

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 287  
3314760

BETWEEN                      ZAINAL ABBAS  
   Applicant  
  
AND                                NO1 BLINDS LIMITED  
   Respondent

Member of Authority:      Robin Arthur  
  
Representatives:            Kara Orvis, advocate for the Applicant  
   Suzie Eagles for the Respondent  
  
Investigation Meeting:      13 February 2025 in Auckland  
  
Submissions received:      From the applicant on 21 February and  
   from the respondent on 7 March 2025  
  
Determination:              22 May 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]        Zainal Abbas sought a finding No1 Blinds Limited (the company) acted unjustifiably by dismissing him 20 days after he started work as a blinds manufacturer and installer.

[2]        Mr Abbas said the company’s operations manager Vikash Kumar called him to a meeting on the morning of 20 February 2024, referred to concerns about his attendance and performance, said he was “not a good fit for the role” and left him in the staff room to consider whether he wanted to remain in the role. Around half an hour later, according to Mr Abbas, Mr Kumar returned and told him “this is your last day”. Mr Abbas said Mr Kumar gave him the option of finishing his shift or leaving immediately. He said he had opted to go at once and, at Mr Kumar’s request, left his work shirt on the table.

[3] The company denied dismissing Mr Abbas. It gave two differing accounts of what had happened.

[4] One account, in its statement in reply, said Mr Kumar spoke to Mr Abbas on 20 February about “his poor attendance”, emphasising that “such behaviour was unacceptable, especially during the initial 90-day period of his employment”. It said:

after being given time to reflect on his commitment to the company, [Mr Abbas] left the premises without informing anyone, leaving his [company] shirt on the counter. Since then, we have not heard from him, leading us to conclude that he had abandoned his position.

[5] The other account, given in Mr Kumar’s oral evidence to the Authority investigation meeting, was that he asked Mr Abbas to wait for him in the smoko room at the start of the workday while Mr Kumar went to talk to production staff about work for the day.

[6] Mr Abbas already knew Mr Kumar wanted to talk to him that morning. The previous day Mr Abbas had not come to work, sending a text message that he had “a family emergency”. Mr Kumar had responded with a text message saying they needed to meet about “issues you have for not turning up to work”.

[7] Mr Kumar accepted he may, when telling Mr Abbas to wait in the smoko room, have said Mr Abbas was “not a good fit for the role” but Mr Kumar denied making the other comments ascribed to him by Mr Abbas and in the company’s statement in reply.

[8] The company’s director Suzie Eagles, in her oral evidence, said Mr Kumar’s account should be preferred. She said a business advisor working for the company at the time had prepared and lodged its statement in reply in August 2024 but may not have accurately described information given to him by Mr Kumar. Neither she nor Mr Kumar had seen the statement in reply before it was lodged.

[9] Mr Abbas’ application to the Authority asked that, if he was found to be unjustifiably dismissed, the company be ordered to pay him lost wages and compensation for distress caused by how his employment ended. He also sought orders for payment of four days’ wages not paid to him and for penalties to be imposed on the company for breaching the Wages Protection Act 1983, by not paying those wages, and for not providing requested wage and time records.

[10] The company denied acting unjustifiably, saying Mr Abbas chose to leave the employment. It referred to a 90-day trial period in his employment agreement but said this was irrelevant because he “was not dismissed and was not even getting disciplined”.

### **The Authority’s investigation**

[11] Under timetable directions for the Authority’s investigation of his personal grievance application, Mr Abbas and his sister, Azifa Karin, had lodged written witness statements. The company did not comply with directions to provide written witness statements from Mr Kumar and its directors, Suzie Eagles and Todd Eagles. They did attend the investigation meeting. Under affirmation, all five witnesses answered questions from me and each party had the opportunity to ask additional questions. The parties also lodged written closing submissions.

