IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2026] NZERA 356
3372023

	BETWEEN	JENNIFER JACOBSEN Applicant
	AND	CUBE INNOVATIONS LIMITED Respondent

Member of Authority:	Robert Davies
Representatives:	Caroline Silk, counsel for the applicant Dave Etchells, for the respondent
Investigation Meeting:	6 March 2026 at Hamilton
Submissions received:	6 March 2026 from the applicant 6 March 2026 from the respondent
Date of Determination:	5 June 2026

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Jennifer Jacobsen says that she was unjustifiably dismissed by Cube Innovations Limited (Cube) when it relied on an invalid trial period to end her employment and also that she was disadvantaged by its failure to provide her with training or reasons for ending her employment. Ms Jacobsen seeks remedies including compensation and reimbursement of lost wages as well as a penalty against Cube, all of which she asks to be paid to her.

[2] David Etchells is Cube's sole director and prepared and lodged its statement in reply. Cube denies Ms Jacobsen's claims, saying the trial period provision was valid and that she is therefore prevented from challenging her dismissal as a personal

grievance. Mr Etchells also says the statement of problem contains a number of lies and that there hasn't been any material loss to Ms Jacobsen as she retained her full-time role elsewhere.

The Authority's investigation

[3] An investigation meeting took place in Hamilton on 6 March 2026. It began almost one hour later than scheduled as Mr Etchells had forgotten about it. On his arrival, Mr Etchells said that his witness, Cindy Mansill, was no longer able to attend to give her evidence as she was now required at Cube's offices to cover his absence.

[4] All parties received notice of the Authority's investigation meeting on 15 December 2025. It clearly identifies the date, time, and venue of the meeting. The Authority's case management directions, issued on 14 November 2025 and following a teleconference from the day before, which Mr Etchells attended, record what was discussed, including specific reference to the 6 March 2026 investigation meeting date, and identify the issues for investigation and determination.

[5] Both parties had reasonable time to prepare their cases in anticipation of the investigation meeting. Both parties knew the issues that would be investigated. Both parties complied with the Authority's directions by lodging and serving any further information and evidence in the form of witness statements. However, only Ms Jacobsen came ready to present her case.

[6] There was discussion at the start of the meeting about whether it should be rescheduled to enable Ms Mansill to attend and give evidence, or whether Ms Jacobsen was heard first before the meeting resumed at a later date. Mr Etchells said that having the meeting delayed was not ideal and that, from his perspective, the issues were straightforward. Mr Etchells said that he was willing to proceed without Ms Mansill appearing, even after it was pointed out to him that this would likely affect any weighting the Authority could give her witness statement.

[7] The investigation meeting proceeded on that basis. On behalf of the applicant, the Authority heard submissions from Ms Silk and evidence from Ms Jacobsen and her father, Damon Jacobsen. On behalf of the respondent, it heard submissions and evidence from Mr Etchells. Witnesses answered questions under oath or affirmation

and had the opportunity to examine one another. Both Ms Silk and Mr Etchells also gave closing submissions or made closing remarks.

[8] As permitted by section 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 any orders made. It has not recorded all evidence and submissions received.

Relevant law

[9] These proceedings commenced before recent amendments to the Act regarding remedies came into effect.[1] Ms Jacobsen's application has therefore been determined on the law as it was at the time her causes of action against Cube arose.[2]

The issues

[10] The issues requiring investigation and determination were:

(a) Are the requirements for a valid trial period satisfied preventing Jennifer Jacobsen from bringing an unjustified dismissal personal grievance claim against Cube?

(b) If not, was Ms Jacobsen unjustifiably dismissed by Cube?

(c) Was Ms Jacobsen disadvantaged by unjustified actions of Cube regarding provision of training and reasons for termination of employment?

(d) If Ms Jacobsen establishes a personal grievance, taking into account any contribution by her, should she receive:

i. Lost wages and lost benefit of KiwiSaver contributions; and

ii. Compensation for humiliation, loss of dignity and injury to feelings?

(e) Did Cube breach its duty of good faith to Ms Jacobsen and, if so, should a penalty be imposed, with all or some paid to Ms Jacobsen?

