

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE**

[2026] NZERA 354
3379263

BETWEEN	AUTO JOHN HUNTLEY- BYRNE Applicant
AND	DALLISON 2021 LIMITED Respondent

Member of Authority: Alyn Higgins

Representatives: Dave Cain, advocate for the Applicant
Kylie James for the Respondent

Investigation Meeting: 21 April 2026 in New Plymouth

Submissions received: 15 May 2026 from the Applicant
20 May 2026 from the Respondent

Determination: 5 June 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Auto John Huntly-Byrne was employed by Dallison 2021 Limited (Dallison), which operates a café in Waverley called Hind Quarters from 5 June 2024 until his dismissal on 18 November 2024. Mr Huntly-Byrne was dismissed for serious misconduct after what Dallison refers to numerous rule breaches in his employment at the café.

[2] Mr Huntly-Byrne claims that he was unjustifiably dismissed from his employment without a fair and reasonable process. Mr Huntly-Byrne says at no point prior to his dismissal did he receive any notice of concerns or any opportunity to respond to those concerns or that his employment was at risk. Mr Huntly-Byrne further says he was not invited to attend any formal meetings to respond to the concerns or have a support person or representation prior to Dallison's decision to summarily terminate his employment.

[3] Mr Huntly-Byrne is seeking wages lost as a result of his grievance and compensation for humiliation, loss of dignity and injury to feelings as a result of the dismissal. Mr Huntly-Byrne also seeks a penalty against Dallison for failing to provide complete wage and time records when originally requested by Mr Huntly-Byrne's representative.

[4] Dallison disputes Mr Huntly-Byrne's claims and says that his dismissal was justified.

The Authority's investigation

[5] For the Authority's investigation written witness statements were lodged from Mr Huntly-Byrne and for the respondents from Kylie James, director and shareholder of Dallison and from Brooke Watty and Shannon Evans being other current or former employees of Dallison. All witnesses answered questions under oath or affirmation from me and Mr Huntly-Byrne's representative. I also received written closing submissions after the investigation meeting.

[6] 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 but all information provided in the course of the investigation has been considered.

The issues

[7] The issues requiring investigation and determination were:

- (a) Was Mr Huntley-Byrne unjustifiably dismissed by Dallison?

- (b) If Mr Huntley-Byrne was unjustifiably dismissed by the actions of Dallison, what remedies should be awarded, considering:
 - (i) Compensation for humiliation, loss of dignity, and injury to feelings;
 - (ii) Lost wages or any other entitlements lost as a result of any grievance, subject to any efforts made by Mr Huntley-Byrne to offset or minimise loss.
- (c) If any remedies are awarded, should they be reduced (under s124 of the Act) for any blameworthy conduct by Mr Huntley-Byrne that contributed to the situation giving rise to his grievance?
- (d) Have there been any breaches by Dallison for failing to provide complete wage and time records?
- (e) Should any penalties be awarded for any breaches and if so, what quantum and to whom?
- (f) Should either party contribute to the costs of representation of the other party?

Relevant Background

[8] In June 2024 Mr Huntly-Byrne was in a relationship with Tania Jeffries' daughter. Ms Tania Jeffries was working for Dallison at the café and introduced Mr Huntly-Byrne to Ms James and suggested that a job in the café would be good for Mr Huntly-Byrne as he had been without work for some time and the café needed more staff.

[9] Ms James met with Mr Huntly-Byrne and asked him about his general fitness to work, looked him up on Facebook but accepts that she never conducted any CV or reference checking since Ms Jeffries had told her that Mr Huntly-Byrne had been without employment for some time. Ms James also said that she wanted to give Mr Huntly-Byrne a job if Dallison could receive a work and income subsidy but this never actually happened.

[10] Despite starting work at the café on 5 June 2024, Mr Huntly-Byrne never signed a written employment agreement until September 2024 but was provided with an employee handbook shortly after commencing in June.

[11] Mr Huntly-Byrne underwent a brief induction with the café's acting manager, Shannon Evans. This included training on how to do dishes, general layout of the café and some front of house duties but Mr Huntly-Byrne generally settled into general kitchen work including cooking on the grill and washing dishes.

[12] About three weeks into the employment Ms Evans said that things started going wrong including Mr Huntly-Byrne not working some of his rostered shifts, presenting for work unclean with a dirty uniform and Ms Evans said that she had to send Mr Huntly-Byrne home on one occasion to get cleaned up. Ms Evans also said that she had to speak with Mr Huntly-Byrne often, about once per week to do with some tasks not being undertaken correctly.

[13] Ms James says that she would often talk with Mr Huntly-Byrne and offered counselling and genuinely wanted to see him succeed in the job and would help him to do so. Mr Huntly-Byrne denies that he had to be directed about improper presentation or work practices.