[12] 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**

[13] The issues requiring investigation and determination were:

- (a) Did the employment of Mr Abbas by the company end by dismissal on 20 February 2024, resignation or abandonment of that employment?
- (b) If Mr Abbas was dismissed, was that an unjustified action by the company?
- (c) If the company’s actions were not justified (in disadvantaging and/or dismissing Mr Abbas), what remedies should be awarded, considering:
  - Lost wages (assessing the period for which loss is claimed; what was done, if anything, in that period to find alternative work and income; and whether what was, or was not done over that period was reasonable in the circumstances); and
  - Compensation under s123(1)(c)(i) of the Act?
- (d) If any remedies are awarded, should they be reduced (under s124 of the Act) for any blameworthy conduct by Mr Abbas that contributed to the situation giving rise to his grievance?

- (e) Arrears: Is Mr Abbas due any wages and if so, what amount and should interest be awarded on any amount due?
- (f) Penalties:
  - (i) Did the company fail to pay wages when due and, if so, should a penalty be imposed: s 4 of the WPA; and
  - (ii) Did the company fail to provide employment records immediately when requested and, if so, should a penalty be imposed: s 130 Employment Relations Act 2000?
- (g) Should either party contribute to the costs of representation of the other party?

### **The employment relationship**

[14] Mr Abbas signed an employment agreement for his job with the company on 19 January. Mr Kumar signed the agreement on the company's behalf.

[15] The agreement included a clause stating "a trial period of 90 days applies". If the clause was intended to limit Mr Abbas' right to bring a personal grievance for unjustified dismissal, it was unenforceable because the trial provision did not include necessary information about the effect of a trial period.<sup>1</sup>

[16] Another clause included a four-week written notice period for either party to terminate the relationship and the following clause on abandonment:

Where the Employee is absent from work for a continuous period of 3 working days without advising the Employer of the reason for the absence or responding to the Employer's efforts to make contact, the Employee shall be deemed to have abandoned his or her employment.

[17] Mr Abbas began work on 1 February 2024. He initially worked with an experienced installer. By 9 February, however, the experienced installer was off work with an injury and Mr Abbas was sent to customers' homes and premises to do installation work on his own.

[18] His employment lasted a total of 20 calendar days. These days included one public holiday (6 February) and 13 ordinary workdays (including the last day, 20 February, when the employment, one way or another, had ended by mid-morning).

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<sup>1</sup> Employment Relations Act 2000, ss 67A and 67B.

[19] Mr Abbas attended work on nine of the ordinary working days (1, 2, 5, 7, 8, 12, 13, 14 and 20 February). On two of those days he was late to work but then worked a longer day, that was until 8.40pm on 13 February and until 11.30pm on 14 February.

[20] His absences on the other four days were, according to text messages he sent Mr Kumar on those days, for the following reasons:

- 9 February – “feeling like shit and throwing up my food all night”;
- 15 February – attending a doctor’s appointment about glass imbedded in his neck during a childhood accident;
- 16 February – “got the shi\*\*”; and
- 19 February – “a family emergency”.

[21] Unknown to Mr Kumar at the time, but disclosed in Mr Abbas’ oral evidence at the Authority investigation meeting, the “family emergency” on 19 February was that Mr Abbas had a heated argument his mother and felt he was “not in the right mind set” to go to work.

[22] In his oral evidence Mr Kumar said Mr Abbas would have had a longer training period if the company’s experienced installer he was sent out to work with had not been injured. The company had a full order sheet for installation work and was short of staff so needed Mr Abbas to carry on with that work. However, in its closing submissions, the company said Mr Abbas was slower than expected in picking up the work. Mr Abbas was aged 22 at the time of this employment. After leaving school he had done a pre-trades plumbing course, so had some familiarity with using various tools, but most recently had been working in a sales job.

[23] Referring to the example of Mr Abbas working from 4pm to 11.30pm on one job on 14 February, the company said this was too long to install seven venetian blinds. Mr Abbas, however, said the job was for the installation of 15 blinds in two units and the client, a builder, needed the blinds done as tenants were due to move into the premises. This was why he had worked through the evening to complete that job.