(f) Should either party contribute to the costs of representation of the other party?

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[1] Employment Relations Amendment Act 2026.
[2] Legislation Act 2019, s 33. See also *McMillan and Anor v Qube Ports NZ Limited* [2026] NZERA 262, from [23].

Background facts

[11] Cube is one of several entities with Mr Etchells listed as a director and shareholder. It sells, rents and installs portable buildings, including offices, ablution blocks and changing rooms. Mr Etchells knew Ms Jacobsen through a friendship with her mother.

[12] On 26 January 2025, Mr Etchells emailed Ms Jacobsen with "ideas" to grow Cube's "portable toilet and portable buildings business nationwide". In this email, one idea was to "bring [Ms Jacobsen] up for a few days and go out with [Ms Mansill] to learn the drill…".

[13] At the time Mr Etchells sent this email, he was aware that Ms Jacobsen didn't live in the Waikato, where Cube is based and where its initial sales and growth focus was to be. He knew that Ms Jacobsen lived in New Plymouth, a three- or four-hour drive away.

[14] Mr Etchells was also aware that Ms Jacobsen was already working full-time at a café so would only be available to work for Cube for one day each week and that she was also young and this role would represent the first "professional" job in her life, and might even become a stepping stone toward a permanent career. By comparison, Mr Etchells is an experienced businessman and salesman.

[15] Ms Jacobsen travelled from New Plymouth to Hamilton to meet Mr Etchells in person on 3 February 2025. That meeting went well because, later that same day, Mr Etchells emailed her an outline of the job, its pay, as well as other details. In terms of remuneration, Mr Etchells said the following:

> Happy to pay $29.00/hr initially, 3.5hrs each way NP/HN, $235.00 vehicle expenses each way. $160.00/night for private accommodation, $30.00 for evening meal, $15.00 for breakfast. (if staying in motel Cube will pay directly).

[16] Mr Etchells also said that he would ask Ms Mansill to prepare an employment agreement but that this would still take "…prob 2-3 days" and that then the pair could "…regroup, and if we are both happy we will take the big jump…!"

[17] The parties 'jumped' the next day, with Ms Jacobsen saying she was offered the part-time role of Marketing Consultant for Cube on 4 February 2025. Ms Mansill then

sent Ms Jacobsen a proposed employment agreement on 12 February 2025, at 1.54pm (IEA). The proposed IEA included a trial period provision:

> **4. TRIAL PERIOD**
>
> 4.1 You are employment under a 90-day trial period commencing on your first day of work.
>
> 4.2 During the trial period, your employment may be terminated with three days notice by either party. The Employer may place you on garden leave during part or all of your notice period.
>
> 4.3 If your employment is terminated during the trial period, you may not pursue a personal grievance on the grounds of unjustified dismissal or other legal proceedings against the Employer in respect of the dismissal.

[18] The IEA also identified 17 February 2025 as Ms Jacobsen's commencement date and set out the "expected" hours for the position, identifying "Monday 8:30am to 3:00pm with half hour lunch break". Ms Jacobsen's remuneration was separated into her "Pay", identified as "$29.00 per hour", and so-called "Allowances", which included the following:

> Allowances — Vehicle expenses calculated at 3.5 hours each way NP/HN @ $235.00 each way
> Private accommodation @ $160.00 per night
> Motel accommodation to be paid directly by [Cube]
> $30.00 evening meal
> $15.00 breakfast

[19] On 15 February 2025, Ms Jacobsen forwarded the IEA to her father, an experienced HR professional, for his views and advice. Insofar as the trial period provision specifically was concerned, Mr Jacobsen said he felt it was "standard" and nothing to be concerned about, but he confirmed that he was aware of it and of what it meant, as was Ms Jacobsen.

[20] Ms Jacobsen travelled from New Plymouth to Hamilton on 16 February 2025, the day before she was to commence work. She was paid by Cube 3.5 hours for the drive between New Plymouth and Hamilton as well as $235 to reimburse her for fuel and any wear and tear on her vehicle. Ms Jacobsen stayed with her sister that evening, an arrangement Mr Etchells was aware of, but she still received $160 from Cube as a contribution toward the private accommodation allowance.

