

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 346
3363163

BETWEEN HEATHER HOWARD
Applicant

AND INDEPENDENT TIMBER
MERCHANTS CO-
OPERATIVE LIMITED
Respondent

Member of Authority: Helen van Druten

Representatives: Heather Howard as the Applicant
Jin Park, Counsel for the Respondent

Investigation Meeting: 25 February and 20 March 2026 at Auckland

Submissions received: Up to 27 March 2026 from the Applicant
24 March 2026 from the Respondent

Determination: 3 June 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Heather Howard was employed by Independent Timber Merchants Co-operative Limited (ITM) as a Data and Insights Analyst from 3 August 2020 until November 2024. She says that she was unjustifiably disadvantaged by the actions of ITM following an overpayment of wages over six pay periods and a dispute about continuation of flexible working hours. She was then unjustifiably dismissed for reasons related to that overpayment and hours.

[2] ITM says that the overpayment was a genuine administrative error and it made all reasonable efforts to agree a repayment schedule with Ms Howard. It disputes that there was any unjustified disadvantage and further says that dismissal was only considered after a breakdown in trust and confidence and breach of good faith in the employment relationship made continuation of the employment relationship untenable.

The Authority's investigation

[3] For the Authority's investigation written witness statements were lodged from Ms Howard as applicant, Marilyn Howard as impact witness, Sara Johnson as CEO, Cherie Jourdain as people and culture manager, and Michaela Salmon as data team leader. All witnesses answered questions under oath or affirmation from me and the parties' representatives. The representatives also gave written closing submissions.

[4] Ms Howard was represented at the investigation meeting which was held over one and a half days.

[5] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[6] The issues identified for investigation and determination were:

- (a) Was Ms Howard unjustifiably dismissed from her employment?
- (b) Was Ms Howard unjustifiably disadvantaged by bullying and harassment from two senior managers?
- (c) Was the deduction of the overpayment amount (agreed by the parties as \$6,265.38 gross) from Ms Howard's pay in breach of the Wages Protection Act 1983?
- (d) Was there any breach of good faith by the parties as required by s 4 of the Act?
- (e) If ITM's actions were not justified (by disadvantaging and/or dismissing Ms Howard), what remedies, if any, should be awarded, considering:
 - i. Lost wages (subject to evidence of reasonable endeavours to mitigate her loss); and
 - ii. Compensation under s123(1)(c)(i) of the Act.
- (f) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Ms Howard that contributed to the situation giving rise to her grievance?
- (g) Should either party contribute to the costs of representation of the other party?

Timeline and summary of events

Hours of work

[7] Ms Howard was employed by ITM as a permanent, full time Data and Insights Analyst for 40 hours per week.

[8] Ms Howard went on parental leave in October 2023 with a due date to return on 1 May 2024. This was confirmed in writing by ITM on 22 September 2023.

[9] Prior to her return, Ms Howard requested an extension to her parental leave through to 1 June 2024. The parties also agreed that upon her return she would work from home on a part time basis, Monday to Wednesday from 1 June to 31 August 2024. This was confirmed in writing by ITM including that “On 1 September 2024, your hours of work will revert to 40 hours per week as per your current employment agreement”.

[10] In mid-June 2024, ITM agreed a second temporary variation for Ms Howard to work a reduced 29 hours per week from 5 August to 31 October 2024. For that period, Ms Howard’s hours were Monday to Thursday with two days working from home and two shorter days in the office. Again, the letter (the July letter) from ITM included that:

If no alternative agreement has been reached, on 1 November 2024, your hours of work will revert to 40 hours per week as per your current employment agreement.

[11] ITM says that these transitional arrangements were made to assist Ms Howard with her return to work. It was never more than a transitional arrangement as the whole team was already working collaboratively in the office on a key project with a heavy reliance on data analysis.

[12] Ms Howard says that despite the July letter with an end date, she had a conversation with Ms Salmon who, according to Ms Howard, saw no problem or issues with extending the reduced hours arrangement to January 2025. Ms Howard interpreted that conversation as an agreement to extend part time hours to January 2025. Ms Salmon accepts a conversation took place but denies that she gave this assurance because she does not have the authority to do so hence Ms Jourdain’s follow up conversations with Ms Howard.