[24] Mr Kumar had been the company’s operations manager for three years, managing around 20 production and installation staff. He had previously worked as a teacher in Fiji for 12 years. He described himself as knowing about “positive reinforcement” of new staff. Text messages they exchanged during Mr Abbas’ employment showed Mr Kumar had provided help solving installation problems Mr

Abbas had reported when he was out on jobs. In his oral evidence, Mr Abbas described Mr Kumar as “a very supportive guy”, until the events of 20 February.

### **How the employment ended**

[25] Determination of Mr Abbas’ personal grievance claim required a finding of fact and law about the basis on which his employment ended on 20 February – was it either abandonment or resignation, as the company submitted, or was it the result of actions on behalf of the company that directly or indirectly terminated his employment?

[26] This assessment is made on the balance of probabilities, that is what was most likely to have happened, considering the accounts of the witnesses and what may be gleaned from records such as text messages and emails sent at the time or soon after.

#### *It was not abandonment*

[27] The events of 20 February, and following days, clearly did not amount to abandonment of the employment, as defined in the clause from the employment agreement referred to earlier. This clause required an absence for three days without response from the employee to any inquiries made by the employer.

[28] The statement in reply, dated 23 August 2024, was plainly incorrect when it said the company had not heard from Mr Abbas since he left its premises on 20 February. At 11.29am that morning, he and Mr Kumar had the following text exchange:

Mr Abbas: Thank you bro for the opportunity to work with you guys  
man appreciate it man [heart emoji]

Mr Kumar: No worries  
All the best  
It was a pleasure meeting you

Mr Abbas: Pleasure meeting you too my man  
  
Sorry for being a nuisance bro just wondering when the pay  
would come thru [face holding back tears emoji]<sup>2</sup>

[29] On 22 February Mr Kumar sent a reply reading: “Let me sort out first all these walls you damaged and not reported back to us aye.” An exchange of several messages

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<sup>2</sup> [www.emojipedia.org](http://www.emojipedia.org): “A yellow face with tears welling up at the bottom of its two large eyes. May be used to express a range of emotions including sadness, anger, embarrassment, admiration and gratitude”.

followed that day, with Mr Abbas asking for information about the damage and Mr Kumar replying: “I will send the addresses and you can go and see. Just give me time”.

[30] Mr Kumar did not subsequently send Mr Abbas any information about the alleged damage.

[31] On 26 February Mr Abbas sent the following further message to Mr Kumar, which received no reply:

As you have previously said to me upon letting me go. You stated that I will get paid the hours I had worked, directly to me and didn't tell me there were complaints on the day of letting me go. It's been a full week and I haven't received any pay from you.

[32] In his oral evidence Mr Kumar said he had been aware by 20 February of two or three customer complaints about installation work done by Mr Abbas but did not have the chance to talk to him about those complaints because Mr Abbas had left the premises before he got to talk to him properly. The text Mr Kumar sent Mr Abbas on 19 February, about having that meeting, referred only to issues about “not turning up to work”, not work quality.

*Competing arguments on resignation or dismissal*

[33] The parties' closing submissions gave two contrasting descriptions of whether Mr Abbas' departure from the company's premises on 20 February, after whatever was said to him by Mr Kumar, was an act of resignation or a sending away that amounted to a dismissal.

[34] The company argues it was unlikely to have wanted to dismiss Mr Abbas that day. It had already spent time training him and, due to the injury of the experienced installer, was short staffed. As Ms Eagles said in her oral evidence, “all new employees take a while to bed in” and “a couple of sick days” were not necessarily seen as a major problem. In the company's submission Mr Kumar had simply wanted to talk to Mr Abbas about his time keeping and it was too soon in the employment to need any formal “sit down discussions” about performance issues.

[35] In that light, the company submitted it was unlikely Mr Kumar had summarily dismissed Mr Abbas that day in the brusque way alleged.