[21] Ms Jacobsen's first day of work at Cube's offices was 17 February 2025. It is at this point the parties' views of what happened diverges.

[22] Ms Jacobsen says that, after arriving early for work, she was met by Mr Etchells and Ms Mansill and was taken to what was going to be her desk where she then showed them a spreadsheet on her laptop that she had begun work on. Ms Jacobsen says she then sat down, logged into her computer, and began converting the Apple file into a Microsoft format. After working for around an hour, Ms Jacobsen says only then was she taken into Mr Etchells's office where he and Ms Mansill (as witness) signed the IEA.

[23] Mr Etchells does not agree with this sequence of events. He says that he was already aware of the requirement that a new employee had to sign their employment agreement before commencing work for any trial period to be valid and alerted Ms Mansill to that same fact. Mr Etchells says that, as a result, the "first thing" Ms Jacobsen did before anything else was to meet in his office to sign the IEA. As already indicated, Ms Mansill did not give evidence at the investigation meeting.

[24] Ms Jacobsen did not work the following week, on 24 February 2025, but did work the week after, on 3 March 2025. On this day, her work largely comprised cold calling competitors trying to get information on their pricing and approach to marketing and sales. During the investigation meeting, Ms Jacobsen said that she struggled with aspects of this work, which she felt required her to "lie" or misrepresent herself to others; pretending to be interested in their business when in reality she only wanted information from them.

[25] From Mr Etchells's perspective, problems with Ms Jacobsen were already obvious to him and so he made the decision to end her employment in reliance on the trial period provision. On 4 March 2025 at 9.41am, Mr Etchells emailed Ms Jacobsen, who says this email came out of the blue. The email is brief. In it, Mr Etchells states that "things aren't working out so we will finish up thanks". When Ms Jacobsen replied seeking clarification about what this meant, Mr Etchells replied "We won't proceed with the employment offer, we will terminate it."

[26] Ms Jacobsen's employment with Cube was summarily ended on 4 March 2025.

Was the IEA's trial period valid?

[27] There is no dispute the IEA includes a trial period provision specifying its duration, commencement date, and the effect of its inclusion as a term of employment.

Ms Jacobsen also accepts that she received the IEA before signing it and that she had enough time to seek advice on it, and indeed did so, from her father, who is an HR professional. Additionally, both Ms Jacobsen and her father accept they were aware of the trial period in the IEA and of its effect.

[28] Insofar as the validity of the trial period is concerned, Ms Silk advances two principal submissions. The first is that the trial period is invalid because Ms Jacobsen commenced work before the IEA was signed. Broadly, this submission casts Ms Jacobsen's commute to Hamilton on the day before as "work", but also relies on Ms Jacobsen's evidence that she only signed the IEA after commencing work anyway which, it is submitted, equally invalidates the provision.

[29] Ms Silk also submits the trial period was invalidated because Cube failed to provide Ms Jacobsen with the "three days notice" (sic) required by clause 4.2 of the IEA. In support of this submission, Ms Silk referred to *Roach v Nazareth Care Charitable Trust*[3] and *Ioan v Scott Technology NZ Ltd*,[4] decisions which she said dealt with notice requirements as well as the need to interpret compliance with any requirements strictly.

[30] *Ioan* is a decision by the Court of Appeal. The case concerned whether an employee could be dismissed within a valid trial period and then paid in lieu of working any applicable notice period. Mr Ioan on appeal argued that "notice" in section 67B of the Act required actual working notice and that ending employment immediately while paying in lieu amounted to a summary dismissal outside the protection of the trial period regime. The Court of Appeal rejected Mr Ioan's argument. It held that a dismissal is still "on notice" where the employer gives the correct contractual notice but elects not to require the employee to work it out, provided the employment agreement permits payment in lieu and also that the notice is otherwise clear and compliant. The Court distinguished this from a true summary dismissal, confirming that section 67B of the Act applies, even if the employee leaves immediately and is paid for the notice period instead.

