

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2026] NZERA 35
3334120

BETWEEN

WENDY DARRELL
Applicant

AND

CANTERBURY VEHICLE
COMPLIANCE LIMITED
Respondent

Member of Authority: Peter van Keulen

Representatives: Chrissy Gordon, advocate for the Applicant
Mihaela Orlandea for the Respondent

Investigation Meeting: 22 September 2025 in Christchurch

Further Information Received: Up to 21 October 2025 from the Applicant
20 October 2025 for the Respondent

Date of Determination: 22 January 2026

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Wendy Darrell was employed by Canterbury Vehicle Compliance Limited (CVC) as an Automotive Technician Assistant from 19 August 2024. Ms Darrell assisted the Vehicle Inspector with compliance inspections by preparing the necessary paperwork and liaising with customers.

[2] Shortly after Ms Darrell commenced work with CVC, CVC experienced a downturn in compliance work and became concerned about the lack of work for Ms Darrell and the Vehicle Inspector.

[3] As a result, in September 2024 Ms Darrell was sent home from work on two occasions and was then told she needed to work at an alternative CVC site. Ms Darrell was not happy about this as the additional travel involved in attending the other CVC site was costly and time consuming, so she refused to go to the alternative site unless she was paid compensation for the additional travel.

[4] What followed over three days were exchanges of emails between Ms Darrell and CVC culminating in Ms Darrell's being dismissed; CVC served Ms Darrell with a notice of termination for redundancy with immediate effect on 26 September 2024.

[5] Ms Darrell raised personal grievances for unjustified dismissal and unjustified action causing disadvantage.

[6] The parties were unable to resolve Ms Darrell's personal grievances, so she lodged a statement of problem in the Authority. The statement of problem set out an employment relationship problem based on:

- (a) Unjustified dismissal.
- (b) Unjustified action causing disadvantage – Ms Darrell says CVC's actions over the few weeks of her employment amounted to bullying.
- (c) A breach of the duty of good faith by CVC.
- (d) Breaches of the Wages Protections Act 1983.
- (e) Wage arrears for unpaid wages.

[7] CVC denies liability for any of the employment relationship problem.

The Authority's investigation

[8] I investigated this employment relationship problem by receiving written evidence and documents and holding an investigation meeting on 16 October 2025. In my investigation meeting, under oath or affirmation, witnesses confirmed their written statement and gave oral evidence in answer to questions from myself.

[9] As permitted by s 174E of the Employment Relations Act 2000 (the Act) I have not recorded all the evidence and submissions received, in this determination. I have set out my findings of fact and law, then based on this I have expressed conclusions on issues as necessary to dispose of the matter, and then I have specified the orders made as a result.

What happened?

[10] In August 2024 CVC took over a vehicle compliance business operating from a site in Wigram, Christchurch (the compliance business).

[11] Ms Darrell had worked for the previous company that had been operating the compliance business from the Wigram site. When CVC took over the operation of compliance business it employed Ms Darrell as an Automotive Technician Assistant. Ms Darrell's employment with CVC commenced on 19 August 2024.

[12] In the first three weeks of operating the compliance business the number of cars requiring compliance was lower than anticipated and CVC was immediately concerned about the viability of the compliance business. Florin Orlandea, a shareholder and director of CVC, discussed this with Ms Darrell at the time, mentioning the possibility of redundancies or taking time off work without pay.

[13] At the start of the fourth week of operating the compliance business CVC sent Ms Darrell home for four hours as it had insufficient work for her to do.

[14] During the fifth week of operating the compliance business, the week commencing 16 September 2024, CVC held a management meeting in which Mr Orlandea and Mihaela Orlandea, the other shareholder in CVC, decided:

- (a) Staff of the compliance business would be reassigned to busier sites when the workload was low. Ms Darrell would be assigned to the Belfast site to assist office staff there.
- (b) Staff of the compliance business would be offered unpaid leave when there was no work.

[15] On 19 September 2024 CVC became aware there would be no vehicles for compliance at the compliance business in the week commencing 23 September 2024.

[16] Mr Orlandea spoke to Ms Darrell about this prospect on 19 September 2024 and told her not to come into work the next day; there was no discussions about pay.

[17] Ms Darrell accepts that work had slowed down by the week commencing 19 September 2024 and that she discussed this with Mr Orlandea – her view being that the slowdown in work was not unusual for the time of the year and work would pick up again. She says she had work to do such as updating files and learning the new systems put in place by CVC.

[18] On Monday 23 September 2024 Mr Orlandea raised with Ms Darrell that she might work at an alternative CVC site. Ms Darrell advised she would work at the alternative site but expected CVC to pay her for the extra time and mileage involved in the travel – Ms Darrell believed this was an entitlement in her employment agreement.

[19] Later that day Ms Darrell received an email from Ms Orlandea. In this email Ms Orlandea stated:

[Mr Orlandea] asked me to get back to you on the work place matter.

...