[13] On 8 October 2024, Ms Jourdain sent an email to Ms Howard confirming that there was no agreed extension to the part time temporary flexible hours arrangement and she was required to return to the terms of her employment agreement from 1 November 2024.

[14] Ms Howard says that Mr Stark also impliedly agreed to her return in January 2025 and this was confirmed in the 21 August 2024 repayment schedule she was provided. ITM disputes that Mr Stark's reference to higher repayment amounts from January 2025 related to hours of work. For ITM, it was an attempt to provide Ms Howard a transitional time to manage her personal finances.

[15] Mr Stark's 21 August 2024 letter and repayment agreement accompanying the schedule makes no reference to hours of work. The schedule provides for 24 fortnightly payments increasing from 30 January 2025 with the last payment in July 2025. It also references the deductions clause in the parties' IEA.

[16] Ms Howard says that had she known that Mr Stark and Ms Salmon had not agreed to a January return to full time, she never would have agreed to the 29 hours per week outlined in the July letter. If that occurred, the other option was for Ms Howard to return to 40 hours from 31 August 2024, an option she clearly did not want.

Overpayment

[17] The overpayment occurred when Ms Howard returned from parental leave on reduced hours. In the payroll system, her hours were reduced from 40 hours to 29 hours as agreed, but the corresponding adjustment to her hourly rate was not made, resulting in Ms Howard receiving almost double her usual hourly rate. For Ms Howard, this meant that despite working 29 hours per week, she was still receiving the same 40 hours per week pay for six pay periods from 1 June 2024 to August 2024.

[18] Late on 7 August 2024, Ms Howard received an email advising of the overpayment. The email advised:

Finance have let me know this afternoon that you have been paid at an incorrect rate since June. Unfortunately, this has resulted in quite a significant overpayment to you. I have attached the details of all the overpayments for your review...

In the attached spreadsheet... are two suggested repayment options. I understand things may be difficult at this time so please let me know if you have an alternative proposal for our consideration, otherwise please advise

which of the two options is preferable to you... I'm available on mobile... if you would like to discuss.

[19] The details were not attached to the email and Ms Howard received these on 9 August 2024, confirming an overpayment of \$6,265.38 (gross). Initially ITM expected Ms Howard to pay back the gross amount (or as deductions from her gross pay). The gross versus net issue was formally resolved after various discussions and ITM confirmed the net payment amount by letter on 8 October 2024.

[20] Ms Howard did not want to accept either original repayment option proposed on 9 August 2024 and suggested payment “at \$100 per fortnight and then the plan to be revisited in January when I also revisit returning to work full-time”.

[21] Between 9 August 2024 and 17 October 2024, there were at least five repayment options discussed with and provided to Ms Howard. All were presented to the Authority (along with a sixth version Ms Howard disputes receiving). Over that period, Ms Howard had three meetings with Mr Stark to look at possible repayment options with Mr Stark’s proviso that finance needed the overpayment to be paid within the next six months to one year.

[22] On 10 September 2024, Ms Howard met with Ms Jourdain and Ms Salmon to again discuss the overpayment arrangement. Ms Jourdain presented a repayment schedule for Ms Howard to sign. She declined to do so as ITM’s terms included payment of the gross amount, and Ms Howard returning to full time work from 1 November 2024.

[23] On 22 October 2024, Ms Howard lodged a personal grievance including that she felt unsafe at work due to bullying and threatening behaviour by Ms Jourdain, specifically related to full-time working hours and signing the repayment schedule. The parties agreed that Ms Howard would work from home while ITM worked through the grievance. On 25 October 2024, ITM responded to the grievance, though with no reference to the bullying claims made.

[24] By email on 29 October 2024, Ms Howard was advised that she was expected to return to work in the office from 1 November 2024 on a 40 hour per week basis as outlined in the July letter.

November 2024

[25] On 1 November 2024, Ms Howard advised the CEO directly that she did not feel safe at work and alleged bullying and harassment, including by Ms Gerrand. Her representative advised that Ms Howard was not returning to the office until the safety issues were addressed.

[26] Ms Howard was invited to a disciplinary meeting on 4 November 2024. She attended with her representative, provided feedback on 14 November 2024 and the parties met again on 19 November 2024 to discuss that feedback. ITM made the decision to terminate Ms Howard's employment.

[27] On 21 November 2024 Ms Howard received her final pay showing deduction of the overpayment amount.

Was Ms Howard unjustifiably disadvantaged?