[31] *Roach* is a decision of the Employment Court. Two distinct issues were considered: whether the applicable trial period was valid; and whether the employer

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[3] *Roach v Nazareth Care Charitable Trust* [2018] NZEmpC 123.
[4] *Ioan v Scott Technology NZ Ltd* [2019] NZCA 386.

had complied with any contractual and statutory notice requirements when ending the employee's employment. In *Roach*, the Court found the trial period provision was substantively valid but that defective notice by the employer prevented its decision to dismiss from being considered using the Act's legal test for justification in section 103A.

[32] Three days' notice is a part of the relevant trial period provision in the IEA, and Ms Silk submitted "[these] days had to be working days" and then either worked or paid in lieu as gardening leave, as provided for by clause 4.2 in the IEA. Mr Etchells accepted during the investigation meeting that Cube did not provide Ms Jacobsen with notice and did not pay her in lieu of requiring her to work it out, saying it must have been "overlooked" because of the unusual circumstances of her employment.

[33] Section 67A of the Act sets out the conditions under which an employment agreement may include a trial period provision. The combined effect of section 67A, and its sibling provision in section 67B of the Act, is to provide for a set of legal circumstances in which an employer may justifiably end an employee's employment without cause and without the affected employee having recourse to specific legal rights of challenge. The law which has developed around trial periods suggests they therefore fall to be interpreted strictly.[5]

[34] Key requirements of trial periods are they must be mutually agreed in writing before a prospective employee becomes an employee.[6] The prospective employee must then be given a reasonable opportunity to seek advice about the terms of the offer of employment, including about any trial period provision and the employment agreement containing the trial period provision must then be signed before the employee commences work.[7] Additionally, and in accordance with the decisions in *Ioan* and *Roach*, an employer must provide any contractual notice period, or pay an employee in lieu if that is provided for within the applicable employment agreement, to also be protected from having a decision to dismiss assessed under the Act's test for justification.

[35] In this case, the evidence shows that not all these requirements were met. Although the trial period provision was mutually agreed after Ms Jacobsen had a

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[5] *Smith v Stokes Valley Pharmacy (2009) Ltd* [2010] NZEmpC 111, at [48].
[6] *Blackmore v Honick Properties Ltd* [2011] NZEmpC 152, at [64].
[7] *Smith v Stokes Valley Pharmacy (2009) Ltd* [2010] NZEmpC 111, at [47].

reasonable opportunity to consider her father's advice, Cube did not provide her with her contractual notice period – this was admitted by Mr Etchells. It is now well established that deficient notice is not lawful notice,[8] and so it follows that conduct also served to invalidate the IEA's trial period provision.

[36] There is also the issue of when the IEA was signed by the parties. This is the specific requirement that Mr Etchells is adamant he was aware of prior to Ms Jacobsen beginning work, and why he is so sure the IEA was signed before she did anything else. Ms Silk said in her closing submissions this critical aspect of Cube's defence only emerged when Mr Etchells had lodged his evidence but that, before then, he had never mentioned it. The implication is that this evidence is contrived and self-serving.

[37] In the end, both parties were vague on the precise detail of what happened and when. This is not unusual given the passage of time and the fact signing the IEA was probably not the most memorable thing either party did that day. Broadly, both agree the IEA was signed in the morning on 17 February and in Mr Etchells's office, which is very close to the shared working area that makes up the balance of Cube's physical office where Ms Jacobsen's desk was located. The factual dispute is when that occurred, not if it did. Mr Etchells says the IEA was signed immediately after site health and safety was attended to, whereas Ms Jacobsen says it was signed after around one hour of work, which included a "bare minimum" induction and site tour.

[38] I consider it more likely than not the IEA was finally executed by the parties at least (if not more than) one hour after Ms Jacobsen first started work and not immediately, as Mr Etchells maintained. I consider it more likely this formality followed the induction and site tour and a period of work by Ms Jacobsen where she converted and modified a spreadsheet she had already begun work on. Given my earlier finding that the trial period was invalidated by Cube's conduct in failing to provide Ms Jacobsen with correct notice, not much seems to turn on this particular factual dispute now, but it should still be resolved in this determination for completeness.