[36] Mr Abbas, however, argued the company's actions, on 20 February and subsequently, were consistent with his account that Mr Kumar told him this was his last day and he could leave immediately. If his departure was an unlooked for surprise, the company would have done more to find out what had happened and why he had left the premises. Instead, the texts exchanged with Mr Kumar later on the morning of 20 February, referring to the "pleasure" of having met one another, showed Mr Kumar knew the employment relationship had ended and why. This was, in Mr Abbas' argument, consistent with his account that Mr Kumar told him this was his last day and he could leave immediately.

[37] One query about that view concerns the polite tone of Mr Abbas' messages that morning. If he had been sent away suddenly, and in a way that was unwelcome to him, it seemed unlikely he would be thanking Mr Kumar and describing working with him as a pleasure. Mr Abbas' explanation on that point was, however, plausible. He worded his message in that way because he, understandably, wanted to ensure he got paid his four outstanding days' pay as quickly as possible.

[38] A third scenario emerges from similarities in the evidence of Mr Abbas and Mr Kumar about what was said that morning. Mr Kumar accepted that he had made a comment to Mr Abbas about whether he was "a good fit for the role" when Mr Kumar asked Mr Abbas to wait for him in the staff room. Mr Abbas said Mr Kumar had also asked him, while waiting, to think about whether he wanted to stay in the role.

[39] One plausible explanation is that Mr Abbas took from those comments that he was about to be dismissed, even if that was not Mr Kumar's intention. Faced with that prospect, and finding his new job more challenging than he had expected, Mr Abbas may have decided to walk away from the job rather than, as he feared, be pushed out.

[40] In that scenario, his actions resulted from how the company was dealing with its concerns about his timeliness and, possibly, some undisclosed concerns about his performance arising from two or three customer complaints Mr Abbas had not yet been told about.

#### *Actions of the company initiated end of the employment*

[41] Two facts favoured a finding, on the balance of probabilities, that Mr Abbas was told on 20 February that his employment with the company was at an end.

[42] Firstly, this was consistent with an email Mr Kumar sent to Mr Abbas' advocate on 11 March, responding to her letter of 6 March which had raised a personal grievance for unjustified dismissal. Her letter said Mr Abbas had "received sudden notice of termination" on 20 February.

[43] Mr Kumar's response was a single sentence: "He was on a 90-day trial period and his poor attendance was the reason for his dismissal".

[44] This response asserted a valid trial period was in place. It referred to the event as a "dismissal", not as the unexpected and unexplained departure from the premises that Mr Kumar described in his evidence to the Authority many months later. Weighed in the balance of probability, Mr Kumar's spontaneous response given in his one-line email, only three weeks' after the 20 February event, is more likely to correctly characterise how Mr Kumar understood what was done or had happened at the time.

[45] Secondly, the content of the text messages exchanged by Mr Abbas and Mr Kumar at 11.29am on 20 February are not consistent with Mr Kumar's explanation that Mr Abbas had left unexpectedly and without being told his employment was at end. If Mr Abbas had not waited for Mr Kumar and walked out that morning, as Mr Kumar said, it was unlikely Mr Kumar would not have referred to this in his response to Mr Abbas' text. He did not ask "why did you not wait to talk to me" or "you left your work shirt, does that mean you have left the job?". His response of "no worries" and "all the best" indicates, as a matter of likelihood, that he did not need to ask because he knew from what he had already told Mr Abbas.

### **The test of justification**

[46] Having considered the facts of what happened, as best as can be ascertained from assessing the available evidence on the balance of probabilities, the company's actions had to be tested against the statutory standard set by s 103A of the Act.

[47] The test of justification asks if what the company did, and how it did so, met the objective standard of being what a fair and reasonable employer could have done in all the circumstances at the time.<sup>3</sup> Factors in that test include:

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<sup>3</sup> Employment Relations Act 2000, s 103A.

- (i) Whether the company had sufficiently investigated its concerns about Mr Abbas' attendance and other work matters before ending the employment;
- (ii) Whether Mr Abbas was properly informed of those concerns and had a reasonable opportunity to respond to them;
- (iii) Whether the company genuinely considered any explanation Mr Abbas had before acting on those concerns in a way that ended his employment; and
- (iv) Whether there were any other factors appropriate to consider?