Bullying and harassment

[28] Ms Howard says that she was unjustifiably disadvantaged by ITM's failure to investigate her personal grievance claim and allegation that she was bullied by two senior managers during the process of overpayment discussions and during the disciplinary process. She further says that Ms Jourdain's behaviour towards her changed after the overpayment error was identified and particularly in the meeting of 10 September 2024 with Ms Salmon and Ms Jourdain discussing the overpayment.

[29] ITM's July 2022 harassment policy includes definitions of harassment and bullying and provides options for employees if they feel this has occurred. The policy defines bullying as "unwanted and unwarranted behaviour that a person finds offensive, intimidating or humiliating and is repeated, so as to have a detrimental effect upon the person's dignity, safety and well-being".

[30] ITM's response to the grievance, authored by Ms Jourdain, focused on the overpayment and hours of work claims. It did not address Ms Howard's primary concerns about Ms Jourdain's conduct.

[31] Appropriately, Ms Johnson reviewed those bullying allegations raised in the grievance separately, reaching a conclusion that Ms Jourdain's conduct amounted to

legitimate management functions and there was no evidence of “threatening behaviour” as alleged.

[32] Looking at that grievance claim, transcript of the 4 November 2024 meeting and Ms Johnson’s oral evidence about her investigation, ITM’s response was appropriate. It was appropriate for a person in Ms Jourdain or Ms Gerrand’s position to be involved in:

- a. Approvals relevant to flexible working arrangements;
- b. Discussions with employees to recover an overpayment;
- c. To make comments querying why an individual has not repaid the money owed;
- d. Follow-up on repayment discussion and progress and briefing the CEO;
- e. Advising other team members not to talk to Ms Howard about the overpayment;
- f. To advise that if repayment cannot be agreed, ITM may apply to the Authority to seek recovery of that money; and/or
- g. Disciplinary meetings and processes.

[33] There was no information placed before the Authority to provide any basis for bullying allegations relating to Ms Gerrand. Ms Gerrand was not included in the personal grievance disadvantage claim made on 25 October 2024. Her name arose intermittently in Ms Howard’s Authority documentation and submissions refer only to her involvement in the November disciplinary meetings and associated correspondence.

[34] I accept Ms Howard felt pressured by the actions of Ms Jourdain requiring her to return to work as required by the original terms of her employment agreement and pursuing the overpayment.

[35] I also agree with Ms Howard that the outcome of Ms Johnson’s investigation was not communicated back to her effectively or appropriately. Ms Jourdain was the subject of the grievance and yet she was the person who replied to Ms Howard on the outcome of the investigation into bullying and Ms Howard feeling unsafe. The extent of that response was “while the working environment may be uncomfortable, we do not accept that it is unsafe for her”.

[36] While this lack of communication was an error by ITM, there was no unjustified disadvantage created by that action. Despite Ms Howard refusing to return to work on the grounds of safety, there was no information placed before the Authority to provide any basis for that claim. The reasonable exercise of lawful management functions was also not unwarranted or unreasonable in the circumstances. Ms Howard's disadvantage grievance claim is unsuccessful.

Was Ms Howard unjustifiably dismissed?

[37] ITM do not dispute that Ms Howard was dismissed. ITM says that the decision to end Ms Howard's employment was made based on her failure to act in good faith in relation to the overpayment and conduct herself in the best interests of the employment relationship as agreed by the parties in the IEA, failure to return to work on 1 November 2024 as instructed and that her actions damaged the trust and confidence necessary in the employment relationship.

[38] 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.¹

[39] In applying this test, the Authority must consider:²

- a. Having regard to the resources available to the employer, whether the employer sufficiently investigated the allegations against the employee before dismissing the employee; and
- b. Whether the employer raised the concerns that the employer had with the employee before dismissing the employee; and
- c. Whether the employer gave the employee a reasonable opportunity to respond to the employer's concerns before dismissing the employee; and
- d. Whether the employer genuinely considered the employee's explanation before dismissing the employee.

[40] Ms Howard says that not noticing the overpayment was an innocent mistake and when she did not agree to a repayment schedule or make voluntary repayments, ITM set out to dismiss her so they could make the overpayment deduction from her final

¹ Employment Relations Act 2000, s 103A(2).

