

**IN THE EMPLOYMENT COURT OF NEW ZEALAND  
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU**

**[2025] NZEmpC 64  
EMPC 20/2024**

IN THE MATTER OF a challenge to a determination of the  
Employment Relations Authority

BETWEEN ANANT SHARMA  
Plaintiff

AND RODNEY FARM 'N' MACHINERY  
LIMITED  
Defendant

Hearing: 26-28 November 2024

Appearances: A Sharma, plaintiff in person  
J Hogg, agent for the defendant

Judgment: 1 April 2025

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**JUDGMENT OF JUDGE J C HOLDEN**

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[1] Anant Sharma challenges a determination of the Employment Relations Authority.<sup>1</sup>

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<sup>1</sup> *Sharma v Rodney Farm 'N' Machinery Ltd* [2023] NZERA 765.

[2] The challenge is de novo but, although the Authority dealt with a large number of issues, the parties agreed that, for the purposes of the Court proceeding, there were five matters in dispute:

- (i) whether a penalty should be ordered against Rodney Farm 'N' Machinery Ltd in respect of deductions wrongly taken from Mr Sharma's pay;
- (ii) whether Mr Sharma was subject to an unjustifiable disadvantage because he was not provided with adequate safety equipment, in particular safety boots;
- (iii) whether a penalty ought to be ordered for Rodney Farm's failure to keep proper records;
- (iv) whether Rodney Farm was required to pay a contribution for KiwiSaver; and
- (v) whether a personal grievance for unjustifiable constructive dismissal was raised within the statutory time period, and if so, whether it succeeds.

[3] Mr Sharma also says that payments ordered by the Authority have not been made. Rodney Farm disagrees.

[4] Neither party was represented by counsel or by an advocate; Mr Sharma represented himself and Rodney Farm was represented by Jim Hogg, who is the director of Rodney Farm.

[5] The parties attended mediation, including by the direction of the Court, which was not successful. That is unfortunate as this is the sort of case that is best suited to resolution between the parties directly, if necessary with the assistance of a mediator. Failing resolution between the parties, the Authority, with its investigatory role, is well placed to gather the necessary information and make a determination. In this case, the Authority did a thorough investigation, based on the information it had in front of it.

[6] A challenge in the Court is a more formal, adversarial process. In order to do justice to both parties, the Court can, does and did here, endeavour to obtain the information as in equity and good conscience it thinks fit.<sup>2</sup> In doing so, however, it must be fair and cannot take over the case for either party. The Court must make its own decision on the matters before it, on the basis of the evidence provided by the parties, with that decision then standing in the place of the Authority.<sup>3</sup>

[7] The Court hearing was in respect of the five matters identified by the parties, and the evidence provided was focused on those matters.

### **Mr Sharma was employed as a truck driver/serviceperson**

[8] Rodney Farm repairs and hires trucks and construction equipment. Its work involves heavy diesel mechanical repairs. It is a small operation, generally employing two employees.

[9] At all material times, Mr Sharma lived next door to the premises of Rodney Farm. During 2020 and early 2021, he would visit Rodney Farm and talk to the staff as they worked. At some point, he was offered and accepted a job as a truck driver/service man working for Rodney Farm. At that time Rodney Farm understood from Mr Sharma that he had a Class 4 heavy vehicles licence as required for the role. As it transpired, he did not, and he also had very limited mechanical skills. Rodney Farm nevertheless kept Mr Sharma on, and found other work for him, cleaning, preparing and painting, and some mechanical servicing work.

[10] There were some other issues with Mr Sharma's employment. At one point he backed into, and badly damaged a gate on Rodney Farm's premises. He said he would repair the gate or replace it by purchasing a replacement one from the TradeMe website. He never did either of those things. There were other occasions where he was reported to have been sleeping at work or otherwise not working when he was expected to be. This led to some criticism of Mr Sharma by his supervisor, in particular in mid to late 2021.

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<sup>2</sup> Employment Relations Act 2000, s 189(2).

<sup>3</sup> Section 183.

[11] Mr Sharma also says that he suffered injuries while working, including from falling from a forklift in August 2021 and while working on a chassis repair in July 2022.

[12] On 15 June 2022, Mr Sharma gave notice of his resignation from Rodney Farm. His resignation letter recorded that he was resigning with four weeks' notice but also that he had been diagnosed with suspected flu and his doctor had recommended that he self-isolate until the symptoms subsided. His email concluded: "My best wishes for the company and see you soon. Regards, Anant."