[48] Defects in the process followed by the company may result in its actions being found to be unjustified if those defects were more than minor and resulted in Mr Abbas being treated unfairly.<sup>4</sup>

[49] In applying the test of justification, the Authority does not substitute its own view for that of the employer but, rather, considers whether what the company in fact did and decided was within the range of responses open to a fair and reasonable employer in that situation.

[50] Whether the employment ended, in fact, by Mr Abbas being told his employment was terminated or, alternatively, he walked out believing he was about to be dismissed, the company's actions fell short in meeting the requirements of the s 103A test for the following reasons.

[51] The company had understandable concerns about Mr Abbas and how his work was going. By 19 February he had called in sick or unable to attend work on four out of the 12 days he had been due to work. He came late on two other days. He had not been using the company's electronic clock in and clock out system, although the company said he had been shown how to, and was reporting his hours by text message to Mr Kumar. And Mr Kumar also had some concerns about the pace and quality of Mr Abbas work.

[52] Those concerns were not, however, properly put to Mr Abbas. He was not given a reasonable opportunity to consider and respond to them. The company had not identified the steps needed for improvement or how it could support him achieving those steps. He had not, as acknowledged in the company's evidence, received as much

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<sup>4</sup> Section 103A(5).

training from the experienced installer as the company would otherwise have hoped to provide.

[53] These shortfalls were defects in the process of addressing problems in the employment relationship. They were more than minor and resulted in Mr Abbas being treated unfairly.

[54] In those circumstances, the sending away of Mr Abbas on 20 February was an unjustified dismissal.

[55] Even if the factual conclusion that Mr Kumar directly ended the employment on 20 February was not correct, an alternative scenario regarding what had happened nevertheless amounted to an unjustified dismissal. If Mr Abbas left because he understood he was about to be dismissed, this was a resignation caused by being unfairly treated by his employer, so that his employment then ended by constructive dismissal.

[56] On that alternative scenario, the company had not sufficiently investigated its concerns, had not adequately told Mr Abbas what those concerns were and, if his departure was unintended, had not then done what a fair and reasonable employer could have done to check the situation with him on 20 February. Mr Kumar was in text contact with Mr Abbas later that morning. Rather than asking him to explain why he had left the premises that day, or to confirm whether he was ending the employment relationship, the company had taken advantage of the opportunity to treat the employment as at end.

[57] Neither party, on 20 February, had taken the step set in their employment agreement requiring written notice to terminate the relationship.

[58] On the company's own account, this was not a situation where the provisions of termination for serious misconduct without notice applied.

[59] Neither was it soon enough for the three-day abandonment provision to apply and there was no failure to respond to "the employer's efforts to make contact". Rather, it was Mr Abbas who had promptly made contact to ask about his final pay and to query Mr Kumar's unexpected comments alleging Mr Abbas had damaged walls at the premises of unidentified customers.

[60] Having established a personal grievance for unjustified dismissal, Mr Abbas was entitled to an assessment of remedies.

### **Remedies for personal grievance**

#### *Lost wages*

[61] Mr Abbas said he was unemployed for eight weeks after his employment with the company ended. He sought an order for lost wages for that period, at the amount of \$1,000 a week based on the hourly rate of \$25 for the 40-hour week in his employment agreement.

[62] Two factors weighed against an order for the eight-week period Mr Abbas sought.

[63] Firstly, the assessment for lost wages must allow for contingencies where, but for the unjustified dismissal, Mr Abbas' employment with the company may have ended anyway.<sup>5</sup> In this case, the counterfactual analysis includes the prospect that he may have left the job anyway because of some difficulties he was experiencing in it, including the longer than expected hours, or that a fairly conducted disciplinary process might have found his absences were unacceptable.

[64] Secondly, Mr Abbas did not provide sufficient evidence of reasonable endeavours he made to obtain alternative work and income during the whole of the period of loss claimed.