[14] Despite speaking to Ms James frequently about Mr Huntly-Byrne, it was in October 2024 that Ms Evans said to Ms James that something needed to be done about Mr Huntly-Byrne if she was going to remain working at the café. Ms Evans told Ms James that she felt that some of Mr Huntly-Byrne's work practices were putting the café at risk. This also included customers overhearing Mr Huntly-Byrne yelling.

[15] In response, Ms James asked Mr Huntly-Byrne to meet with her and to bring a support person. This meeting took place at another business operated by Dallison; a clothing store located across the road from the café.

[16] This meeting lasted for approximately 45 minutes and Ms James says that matters discussed included Mr Huntly-Byrne's lateness, cleanliness, and an argument between Mr Huntly-Byrne and Ms Evans about cleaning. The meeting ended with Mr Huntly-Byrne apologising for the argument with Ms Evans but says that no disciplinary outcome or warning was issued and no notes from the meeting were provided.

[17] Following the meeting, Ms James wrote up the matters discussed at the meeting into a letter dated 29 October 2024 that also advised Mr Huntly-Byrne of a final warning in respect of his conduct. Ms James placed the letter in a sealed envelope and handed it to Mr Huntly-Byrne in the café. Mr Huntly-Byrne did not open the envelope but threw

the letter into a shelf with timesheets. Neither did Ms James instruct Mr Huntly-Byrne to open the letter, which she could have done or met with Mr Huntly-Byrne in a more private setting to go through the letter. Ms James found the envelope still sealed after Mr Huntly-Byrne's employment had ended. Mr Huntly-Byrne says that the first time he viewed the letter was with the Statement in Reply lodged by Dallison in June 2025.

[18] On 17 November 2024, Mr Huntly-Byrne was working his normal shift and was closing the café with Brooke Watty. Ms Watty had arranged to leave early for an appointment, which meant that Mr Huntly-Byrne was left to close the café.

[19] Sometime after the café had been closed Ms James went into the café to do the cash up as she often did and noticed a number of tasks that had not been completed including the alarm not being set, the sandwich press still on, milk on the counter, scum in the sinks and cardboard boxes in front of a freezer vent. Ms James took photos of these incomplete tasks and posted them into the group messenger chat for Hind Quarters staff. In the same chat thread Ms James asked who did the kitchen that day to which Mr Huntly-Byrne said him and Ms Watty and said that Ms Watty had left earlier than Mr Huntly-Byrne for an appointment.

[20] In the chat thread supplied as evidence Ms James said that it was not good enough and the café could've been burnt down and that Mr Huntly-Byrne couldn't do his job. Ms James further said that she needed to be able to trust the team and Mr Huntly-Byrne and "this is my business and not a bloody shitty arse game."

[21] Mr Huntly-Byrne tried to explain in the chat that those responsibilities were shared between staff and were not all his fault.

[22] The next day on 18 November 2024, Mr Huntly-Byrne says that he was unsure whether he was rostered to work as a result of the messages Ms James had sent the day before. Mr Huntly-Byrne sent Ms James a text message directly asking if he was to work on 18 November 2024 to which Ms James replied "no". Mr Huntly-Byrne then asked Ms James when would she like him to work next. Ms James replied "I don't. Sorry mate you blew it yesterday."

[23] Ms James also drafted a formal letter headed "serious misconduct dismissal letter." This letter detailed a number of issues including lateness/absenteeism, customer service expectations, dress and appearance, rules covering unsatisfactory conduct and

serious misconduct and termination without notice. This letter referred to the letter dated 29 October 2024 that covered similar items. Ms James says that she posted the 18 November 2024 letter to Mr Huntley-Byrne's home address but he says he never received the letter.

Was Mr Huntley-Byrne unjustifiably dismissed?

[24] There is no dispute that Mr Huntley-Byrne was dismissed. Having dismissed Mr Huntley-Byrne the onus was on Dallison to establish a substantive justification for Mr Huntley-Byrne's dismissal for serious misconduct.

[25] Section 103A (2) of the Act sets out the legal test for justification for dismissal. Specifically, the Authority must consider, on an objective basis, whether Dallison's actions, and how it acted, were what a fair and reasonable employer could have done in all of the circumstances at the time the dismissal occurred.

[26] In applying the statutory test of justification for an employer's disciplinary action, the Authority must consider the four procedural requirements set out in s 103A (3) of the Act. These set out the minimum standards of procedural fairness that need to be observed by an employer in order to justify an employee's dismissal. These are:

- (a) whether, having regard to the resources available to the employer, the employer sufficiently investigated the allegations against the employee before dismissing or taking action against the employee; and
- (b) whether the employer raised the concerns that the employer had with the employee before dismissing or taking action against the employee; and
- (c) whether the employer gave the employee a reasonable opportunity to respond to the employer's concerns before dismissing or taking action against the employee; and
- (d) whether the employer genuinely considered the employee's explanation (if any) in relation to the allegations against the employee before dismissing or taking action against the employee.