[39] Finally, I have also considered whether Ms Jacobsen's commute from New Plymouth to Hamilton was "work" in the way Ms Silk has submitted. While Ms Jacobsen was paid for her time spent travelling, and received allowances for vehicle expenses, accommodation and meals, the substance of what she was doing was

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[8] *Smith v Stokes Valley Pharmacy (2009) Ltd* [2010] NZEmpC 111, at [97].

travelling to the place from which her duties were then to be performed the following day. She was not, during that journey, performing any tasks for Cube, nor was she subject to any direction or control beyond the requirement to present herself at work the next day. These payments are more appropriately characterised as reimbursing allowances or compensation for the burden of travel associated with what was, on any view, an unusually long commute for a one-day-per-week role.

[40] The trial period provision in Ms Jacobsen's IEA with Cube not valid when she was dismissed. Accordingly, Cube cannot rely on that provision in respect of Ms Jacobsen's dismissal.

Unjustified dismissal

[41] On the basis the trial period was not valid, Cube's decision to dismiss Ms Jacobsen is subject to the legal test for justification in section 103A of the Act. This test is whether the employer's actions, and how it acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred. The Authority is required to consider a number of things, including whether concerns were raised by the employer with the employee before the dismissal, whether a reasonable opportunity to respond to those concerns was given, and whether the employer genuinely considered the employee's explanation (if any) before dismissing.

[42] This issue does not need to be laboured as the evidence was clear. The dismissal was unexpected and perfunctory, delivered as an email with minimal explanation and no reasons. Ms Jacobsen had no idea Cube had concerns about her performance, no idea what those concerns were, and no opportunity to do anything about them in any event. These substantive and procedural deficiencies are significant, not minor, and they resulted in Ms Jacobsen being treated unfairly. Cube cannot satisfy the test of justification in section 103A of the Act. Summarily dismissing Ms Jacobsen in this manner was not what a fair and reasonable employer could have done in all the circumstances at the time.

[43] Cube unjustifiably dismissed Ms Jacobsen on 4 March 2025.

Unjustified disadvantage

[44] An unjustified disadvantage in employment, as set out in section 103(1)(b) of the Act, occurs when an employee's employment or one or more conditions of their

employment are affected to their disadvantage by some unjustifiable action by the employer. The law requires that, once the employee establishes a disadvantage, the onus shifts to the employer to justify its actions in accordance with the test for justification in section 103A of the Act.

[45] Ms Jacobsen says she was unjustifiably disadvantaged by Cube's failure to support and train her to perform the tasks required of the role and also by its refusal to provide her with reasons for her dismissal.

[46] Ms Jacobsen describes receiving a "bare minimum" induction before being left to work on her own cold calling Cube's competitors. She said she felt like she had been "thrown into the deep end" and felt pressure to perform. She has also repeatedly asked Mr Etchells for the reason her employment ended but has never been provided with one.

[47] Mr Etchells denies that Cube failed to train or support Ms Jacobsen. He said she received extensive and appropriate on-the-job training from Ms Mansill on her first day and ongoing support on the days she worked, including being able to observe cold calls and being provided with a script to use. Mr Etchells admits not providing Ms Jacobsen with reasons for ending her employment, saying he is not obligated to on the basis of the trial period provision and also saying that doing so would not be helpful.

[48] In *Jansen v BDS Chartered Accountants Ltd*, the Authority accepted that an employer's failure to provide adequate training and support could amount to an unjustified disadvantage.[9] In that case, the Authority considered the employer's resources, like the size of its business, as well as the employee's relatively short tenure.[10] Similar circumstances apply in the present case. Ms Jacobsen's tenure was short, although not through her own decision-making (which can be contrasted with the facts in *Jansen*), but she also accepted receiving an induction (albeit "bare minimum") and some on-the-job training provided by Ms Mansill. Although this approach is more *ad hoc* than it is structured, that alone does not make it inadequate or unreasonable. Having regard to Cube's resources and Ms Jacobsen's tenure, and overall, I find the training she was provided was reasonable in the circumstances.