² Employment Relations Act 2000, s 103A(3).

pay. For Ms Howard, the repayment schedule she submitted was reasonable and the increase in payments from January 2025 was only reflecting what Ms Salmon and Mr Stark already agreed about her part-time hours of work extending until then. Taking action to dismiss her was not the actions of a fair employer in all the circumstances.

[41] ITM dispute Ms Howard's account. They submit that Ms Howard did not wish to return from parental leave on a full-time basis. The overpayment notification then occurred. She saw the repayment discussions as a way of leveraging the overpayment situation to secure her ongoing part-time work. When ITM maintained that she was required to return to work full-time and repay the money overpaid, Ms Howard characterised those actions as bullying and harassment and filed a personal grievance. The disciplinary process and dismissal that followed were the direct consequence of that course of conduct.

[42] Looking at the objective reasonableness of ITM's decision to dismiss, it does not follow that an employee who wanted to maintain a constructive relationship would acknowledge the overpayment but refuse to engage constructively with recovery, specifically:

- a. Ms Howard insisted throughout she intended to repay the money but no payment was made by Ms Howard while discussions were continuing.
- b. Ms Howard conditioned the overpayment terms to her demand to work part-time hours. "I agree to the repayment amounts but I did not agree to the full-time hours". Both written and oral information supported the premise that Ms Howard was trying to force ITM into agreeing a part-time work arrangement as a condition of the repayment. They were two separate issues;
- c. Ms Howard refused to sign the repayment schedule, though fundamental terms were verbally agreed. The claim that things kept changing was unsubstantiated.
- d. At least five different people in ITM had actively attempted to present a repayment schedule that achieved a middle ground;
- e. This was a lengthy process over three months and there were multiple attempts, by different people, to genuinely work with Ms Howard to resolve the issue.

[43] Similarly, there was no requirement for ITM to agree to any extension of parental leave or transitional working arrangements. It did so for five months to support Ms Howard's gradual return to the workplace at a time when they preferred her back full-time on a key project. I do not accept that in those circumstances ITM were seeking to dismiss Ms Howard purely to deduct \$6,265.38 from her final pay.

[44] On at least two occasions in October 2024, ITM confirmed in writing that Ms Howard was required to return to work on 1 November 2024. This was a direct and written instruction based on a written agreement, signed by both parties, for her to return to full-time hours on 1 November 2024. There was no justifiable reason to rely upon an unsubstantiated oral agreement (if any) denied by Ms Salmon.

[45] Ms Johnson and Ms Jourdain say that they investigated Ms Howard's claim that ITM orally agreed to an extension of the part-time working arrangements to January 2025. The findings of that investigation were confirmed in a letter to Ms Howard's (then) representative on 8 October 2024. In essence, the letter confirmed that:

- a. Ms Salmon denies agreeing to any such extension beyond 31 October 2024, though she knew that was what Ms Howard wanted;
- b. Previously Ms Howard had made her requests in writing as per business requirements. There is no such record of any such request being made by Ms Howard;
- c. Reasons for ITM's inability to continue that arrangement were already provided in writing;
- d. If Ms Howard wants to request further flexible working arrangements she can do so and that it will be considered;
- e. No agreement has been reached to continue the current arrangement.

[46] It is not enough, for ITM to merely assert a loss of trust and confidence for it to be a reality. ITM must be able to point to some established conduct by Ms Howard that is incompatible with continued faithful discharge of her duties.³ I am satisfied that prior to these events, ITM had a trusted and positive relationship with Ms Howard in her role providing data analytics that the business relied upon.

³ *Orme v Eagle Technology Group Ltd* (unreported, Employment Court Wellington, WEC40/95, 15 June 1995, Goddard CJ) and

[47] From August 2024, ITM engaged with Ms Howard to resolve the issue. Her continued refusal to confirm an agreed repayment arrangement or make any payment (despite agreeing to repay the amount), unsubstantiated allegations of bullying and refusal to return to work as agreed established a pattern of conduct that ultimately went to the core of the employment relationship.

[48] Ms Howard agreed the amount was owing and said that she was willing to pay yet refused attempts to agree any repayment and instead alleged that both senior managers engaged in threatening behaviour by pressuring her and threatening further action about the overpayment. As the Court noted in *Emmanuel v Waikato District Health Board*:⁴

Where an employee provides misleading information to his or her employer on a matter that the employee knows is important to the employer, that usually will deeply impair or be destructive of the basic confidence or trust that is an essential of the employment relationship. It will almost inevitably amount to serious misconduct.