[65] Allowing for both these factors, and some delay to his job search caused by the knock to his confidence in seeking work, due to the sudden end to his employment with the company, the company is ordered to reimburse Mr Abbas for four weeks' wages lost as a result of his grievance. The company must pay him \$4,000 under s 123(1)(b) of the Act within 28 days of the date of this determination.

#### *Compensation for humiliation, loss of dignity and injury to feelings*

[66] Mr Abbas sought an award of \$25,000 for the upset caused to him by how his employment came to end. He gave evidence of isolating himself from his family and

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<sup>5</sup> *Telecom NZ Ltd v Nutter* [2004] 1 ERNZ 315 (CA) at [73] and [81].

being too embarrassed to tell his parents about the loss of his job, keeping this news from them for some time. He described experiencing sleeplessness and a loss of trust in others, including prospective employers.

[67] His sister, Ms Karim, confirmed she observed Mr Abbas had experienced trouble sleeping, isolated himself from his family and was anxious over the prospect that he would lose any new job that he got.

[68] An award for distress compensation, in this context, takes account of the evidence of the effects on him but is moderated by some other factors. It does not include effects on Mr Abbas due to other tensions he had with his family not related to his employment. It is also not used as a penalty to express disapproval of the company's conduct. It concerns only the effect on him, not how long he was in the job or the loss of the prospect of longer employment.

[69] Weighing those factors and the range of awards in similar cases, the sum of \$8,000 was an appropriate amount to compensate Mr Abbas for the emotional effects on him of how his employment ended. The company must pay Mr Abbas \$8,000 under s 123(1)(c)(i) of the Act within 28 days of the date of this determination.

#### *Contributory conduct*

[70] Under s 124 of the Act the Authority must consider the extent to which Mr Abbas' own actions contributed to the situation giving rise to his grievance. Where any such actions are found to be blameworthy, remedies that would otherwise have been awarded may be reduced.

[71] The company understandably had concerns about Mr Abbas' absences on four days but no evidence confirming his reasons for being away from work were not genuine. While there may have been some grounds for doubt, such as the reason given for his absence on 19 February, this was not sufficient for a finding of blameworthy conduct requiring a reduction of remedies.

[72] The same limitation applied to the suggestion that Mr Abbas had caused some damage to customers' walls when doing his work. The company provided no evidence to corroborate the existence of those complaints.

## **Arrears**

[73] Mr Abbas sought an order for payment of arrears of wages he was owed for work on 13, 14, 15 and 20 February 2024. He had provided his account of his hours worked on 13, 14 and 15 February by text to Mr Kumar on 19 February. He also said Mr Kumar told him on 20 February he would be paid for eight hours for that day.

[74] The company said it had not paid those wages because Mr Abbas had not used its clocking in and clocking out system and the company did not have the necessary information about his hours of work on those days.

[75] At the investigation meeting the company undertook to pay the outstanding amounts within 24 hours. In its closing submissions, submitted on 7 March 2025, the company said it had paid “all outstanding wages owed”. It did not provide the Authority with an account of what amount had been paid.

[76] In order to ensure Mr Abbas receives his full entitlement to those wages, associated holiday pay and interest on that amount, the following order is made under s 131 of the Act.

[77] Mr Abbas must be paid at the rate of \$25 for each of the following hours of work: eight on 12 February, 12.5 on 13 February, 14.5 on 14 February and eight on 20 February 2024. On the amount of \$1,075 due he must also be paid \$86 as holiday pay. On the combined total of \$1,161, due as arrears of wages and holiday pay, the company must also pay interest from 21 February 2024 to the date payment is made in full. The order for interest is made under clause 11 of Schedule 2 of the Act. Interest is to be calculated using the Civil debt interest calculator.<sup>6</sup>

## **Penalties**

[78] The evidence established the company was liable to penalties for breaches of two employment standards – failure to provide wage and time records immediately when requested, in breach of s 130(2) of the Act and, as shown by the arrears award made, failure to pay wages in full when due, in breach of s 4 of the WPA.