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[9] *Jansen v BDS Chartered Accountants Ltd* [2026] NZERA 230, from [3] and [35].
[10] *Jansen v BDS Chartered Accountants Ltd* [2026] NZERA 230, at [42].

[49] Where an employee is dismissed, they can, within 60 days after the dismissal (or after becoming aware of the dismissal), request from their employer a statement in writing setting out the reasons for their dismissal.[11] Every employer to whom such a request is made must then provide the statement within 14 days.[12] There is an exception in the case of a valid trial period provision,[13] however that does not apply in this case given my earlier finding of that provision's invalidity. Accordingly, and by admission, Cube failed to provide a written statement when requested, and Mr Etchells refused to do so again during the investigation meeting. This failure disadvantaged Ms Jacobsen by depriving her of a statutory right to know. Although this disadvantage occurred after Ms Jacobsen's employment ended, because it is a condition that survives the employment relationship, it remains justiciable as a disadvantage.[14]

[50] Cube unjustifiably disadvantaged Ms Jacobsen by failing to provide written reasons for her dismissal, as required by section 120 of the Act.

Remedies

[51] Ms Jacobsen has established personal grievances for unjustified dismissal and unjustified disadvantage. She is therefore entitled to, and seeks, statutory remedies, including reimbursement of three months' lost wages,[15] compensation of $15,000 for hurt and humiliation,[16] as well as compensation for lost KiwiSaver benefits.[17]

Reimbursement for lost wages

[52] Ms Jacobsen has lost remuneration because of her personal grievance so is entitled to reimbursement of "…a sum equal to the whole or any part of the wages… lost as a result...",[18] also considering the requirements of section 128 of the Act. This section provides for the mandatory reimbursement, in the absence of contributory fault, of a minimum of three months lost wages or the actual amount of remuneration lost.[19]

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[11] Employment Relations Act 2000, s 120(1).
[12] Employment Relations Act 2000, s 120(2).
[13] Employment Relations Act 2000, s 67B(5)(b).
[14] Employment Relations Act 2000, s 120
[15] Employment Relations Act 2000, s 123(1)(b).
[16] Employment Relations Act 2000, s 123(1)(c)(i).
[17] Employment Relations Act 2000, s 123(1)(c)(ii).
[18] Employment Relations Act 2000, s 123(1)(b).
[19] Employment Relations Act 2000, s 128.

[53] Ms Jacobsen seeks three months' lost wages, which she quantifies at $2,436 gross, based on 14 weeks' work at six hours per week and calculated using the agreed $29 per hour rate. Mr Etchells's view is that Ms Jacobsen has not suffered any loss because she retained her other role at the café, where she worked for four days each week. Ms Silk correctly submits this cannot be correct – Ms Jacobsen lost the work she performed for Cube because of its unjustified actions in dismissing her.

[54] The Court of Appeal has considered the principles applicable to these remedies previously, including in *Sam's Fukuyama Food Services Ltd v Zhang*.[20] The principles include that any award is discretionary and that, while a "full" assessment of the financial loss suffered sets the upper limit of any award, moderation is still appropriate[21] and there is no entitlement to "full" compensation.[22] The existence of this remedial discretion has been recognised by the Court of Appeal as making precision in any assessment difficult, meaning any "…award will inevitably involve a broad-brush approach".[23]

[55] Employees also have a duty to mitigate their loss.[24] In this case, Ms Jacobsen continued in her café role which required her to work four days per week. This is relevant because it informs the extent to which she might also be reasonably expected to have mitigated her loss. Ms Jacobsen's evidence during the investigation meeting was that it was not immediately possible for her to increase her hours at the café, meaning she would be left to find alternative equivalent employment for one day each week. This alone would not have been an easy task, but there is also a need to acknowledge the emotional harm Ms Jacobsen experienced and was recovering from, which would have further impacted her ability to mitigate her loss.

[56] Ms Jacobsen has lost remuneration as a consequence of being unjustifiably dismissed by Cube. She is entitled to reimbursement for three months' lost wages, calculated as amounting to $2,436 gross.