### **Rodney Farm acknowledges that it made a deduction from Mr Sharma's pay**

[13] Rodney Farm acknowledges that it made a deduction of \$340 from Mr Sharma's final pay to cover the cost of the damaged gate. It did so after waiting approximately eight months for Mr Sharma to repair or replace the gate as he had said he would. Rodney Farm acknowledges that the deduction was done without Mr Sharma's consent.

[14] By making that deduction, Rodney Farm was in breach of the Wages Protection Act 1983, which provides that "an employer shall, when any wages become payable to a worker, pay the entire amount of those wages to that worker without deduction."<sup>4</sup> Exceptions to that are when the employee consents in writing to a deduction, or where there is an overpayment and the requirements of s 6 of the Wages Protection Act are satisfied.<sup>5</sup> The issue, then, is whether a penalty should be ordered for the breach<sup>6</sup> and, if so, how much and whether any of it should be payable to Mr Sharma.<sup>7</sup>

[15] Mr Sharma did not seek a penalty in the Authority. In any event, on balance, I consider that this is not a case where the circumstances require a penalty. Those circumstances include the small amount deducted, the reasons it was deducted, and the nature and size of Rodney Farm's operations. Even if I had ordered a modest

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<sup>4</sup> Section 4.

<sup>5</sup> Sections 5 and 6.

<sup>6</sup> Section 13(1); and Employment Relations Act 2000, s 133.

<sup>7</sup> Employment Relations Act, s 136(2).

penalty, it would have been payable to the Crown. I would not have ordered any proportion to be paid to Mr Sharma.

### **Safety boots were provided but were inadequate**

[16] Although the challenge before the Court was brought by Mr Sharma, it was a de novo challenge and the issue surrounding the provision of safety boots was a focus for Rodney Farm.

[17] I accept the evidence for the company that second-hand boots were provided to Mr Sharma when he started. Mr Sharma said they did not fit correctly, but nevertheless it seems that he wore them for some time. Then, in March 2022, Mr Sharma emailed Mr Hogg asking: “If you have any budget for [safety boots] let me know, so I can add some money and buy the John Bull (the best quality) safety boots. That will keep me fit and will go for a long time.”

[18] It is clear, therefore, that he was not requesting that the company pay in full for the better-quality boots, which was what Mr Hogg said in evidence.

[19] Rodney Farm advised Mr Sharma that it would refund him on receipt for boots purchased at The Warehouse. Mr Hogg said in evidence that, had Mr Sharma purchased the higher quality boots, the company would, nevertheless, on receipt have contributed the amount that The Warehouse boots would have cost, but there is no indication in the documentary evidence of that being communicated to Mr Sharma.

[20] Rodney Farm did not follow up on the issue, which it should have done as ultimately it is the responsibility of an employer to ensure that its employees have adequate safety equipment.<sup>8</sup>

[21] Accordingly, I accept that Mr Sharma was disadvantaged unjustifiably by the failure of Rodney Farm to follow through on the request for safety boots, and is entitled to compensation under s 123(1)(c)(i) of the Act. The compensation is to be

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<sup>8</sup> Health and Safety at Work Act 2015, s 36.

fair, realistic, and not miserly.<sup>9</sup> It is to recognise the distress the affected employee endured because of the particular grievances.<sup>10</sup>

[22] The evidence provided to the Court was that not being provided adequate safety boots was a cause of some limited stress and upset for Mr Sharma and ultimately caused him some physical discomfort. Based on that evidence, and having reviewed awards in recent decisions, I consider an appropriate award for compensation under s 123(1)(c)(i) is \$2,500.<sup>11</sup> In the Authority Mr Sharma was awarded compensation of \$5,000, which I understand Rodney Farm has paid to him. Therefore, there is a sum of \$2,500 to be repaid by Mr Sharma to Rodney Farm.

### **No penalty in respect of record keeping**

[23] Mr Sharma contended that records were either not kept or were falsified, and seeks a penalty.

[24] However, no penalty was sought in the Authority. Further, based on the evidence, I am not satisfied that the inaccuracies in the records identified before me warrant a penalty.

[25] Before the Court, the evidence was that Mr Sharma completed his own timesheets. He says, however, he was required to put certain times in, which were incorrect. The evidence before me focussed on one day where Mr Sharma considers that, although he put that he finished work at 5pm, in fact he worked until much later. This was accepted by the Authority and was addressed through a finding that Rodney Farm pay Mr Sharma \$161 (gross) as wage arrears. That finding was not challenged before me and is appropriate.

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<sup>9</sup> *Wikaira v Chief Executive of Department of Corrections* [2016] NZEmpC 175 at [237].

<sup>10</sup> *Pact Group v Robinson* [2023] NZEmpC 173, (2023) 20 NZELR 42 at [50].

