Mr Keen to contact Jason Devine's New Zealand based accountant with any enquiries. It would appear from messages exchanged that Jason Devine then assured Mr Keen he would return to New Zealand on 24 February but did not do so. Mr Keen then messaged Jason Devine on 1 March, asking why leave without pay had been imposed without him requesting it. Mr Keen also pointed out he was still a full-time employee and had not been paid for Waitangi Day (6 February).

### **The ending of the employment relationship**

[18] From this point (1 March) until 17 March, when Mr Keen utilising an advocate raised a personal grievance there is no evidence of further contact between the parties. The personal grievance letter suggested Mr Keen's employment had ended on 14 February and that this constituted an unjustified dismissal or "at the least, amounts to an unjustifiable constructive dismissal". Mr Keen's advocate formally citing s 130 of the Act, sought wage and time records.

[19] Prestige did not engage any further, did not respond to a request for mediation and, have remained uncommunicative during the Authority investigation process.

[20] Mr Keen's evidence was he had not resigned and wanted to keep working but as Jason Devine would not engage he assumed his employment had ended. Mr Keen says he then sought alternative work but was unable to secure a permanent job and has only engaged in two brief periods of casual work. At the time of the investigation meeting, Mr Keen was still unemployed.

### **Was Mr Keen unjustifiably disadvantaged?**

[21] In the absence of any documentary evidence validating Jason Devine's decision to effectively abandon his responsibilities as a director of Prestige, I can only infer that Mr Keen was the subject of unjustified actions and omissions that caused him detriment. This included not being paid for the period 6 January 2025 to 14 February 2025; being inappropriately placed on leave with without pay and, a lack of ongoing communication.

## **Finding**

[22] In all the circumstances, I find Mr Keen was unjustifiably disadvantaged by not being paid when he was available for work and he is entitled to consideration of remedies sought.

### **Was Mr Keen unjustifiably dismissed?**

[23] Again, in the absence of an explanation from Prestige and considering the documentation and evidence provided, I can only conclude that the inaction of Jason Devine as a Prestige's director, in stopping Mr Keen's remuneration and attempting to unilaterally place him on leave without pay amounted to bringing the employment relationship to an end.

## **Finding**

[24] I find Prestige unjustifiably dismissed Mr Keen by failing to provide him with ongoing employment from 6 January 2025 and thereafter failed to communicate effectively to maintain the employment relationship.

### **Remedies:**

#### **Compensation for distress, hurt and humiliation.**

[25] Mr Keen impressed with evidence that this dismissal dented his confidence and caused him distress and humiliation by being robbed of any agency in how the employment ended. Mr Keen described and provided evidence, of unsuccessful efforts to find alternative employment. I assess his distress although real, was transitory.

## **Finding**

[26] Considering the evidence proffered and awards made by the Authority and Court in similar circumstances and surveying cases I consider Mr Keen's evidence warrants compensation of \$12,000 under s 123(1)(c)(i) of the Act. <sup>1</sup>

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<sup>1</sup> See summary of compensatory approaches in comparable cases in *Richora Group Ltd v Cheng* [2018] ERNZ 337 at [65] – [66].

## **Lost wages**

[27] Section 123(1)(b) of the Act provides for the reimbursement of the whole or any part of wages or other money lost by Mr Keen should I find that he has established a personal grievance.

[28] Here I find Mr Keen's lost remuneration was attributed to the personal grievance. Mr Keen has claimed, supported by payslips that while employed he averaged 44.93 hours per week at \$23.15 per hour. Mr Keen claims for the period between 6 January 2025 and 14 February 2025, he was available for work for 40 days and would have been paid on his previous average hours \$5,939.14. Further, Mr Keen claims lost wages of 13 weeks for the period after his employment ended. Adopting the same averaging approach that amounts to \$13,521.68.

## **Finding**

[29] In all the circumstances I consider it fair to award Mr Keen unpaid and lost wages in the total amount of \$19,460.82. and that holiday pay on this amount is also due.

## *Penalties*

[30] In all the circumstances, while not condoning Prestige's actions and omissions, I decline to order any penalties.

## **Contribution**

[31] Section 124 of the Act states that I must consider the extent to what, if any, Mr Keen's actions contributed to the situation that gave rise to his personal grievance and then assess whether any calculated remedy should be reduced. To assess whether the remedy should be reduced I have considered the relevant factors summarised in *Maddigan v Director General of Conservation*<sup>2</sup>.

[32] I have not found any factors that could lead to a conclusion Mr Keen contributed to the way in which his employment was abruptly terminated.

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<sup>2</sup> *Maddigan v Director General of Conservation* [2019] NZEmpC 190 at [71] – [76].

## **Costs**

[33] Given Prestige chose not to participate in the Authority investigation proceedings and Mr Keen was successful in his personal grievance and obtained significant remedies including recovering minimum wage entitlements, it follows he is entitled to a costs' contribution. Exercising the discretion the Authority has under section 14, Schedule 2 of the Act I fix that cost contribution at \$3,000 to reflect the costs of preparation and attendance at the investigation meeting and, preparation of submissions.

## **Orders**

[34] I have found that Cameron Keen was unjustifiably dismissed and unjustifiably disadvantaged by the actions of Prestige Paving NZ Limited. As a result, Prestige Paving NZ Limited must pay Cameron Keen the sums below within 28 days of this determination being issued:

- i. \$12,000 compensation without deduction, pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000; and
- ii. \$19,460.82. combined unpaid and lost wages, pursuant to s 123(1)(b) of the Employment Relations Act 2000.
- iii. Holiday pay on the above amount at 8% in the sum of \$1,556.86.
- iv. A costs contribution of \$3,000.

David G Beck  
Member of the Employment Relations Authority