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[20] *Sam's Fukuyama Food Services Ltd v Zhang* [2011] NZCA 608.
[21] *Sam's Fukuyama Food Services Ltd v Zhang* [2011] NZCA 608, at [25].
[22] *Telecom NZ Ltd v Nutter* [2004] 1 ERNZ 3105 (CA), at [70]-[75].
[23] *Sam's Fukuyama Food Services Ltd v Zhang* [2011] NZCA 608, at [36].
[24] *Argosy Imports Ltd v Lineham* [1998] 3 ERNZ 976.

Compensation for hurt and humiliation

[57] Ms Jacobsen has established personal grievances for unjustified dismissal and unjustified disadvantage. Each grievance carries separate statutory remedies, including for compensation for hurt and humiliation. Ms Jacobsen seeks a total of $15,000 in compensatory remedies. She is entitled to frame her application in this way, provided doing so does not also deprive her of any minimum entitlements she may also be owed.

[58] Notwithstanding the way Ms Jacobsen's application was framed, I note the Authority is not subject to the same restriction as the Employment Court, so can award more than is claimed if reasonable in the circumstances. This is because the Authority is an "…investigative body that is to resolve employment relationship problems according to the substantial merits of the case, without regard to technicalities".[25]

[59] Ms Jacobsen gave compelling and uncontested evidence about the personal effect of Cube's unjustified dismissal on her. Even at the investigation meeting, she remained visibly upset and confused by her treatment. Ms Jacobsen felt embarrassed that she had lost a job she had already excitedly told some family and friends about. She questioned her contribution and the consequences of Cube's unjustified actions clearly still affect her today. Ms Jacobsen's self-confidence and sense of worth was badly shaken and, in many respects, is still recovering.

[60] The Authority's focus when determining compensatory remedies is to focus on the impact the grievance had on the employee. This is because compensation for hurt and humiliation is intended to address that harm specifically and not to penalise the employer. An individual assessment is inevitably required, although guidance from other cases involving similar circumstances is also necessary to ensure consistency and moderation.

[61] *Reddy v Studio Image Ltd* is a recent Authority determination dealing with a similarly perfunctory dismissal that failed to comply with any of the minimum procedural fairness tests under the Act. In *Reddy*, as in this case, the employee was "…simply informed of [their] summary dismissal…",[26] leading to harm like "…constantly thinking about what had happened and replaying the events in [their]

[25] *Ashby v NIWA Vessel Management Ltd* [2022] NZEmpC 174, at [43].
[26] *Reddy v Studio Image Ltd* [2026] NZERA 323, at [37].

mind…".[27] In *Reddy*, the Authority awarded compensation of $13,500 under section 123(1)(c)(i) of the Act. There are also the decisions Ms Silk referred to, specifically *Roach*, where the employee's dismissal was similarly abrupt, although with some additional aggravating features, including the fact it occurred at the place of work (meaning the employee was also physically escorted from the premises) and then required the employee to drive home. In *Roach*, the Employment Court awarded $25,000 as compensation.[28]

[62] Ms Jacobsen experienced harm under each of the heads identified in section 123(1)(c)(i) of the Act. This harm was more than minor and it is still impacting Ms Jacobsen today. Taking into account where this case sits on the spectrum of cases in terms of overall harm suffered, and an award of $15,000 compensation for hurt and humiliation, which is what is sought by Ms Jacobsen, is appropriate. That award is made up of:

a. $13,000 as compensation for Ms Jacobsen's unjustified dismissal; and
b. $2,000 as compensation for her unjustified disadvantages.

[63] Cube must pay Ms Jacobsen $15,000 as compensation for her hurt and humiliation pursuant to section 123(1)(c)(i) of the Act.

Compensation for loss of KiwiSaver benefit

[64] Ms Jacobsen seeks the employer contributions Cube otherwise should have made to her KiwiSaver but for its unjustified dismissal as a lost benefit under section 123(1)(c)(ii) of the Act. Clause 10.5 of the IEA makes clear this contribution is paid by the employer in addition to Ms Jacobsen's remuneration.