<sup>11</sup> See for example, *Evans v JNJ Management Ltd* [2020] NZEmpC 181, (2020) 17 NZELR 674; *Restaurant Brands Ltd v Gill* [2021] NZEmpC 186; and *AJY v Chief Executive of the Department of Corrections* [2023] NZEmpC 168, [2023] ERNZ 642.

## **KiwiSaver**

[26] It is the obligation of an employer to contribute to and make deductions for KiwiSaver unless an employee opts out.<sup>12</sup>

[27] From the evidence, I accept that Mr Sharma did not actively pursue involvement in KiwiSaver at the outset of his employment, but that does not absolve Rodney Farm from its obligations.<sup>13</sup> In the absence of Mr Sharma selecting a contribution rate, or formally opting out,<sup>14</sup> Rodney Farm was liable to make contributions and deductions at the default rate.<sup>15</sup>

[28] Accordingly, I accept that Mr Sharma was entitled to have KiwiSaver contributions paid on his behalf from the commencement of his employment.

[29] To the extent this has not been attended to, Rodney Farm should do so now.<sup>16</sup>

## **Dismissal grievance raised but unsuccessful**

[30] Not every complaint made by an employee to their employer amounts to a personal grievance. The complaint must be a personal grievance within the meaning of s 103 of the Act, and the employee's communications must comply with s 114(2) of the Act by conveying the substance of the complaint to the employer.

[31] It is insufficient for an employee simply to advise an employer that the employee considers that they have a personal grievance, or even specifying the statutory type of personal grievance.<sup>17</sup> The employer must know what it is responding to; it must be given sufficient information to address the grievance, that is to respond to it on its merits with a view to resolving it soon and informally, at least in the first instance.

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<sup>12</sup> KiwiSaver Act 2006, ss 10, 15 and 66.

<sup>13</sup> Certainly, it is clear, and I understand is accepted by Rodney Farm, that Mr Sharma specifically sought to be included in KiwiSaver from February 2022.

<sup>14</sup> KiwiSaver Act 2006, s 17.

<sup>15</sup> Section 64.

<sup>16</sup> *Sharma v Rodney Farm 'N' Machinery Ltd*, above n 1, at [213].

<sup>17</sup> *Creedy v Commissioner of Police* (2006) 3 NZELR 393 at [36].

[32] Beyond that:<sup>18</sup>

- (1) The grievance process is designed to be informal and accessible.
- (2) A personal grievance may be raised orally or in writing.
- (3) There is no particular formula of words that must be used.
- (4) Where there had been a series of communications, not only would each be examined as to whether it might constitute raising the grievance, but the totality of those communications might also constitute raising the grievance.
- (5) It does not matter what an employee intended their complaint to be, or their preferred process for dealing with it in the first instance.
- (6) It also does not matter whether the employer recognised the complaint as a personal grievance.

[33] The termination of Mr Sharma's employment took effect on or about 13 July 2022. He says that he immediately raised a grievance with Rodney Farm in a discussion with Mr Hogg at Rodney Farm's offices. That is disputed by Mr Hogg, who says that the conversation was amicable with each side wishing the other well.

[34] I am not satisfied that a personal grievance was raised in that discussion.

[35] However, in or about early August 2022, within the prescribed 90-day period for raising a grievance, Mr Sharma lodged a dispute with the Disputes Tribunal, which included a claim that he left Rodney Farm because the work conditions had gotten so bad; i.e. he was constructively dismissed.<sup>19</sup> He endeavoured to email his claim document to Rodney Farm but, after he received no response, he asked the Disputes Tribunal to forward that to Rodney Farm, which it did on 23 August 2022.

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<sup>18</sup> *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC 132 at [36].

<sup>19</sup> It seems this communication was not raised before the Authority.

[36] Rodney Farm responded to the claims made by Mr Sharma.

[37] The Disputes Tribunal advised Mr Sharma that, as his dispute was an employment matter, he should proceed to the Employment Relations Authority.

[38] I accept that the correspondence in respect of the dispute before the Disputes Tribunal raised a personal grievance for unjustifiable constructive dismissal; Rodney Farm was aware of the claim of constructive dismissal and responded to it. It does not matter that Mr Sharma raised it in the wrong forum, the substance of his complaint was clear.

[39] For completeness, I note that Mr Sharma had other communications, both with the Employment Relations Authority and with an Employment New Zealand migrant exploitation helpline, but those were not with Rodney Farm; they would not have amounted to the raising of a grievance.

[40] Having found that the personal grievance for unjustifiable dismissal was raised within time, I turn to whether Mr Sharma's claim of unjustifiable dismissal is successful. The first issue is whether Mr Sharma was constructively dismissed. If he was not dismissed, his claim of unjustifiable dismissal cannot succeed.