[49] This was conduct capable of amounting to serious misconduct in accordance with the parties' IEA obligations and fully within Ms Howard's control to remedy from 8 October 2024 – if not linked to the hours issue and if she genuinely wanted to do so.

[50] As confirmed in correspondence in November 2024, I am further satisfied that Ms Howard knew that termination of her employment was a potential outcome, was given an opportunity to provide feedback, had a representative present and that ITM genuinely considered her feedback before making a decision to terminate her employment.

[51] Looking at the transcript of the 4 November 2024 meeting alone and the parties' verbal interactions, it is evident that continuation of the employment relationship was untenable by 6 November 2024. Ms Howard later gave evidence that at the time of the November 2024 meeting she had also lost trust in Ms Jourdain and ITM.

[52] Applying the test of justification in s 103A of the Act, on an objective basis, Ms Howard's conduct was capable of amounting to serious misconduct and ITM concluded that her conduct resulted in their loss of the confidence or trust essential to the employment relationship, justifying dismissal. ITM's decision to terminate Ms

⁴ *Emmanuel v Waikato District Health Board* [2019] NZEmpC 81 at [60].

Howard's employment was a decision that a fair and reasonable could have made. Ms Howard's claim for unjustified dismissal is declined.

Deduction from final pay

[53] Ms Howard seeks imposition of a penalty on ITM for the overpayment amount deducted from her final pay. The deduction was said to breach sections 4 and 5 of Wages Protection Act 1983 (WPA). Those sections prohibit deductions without written consent or, where an employment agreement allows for deductions, without first consulting the worker about a specific deduction.

[54] Deduction of the overpayment amount was made pursuant to a general deductions clause in the IEA providing that "the employer shall be entitled to make deductions from the employee's salary for absence, overpayment or lost, stolen, damaged or unreturned company property". It also followed considerable consultation with Ms Howard between 8 August and 4 November 2024 about the overall payment though did not specify a final pay deduction.

[55] Comments by Ms Howard's representative of 26 September 2026 about the overpayment suggested that any amount unpaid at ending of employment would be deducted at final pay. This falls short of express written consent envisaged by s 5(1) of the WPA though provides insight into Ms Howard's awareness that this would occur if employment ended.

[56] I am satisfied there was no breach of the WPA in making the deduction from her final pay.

Good faith

[57] There was no evidence that ITM breached good faith obligations. ITM was entitled to seek to recover the overpayment. This was a genuine payroll error and was a clear overpayment of wages for a specified period. ITM made repeated attempts to reach an agreement with Ms Howard for repayment and the various repayment schedules show a genuine attempt to present options that could work for both parties. ITM's request to sign a repayment schedule was not unreasonable in the circumstances in order to meet its obligations relating to wage deductions.⁵

⁵ Wages Protection Act 1983, ss 4 and 5.

[58] The legislation does not require ITM to agree to Ms Howard's terms for repayment. ITM made an error requesting the gross amount repaid but this was remedied once finance was consulted and Ms Howard was assured in writing that the amount would be calculated correctly. It was appropriate that Ms Howard did not make any repayments until the gross/net issue was finalised.

[59] At that point (being 8 October 2024 at the latest), there was no reasonable barrier to repayment. Ms Howard had received higher wages than she was entitled to receive for six consecutive pay periods and the company were requesting it back within six to 12 months, suggesting two methods of payment or a mutually acceptable alternative.

[60] The bullying concerns were investigated and ITM responded to the personal grievance on 25 October 2024. It was responsive and communicative on both the overpayment and providing Ms Howard flexibility as she returned to work. Having heard the oral evidence, there was a genuine effort by ITM to work with Ms Howard to accommodate her hours as ITM were reasonably able to do so, discuss options for repayment and request paperwork to ensure compliance.

[61] Ms Howard's claim for a breach of good faith by ITM is unsuccessful.

Summary

[62] As Ms Howard's grievance claims and claims relating to the WPA and good faith are unsuccessful, there is no requirement to consider remedies.

Costs

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

[64] If the parties are unable to resolve costs, and an Authority determination on costs is needed, ITM 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, Ms Howard will 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.

[65] 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.⁶

Helen van Druten
Member of the Employment Relations Authority

⁶ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.