[65] Ms Jacobsen is entitled to Cube's employer contribution toward her KiwiSaver as a lost benefit. Had Cube not unjustifiably dismissed her, she could have reasonably expecteded to have benefitted from that contribution for at least the period equivalent to her lost remuneration.

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[27] *Reddy v Studio Image Ltd* [2026] NZERA 323, at [48].
[28] *Roach v Nazareth Care Charitable Trust* [2018] NZEmpC 123, at [88].

[66] Cube must pay Ms Jacobsen its compulsory employer KiwiSaver contribution, calculated in accordance with the KiwiSaver Act 2006, on the basis of the earlier award of $2,436 as lost remuneration.

Contribution

[67] Where the Authority has determined that an employee has a personal grievance, it must also consider the extent to which the actions of the employee contributed towards the situation that gave rise to that grievance and, if required, reduce any remedies that would otherwise have been awarded.[29] A recent law change[30] has clarified that remedies may be reduced by up to 100 per cent.[31]

[68] Ms Jacobsen did not contribute in any way toward the situation giving rise to her personal grievance. The evidence showed that no concerns about her performance or conduct had been raised by Cube and also that she had attended work as required and did what was asked of her. No reduction is made to Ms Jacobsen's compensatory remedy on account of contribution.

Penalty for breach of good faith

[69] Ms Jacobsen says the manner of her unjustified dismissal warrants a penalty under section 4A of the Act, which should be paid to her. Ms Silk submits Cube failed to meet the test of justification in section 103A of the Act, failed to provide information regarding the potential end of her employment, and failed to provide any opportunity for Ms Jacobsen to provide feedback. Additionally, Ms Silk submits Cube failed to properly train Ms Jacobsen "…and thus set her up to fail".[32]

[70] The threshold which must be met before a penalty for a breach of good faith is imposed is high.[33] The failure must be deliberate, serious, and sustained and must have been intended – in this case – to undermine the employment relationship.[34] Additionally, the purpose of the penalty regime is not compensatory. It is directed to accountability for non-compliance and the protection of minimum statutory standards

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[29] Employment Relations Act 2000, s 124(1).
[30] Employment Relations Amendment Act 2026, s 8(2).
[31] Employment Relations Act 2000, s 124(2).
[32] Submissions for the Applicant (5 March 2026), from [38].
[33] *Radius Residential Care Ltd v New Zealand Nurses Organisation Inc* [2016] NZEmpC 112, at [120].
[34] Employment Relations Act 2000, s 4A.

governing employment relationships in New Zealand. Penalties serve both a punitive and deterrent function. They are intended to mark the seriousness of the breach and to deter both the particular employer – but also others – from similar non-compliance in the future.

[71] The threshold to find a breach of good faith, and to impose a penalty for that breach, is not met in this case. Cube's conduct was unjustified but was not intended to undermine the employment relationship. Mr Etchells wrongly but genuinely believed that he could rely on the IEA's trial period provision when dismissing Ms Jacobsen. To the extent she has suffered harm because of that unjustified conduct, she has now been compensated. The lack of evidence of intent to deliberately undermine the employment relationship is what distinguishes this case from others where the Authority has imposed a penalty in the context of an unjustified dismissal.[35]

Orders

[72] I make the following orders:

a. Cube is to pay Jennifer Jacobsen the following amounts within 28 days of the date of this determination:
    i. $2,436, less any applicable tax, deductions, or withholdings, as arrears of wages.
    ii. $15,0000, without deduction, as compensation pursuant to section 123(1)(c)(i) of the Act.
    iii. Cube's KiwiSaver employer contribution, calculated in accordance with the KiwiSaver Act 2006.

Costs

[73] Costs are reserved. 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, Ms Jacobsen may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum, Cube 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.

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[35] See for example *McCann v Winton Capital Ltd* [2025] NZERA 171, from [75].

[74] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff. Further information about the factors considered in assessing costs is available on the Authority's website.[36]

Robert Davies
Member of the Employment Relations Authority

[36] www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1