[41] In order for there to be a constructive dismissal, the employer must have, in substance, dismissed the employee, although technically there has been a resignation.<sup>20</sup> The employer may have followed a course of conduct with the deliberate and dominant purpose of coercing the employee to resign or committed a sufficiently serious breach of duty, that foreseeably compelled the employee to resign.<sup>21</sup>

[42] Mr Sharma pointed to several matters he says induced his resignation, including the behaviour of his supervisor, ongoing discrepancies with wages and leave balances, and safety concerns. A difficulty for Mr Sharma is that the matters, to the extent they can be accepted, do not amount to the necessary standard of repuditory

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<sup>20</sup> *Auckland Shop Employees Union v Woolworths (NZ) Ltd* [1985] 2 NZLR 372 (CA) at 374.

<sup>21</sup> *Auckland Electric Power Board v Auckland Provincial District Local Authorities Officers IUOW Inc* [1994] 1 ERNZ 168 (CA) at 172.

conduct for a resignation to be considered a constructive dismissal. The evidence concerning the claims about the behaviour of his supervisor is conflicting and mainly related to events that occurred well before Mr Sharma resigned. The discrepancies with wages and leave balances largely related to a period ending six months prior to his resignation and are, on the whole, not major.<sup>22</sup> I have accepted Rodney Farm did not follow up on the safety boots after providing a reimbursement option but it cannot be said that conduct constituted a sufficiently serious breach of contract that it was foreseeable Mr Sharma would not be willing to continue work in the prevailing conditions. The complaint with respect to the fall from a forklift related to an event in August 2021, months before Mr Sharma resigned; and the complaint of injury while working on a chassis repair in July 2022 was made after he submitted his resignation.

[43] It follows that a further difficulty for Mr Sharma is establishing a causative link between an alleged breach of duty and his resignation. The matters Mr Sharma referred to occurred many months before his decision to resign. While there can be a course of conduct that leads to a constructive dismissal, one would expect proximity between the final event pointed to and the resignation.<sup>23</sup>

[44] It is axiomatic that many, if not most, resignations occur when an employee decides they no longer wish to work for an employer. That can arise because of unhappiness with the way the employer conducts its business. That does not mean that a resulting resignation amounts to a constructive dismissal.

[45] In this case, while I accept that there were instances during the course of his employment that Mr Sharma was not happy with, most of those occurred many months prior to his decision to resign and would not have, either individually or collectively, amounted to the sort of repudiatory conduct that meant a resignation amounted to a constructive dismissal. Further, Mr Sharma provided standard notice with his resignation, which is usually contra indicative of a constructive dismissal, and nothing

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<sup>22</sup> See in comparison *Strachan v Moodie* [2012] NZEmpC 95 (2012), 10 NZELR 2016 at [120] where a serious breach of remuneration obligations spanned over a year and was expected to continue if not for the resignation.

<sup>23</sup> *Business Distributors Ltd v Patel* [2001] 1 ERNZ 124 (CA) at [11]-[12]; and *ANZ Sky Tours Ltd v Wei* [2021] NZEmpC 76, [2021] ERNZ 261 at [92].

in the letter of resignation indicated that he felt compelled to resign because of Rodney Farm's conduct.<sup>24</sup>

[46] In those circumstances, I do not accept that Mr Sharma's resignation amounted to a constructive dismissal. Accordingly, Mr Sharma's claim of unjustifiable dismissal cannot succeed.

### **Parties should resolve any issues over payment**

[47] Finally, I note that, although Mr Sharma says he has not been fully paid the amounts due under the Authority's determination, Rodney Farm has provided a summary that suggests all payments apart from KiwiSaver were paid reasonably promptly. I understand that KiwiSaver now has been attended to.

[48] As a result of this judgment, Mr Sharma now must repay Rodney Farm the \$2,500 identified in [22] above. Unless otherwise agreed between the parties, that is to be done within 28 days of the date of this judgment.

[49] If there remains any disagreement between the parties over the amounts to be paid and still outstanding, they may, if they think it is worthwhile, seek further assistance from the Mediation Services.

### **No order for costs**

[50] Although Rodney Farm has had some small success in this challenge, this is not a case where I consider costs should be awarded to either party. There is no order for costs.

J C Holden  
Judge

Judgment signed at 4.45 pm on 1 April 2025

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<sup>24</sup> *Business Distributors Ltd v Patel*, above n 23, at [12]. All the circumstances of the resignation are relevant, including notice and the communication in which the employee tendered the resignation.