[79] Mr Abbas’ advocate requested his time and wages records by letter on 6 March 2024 when raising his personal grievance. The letter noted failure to provide the

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<sup>6</sup> [www.justice.govt.nz/fines/civil-debt-interest-calculator](http://www.justice.govt.nz/fines/civil-debt-interest-calculator).

information could result in a penalty if the matter proceeded to an Authority investigation meeting. By the date of the investigation meeting, held one year later, the company had still not sent the full record it is required under s 130 of the Act to keep for each employee and, when requested, provide “immediately”.

[80] The company had not paid the final pay due to Mr Abbas because it said it was unclear about what hours still required payment. As referred to earlier, the company had the relevant information for 12, 13 and 14 February by 19 February and, as found in this determination, was due to pay Mr Abbas his daily wage for 20 February.

[81] Determining an appropriate penalty for each breach is guided by the relevant matters listed in s 133A of the Act. In this case, each breach concerned the employment standards defined in the Act. The object or purpose of the Act includes promoting effective enforcement of employment standards. The evidence showed the company’s breaches continued deliberately as part of its opposition to Mr Abbas’ personal grievance. The breaches caused loss to him, both in the use of money he was entitled to have and having relevant information needed for his application to the Authority.

[82] The maximum liability of the company for these two breaches was \$40,000, that is up to \$20,000 for each breach.<sup>7</sup> Considering the specific circumstances of this case, and the range of penalties awarded in similar case, the appropriate penalty for each breach was \$2,000. Combined the penalties are 10 per cent of the potential maximum so were a relatively moderate amount but is sufficient to act as a deterrent for this particular employer, and a caution for employers generally, about failing to observe these statutory minimum requirements.

[83] Mr Abbas’ request for a portion of these penalties to be paid to him is declined. Other orders made regarding personal grievance remedies, arrears and interest adequately address his claim. Payment of the penalty by the company to the Authority, for transfer to the Crown, recognises the wider public policy interest in enforcement of the employment standards.

[84] Accordingly, by no later than 28 days from the date of this determination, the company must pay penalties totalling \$4,000 to the Authority. On recovery, this amount must be paid by the Authority into a Crown Bank Account.

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<sup>7</sup> Employment Relations Act 2000, s 135(2)(b).

## **Summary and orders**

[85] Mr Abbas' employment by the company ended by unjustified dismissal.

[86] In settlement of his personal grievance for unjustified dismissal, the company must pay Mr Abbas the following amounts by no later than 28 days from the date of this determination.

- (i) \$4,000 in reimbursement of wages lost as a result of his grievance; and
- (ii) \$8,000 as compensation for humiliation, loss of dignity and injury to his feelings.

[87] For arrears of wages and holiday pay due but not paid to him at the end of his employment, the company must pay Mr Abbas the further amount of \$1,161 (less any part paid since then), and must also pay interest on the whole amount for the period from 21 February 2024 to the date payment is made in full. Interest is to be calculated using the Civil debt interest calculator.<sup>8</sup> Payment must be made by no later than 28 days from the date of this determination

[88] The company must pay the Authority, also by no later than 28 days from the date of this determination, penalties of \$4,000 for the following two breaches of employment standards:

- (i) Failure to provide wage and time records immediately on request, in breach of s 130 of the Act – a penalty of \$2,000; and
- (ii) Failure to pay the entire amount of wages when due, in breach of s 4 of the Wages Protection Act 1983.

## **Costs**

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

[90] If they are not able to do so and an Authority determination on costs is needed Mr Abbas 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, the company would then have 14 days to lodge any reply memorandum. If requested by the parties, an extension of time to resolve costs between themselves may be granted.

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<sup>8</sup> [www.justice.govt.nz/fines/civil-debt-interest-calculator](http://www.justice.govt.nz/fines/civil-debt-interest-calculator).

[91] 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.<sup>9</sup>

Robin Arthur  
Member of the Employment Relations Authority

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<sup>9</sup> See [www.era.govt.nz/determinations/awarding-costs-remedies](http://www.era.govt.nz/determinations/awarding-costs-remedies).