[27] Mr Huntley-Byrne's individual employment agreement states at clause 22 that after a following a fair process the employer may terminate the employment without notice for serious misconduct. The Employee Handbook supplied to Mr Huntley-Byrne at the commencement of the employment at part 15 also provides a disciplinary

procedure. Ms James accepted that the handbook and the disciplinary procedure referred to applied to Mr Huntley-Byrne's employment.

[28] Point 4 of the disciplinary procedure in the handbook states that "you will only be disciplined after careful investigation of the facts and the opportunity to present your side of the case."

[29] Ms James states that her investigation amounted to the visit she made to the café after Mr Huntley-Byrne's shift had ended on 17 November 2024, the photos taken of the non-complete tasks and the exchange with Mr Huntley-Byrne on the Hind Quarter group messenger chat. Ms James also spoke with Ms Watty later the same day and Ms Watty said that Ms James had referred to the close up process not being complete but no formal employment process had been undertaken with Ms Watty.

[30] I accept that Ms James did carry out some form of investigation prior to raising the issues with Mr Huntley-Byrne in that she visited the café, took photographs and put these to the staff in question. I also accept that Mr Huntley-Byrne knew the standards of performance required to close the café as he had done so previously. However, Ms James did not follow all of the required steps outlined in the Employee Handbook and Dallison's actions also fell short of the requirements of s 103A (3) of the Act.

[31] Specifically, there was no disciplinary meeting convened where Mr Huntley-Byrne could've had appropriate support as had been done at the earlier meeting in October. There was also a lack of a proper opportunity for Mr Huntley-Byrne to state his case before Dallison made its decision to terminate his employment. I do not consider that over a messenger chat is an appropriate forum to conduct a disciplinary process and particularly where the termination of Mr Huntley-Byrne's job was a possible outcome. Further, Dallison had shown that it could have followed a better process because it did so for the October 2024 meeting.

[32] In conclusion, I find that Mr Huntley-Byrne was unjustifiably dismissed from his employment by the actions of Ms James for Dallison on 18 November 2024.

Is Mr Huntley-Byrne entitled to remedies?

[33] Having found that Mr Huntley-Byrne has a personal grievance for unjustified dismissal he is entitled to remedies.

Compensation for lost wages pursuant to s 123 (1) (b) of the Act

[34] Mr Huntley-Byrne claims a gross amount of \$8,299.20 in lost wages for 13 weeks following the unjustified ending of his employment. Mr Huntley-Byrne bases this claim on an hourly rate of \$24.00 per hour and an average of 26.6 hours per week that he worked during his employment.

[35] Any claim for wages lost as a result of dismissal is also subject to the requirement to minimise loss.¹ Mr Huntley-Byrne stated that he had been actively looking for work through Trade Me Jobs, Seek and Zeil, and had been working with WINZ to try and find employment. In their final submissions Dallison says that Mr Huntley-Byrne did not actively look for alternative employment as quickly as he should have but no supporting evidence was produced by Dallison at the investigation meeting. I note supporting documents provided by Mr Huntley-Byrne showed applications for jobs applied for.

[36] I am satisfied as to efforts taken by Mr Huntley-Byrne to minimise his loss. I order Dallison to make payment to Mr Huntley-Byrne of the gross sum of \$8,299.20 as compensation for wages lost as a result of the grievance.

Compensation for humiliation, loss of dignity and injury to feelings pursuant to s 123 (1) (c) (i) of the Act

[37] Compensation may also be awarded pursuant to s 123(1)(c)(i) of the Act for the humiliation, loss of dignity and injury to feelings that an applicant suffers as a result of unjustified actions, but this is not intended as a punitive action to signal disapproval of the employer's conduct.²

[38] In assessing any amount of compensation that should be awarded, my task is to quantify the harm and loss caused by the humiliation, loss of dignity and injury to feelings arising out of Dallison's unjustified actions. Various Employment Court decisions provide guidance on this exercise of quantification.³

¹ See *Argosy Imports Ltd v Lineham* [1998] 3 ERNZ 976.

² *Paykel Ltd v Ahlfield* [1993] 1 ERNZ 344 at [342].

³ See *Stormont v Peddle Thorp Aitken Ltd* [2017] NZEmpC 71; *Waikato District Health Board v Kathleen Ann Archibald* [2017] NZEmpC 132; and *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

[39] Mr Huntley-Byrne says that when he lost his job, he lost his income and his independence. Because of the 13-week stand down period he could not immediately get financial support from WINZ. As a result, Mr Huntley-Byrne says that he struggled to pay for food, gas and internet and had to sell his car to pay his expenses. Mr Huntley-Byrne also described not sleeping properly and feeling anxious about his future and this putting strain on his relationship and household he was living in. Mr Huntley-Byrne further described having low energy, feeling depressed and isolated.

[40] I am satisfied that Mr Huntley-Byrne was adversely impacted by the ending of his employment.

[41] Taking all of these factors into account, I consider an award of \$15,000 as compensation for humiliation, loss of dignity, and injury to feelings is appropriate.

Contribution

[42] Having awarded remedies, s 124 of the Act requires that I consider the extent to which Mr Huntley-Byrne's actions contributed towards the situation that gave rise to the grievance, and if those actions so require, that I reduce the remedies that would otherwise have been awarded accordingly.

[43] In assessing contribution, I accept that Mr Huntley-Byrne knew the standards of performance required to close the café on his own as he had done so previously. Taking this into consideration I consider that a small reduction in remedies for contribution to the situation by Mr Huntley-Byrne on 17 November 2024 is appropriate and I fix that at ten percent. As a result, all financial remedies awarded are reduced by 10%.

Should any penalties be awarded for any breaches and if so, what quantum and to whom?

[44] Mr Huntley-Byrne claims a penalty against Dallison for its failure to provide his wage and time records pursuant to s 130 (2) of the Act. An employer who fails to comply with any requirement of this section is liable to a penalty imposed by the

Authority.⁴ This breach attracts a maximum penalty of \$20,000.00 against a company for each breach.⁵

[45] Section 135(5) of the Act provides the timeframe for a penalty action to be commenced. Recovery of a penalty must be commenced within 12 months after the earlier of either the date when the cause of action first became known to the person bringing the action or the date when the cause of action should reasonably have become known to the person bringing the action.⁶ Mr Huntley-Byrne notified Dallison of its liability for a penalty for breach of s 64 of the Act in the Statement of Problem lodged with the Authority dated 19 May 2025 and is within the timeframes for recovery of penalties under the Act.

[46] Even though a penalty might technically be available, I also have to be satisfied that the imposition of any penalty would meet the purposes and principles of penalties generally.⁷ In summary, the purpose of penalties is punitive. They are not imposed to remedy a loss, but to punish the person who has breached a legal duty and to deter and condemn that behaviour.

[47] The law in respect of quantification of penalties is well established. Section 133A of the Act requires that regard is given to the objects of the Act; the nature and extent of any breach; whether it was intentional, inadvertent or negligent; the nature and extent of any loss or damage, steps taken to mitigate the effects of the breach, circumstances of the breach, including vulnerability of the employee; and previous conduct. This is a non-exhaustive list of considerations.

[48] Penalties should also be set at a level that both punishes breaches and deters future non-compliance. The Authority must also take into account whether any penalty would be significantly out of proportion to the gravity of the breaches and whether there is a real risk that a penalty could be of such magnitude as to create a significant risk of non-payment.⁸

⁴ Employment Relations Act 2000 s 130 (4)

⁵ Employment Relations Act 2000 s 135 (2)

⁶ Employment Relations Act 2000 s135 (5)

⁷ See *Borsboom v Preet PVT Limited and Warrington Discount Tobacco Limited* [2016] NZEmpC 143.

⁸ Above n7

[49] Mr Huntley-Byrne has also asked that some or all of any penalty be paid to him. Where victims of breaches can be properly compensated and the party bringing proceedings can be reimbursed in costs for doing so, there will not be a strong case for payment of any of the penalties to anyone other than the Crown.⁹

[50] In this case while I accept that failure to provide complete wage and time records when requested to do so amounts to a breach of s 130 (2) of the Act for which a penalty may be imposed. In this case, while the information was incomplete when requested there was no claim that Mr Huntley-Byrne was owed any unpaid wages or holiday pay for which wage and time records were being relied upon for the calculation of any arrears. Nevertheless, a breach has been established and in terms of promoting compliance I consider a nominal penalty is appropriate.

[51] Stepping back to look at the matter objectively and having already awarded Mr Huntley-Byrne remedies I consider an appropriate penalty of \$500.00 is appropriate and that this be payable to the Crown.

Summary of orders

[52] Within 28 days from the date of this determination and taking into consideration reduction for 10% contribution, Dallison 2021 Limited is ordered to pay Auto-John Huntley-Byrne the following:

- (a) Lost wages of \$7,469.28 gross;
- (b) Compensation for the humiliation, injury to feelings and loss of dignity of \$13,500.00.

[53] Within 28 days of the date of this determination, Dallison 2021 Limited must pay to the Crown a penalty of \$500.00 for breach of s 130 (2) of the Act.

Costs

[54] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. The investigation meeting lasted for a full day.

⁹ Above n7

[55] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Huntley-Byrne 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 Dallison will then have 14 days to lodge any reply memorandum.

[56] 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.¹⁰

Alyn Higgins
Member of the Employment Relations Authority

¹⁰ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1