Just generally speaking, before the takeover, we were advised that there were an average of 10 compliance inspections a day. We understood that there were occasional occurrences when this number would drop or may go up, but would overall average 10 a day.

Now, with the compliance numbers dropping to half or lower than the expected numbers – since we have taken over, approx. 6 weeks – we need to adjust to these times whilst we wait for the market to recover. Over these 6 weeks, there was an average of 5 cars a day, which is inefficient and below cost and also unfair on the other company staff members to finance your wages, this being a factor in the grand picture.

...

However, as things stand, we need to use the workforce we best see fit until the numbers go back up.

You have been assigned to the Belfast testing station for this week, with no further information beyond that.

There will be no fuel allowance, your salary will cover that. We have staff travelling 100 kms a day with no such allowance and its been a long stance practice in many workplaces we know.

...

In case you are not prepared to adapt, we also respect that and changes will be made accordingly.

[20] So, CVC had explained its concern with the amount of work available at the Wigram site for Ms Darrell and instructed her to attend the Belfast site. In response to this, later in the evening of 23 September 2024, Ms Darrell raised a personal grievance with CVC. Ms Darrell says she did this as she felt she had no choice; Ms Darrell says CVC were demanding and threatening, and she felt bullied by them. Ms Darrell's personal grievance raised four concerns:

- (a) Being required to work at the Belfast site without any consultation and no opportunity to negotiate over this.
- (b) Not being offered compensation for the additional travel and time involved in attending the Belfast site.
- (c) Being threatened with redundancy, thereby creating a hostile work environment.
- (d) Feeling bullied and harassed and made to feel responsible for the lack of work.

[21] To resolve the grievance Ms Darrell asked for her place of work to be restored to the Wigram site, for CVC to stop threatening her with redundancy, for CVC to compensate her for any travel if she worked at another CVC site and for CVC to consult properly with her before making any changes to her employment. Ms Darrell also advised that she would work at the Wigram site until her grievance was resolved.

[22] On 24 September 2024 Ms Darrell attended work at the Wigram site.

[23] By this time, CVC felt Ms Darrell was being unreasonable. It was clear to them that there was no work to do at the Wigram site and CVC was not prepared to pay Ms Darrell to do nothing so she either took time off without pay, worked from an alternative site or would be made redundant.

[24] On 24 September 2024 Mr Orlandea and Ms Orlandea discussed Ms Darrell's personal grievance and recorded their discussion in a memorandum dated 24 September 2024. This memorandum records the following:

[Ms Darrell's] workload is zero, as the current workload at the [Wigram site] is barely sufficient to cover a full-time vehicle inspector, essential to the job.

[Ms Darrell's] assistant job is not required if the workload can be solely managed by the inspector. Her assisting services are only required with higher workload.

[Ms Darrell's] job position as an Automotive Technical Assistant is at the discretion of the management's assessment and approval, aimed to make the vehicle inspector's work more efficient by handling a higher volume of inspections a day.

[Ms Darrell's] lack of required qualifications to our company's nature of activity performing vehicle inspections renders her services redundant.

[25] The memorandum then records CVC's view on the discussions with Ms Darrell and CVC's rejection of her concerns giving rise to her grievance. Then, in regard to the resolution sought by Ms Darrell CVC noted that the choice of work site was not up to Ms Darrell, redundancy was misconstrued as a threat when it was a credible option, redeployment to an alternative site was an option to keep her employed - it was not travel incurred for work errands, there had been formal consultation over redundancy including redeployment which she did not accept so Ms Darrell "*chose redundancy herself.*"

[26] Also, on 24 September 2024 CVC obtained advice on redundancy – evidenced by an invoice dated 24 September 2024 from a legal services provider seeking payment for providing a "Notice of Redundancy (Redundancy Letter)".

[27] CVC then sent an email to Ms Darrell at 8:35 am on 25 September 2024. Usefully in this email CVC acknowledged the situation was affecting all of them and that it noted Ms Darrell's grievances stating that CVC would consider what could be done to resolve any disagreement. Then CVC set out the context in which the issues had arisen – this contained a reasonably comprehensive summary of factors that CVC perceived as being relevant to the issues raised by Ms Darrell. And then CVC concluded the email by setting out 16 questions for Ms Darrell to answer as part of consultation to explore solutions. It is unfortunate that CVC set out 16 questions as this meant the key points for consultation were lost amongst some technical

questions and other unnecessary questions; the effect or impact of this part was overwhelming for Ms Darrell.

[28] Then CVC sent Ms Darrell a further email on 25 September 2024 at 8:54 am asking Ms Darrell to explain what she did on 24 September 2024 as she had not attended the Belfast site as directed and what she intended to do that day as she was also not at the Belfast site. CVC stated that it was their decision for her to work at Belfast for the week as there was no work at the Wigram site and that there was work expected at the Wigram site in the following week so the temporary site change would end.

[29] Ms Darrell responded to this second email at 10:37 am on 25 September 2024 saying she would obtain some advice and get back to CVC the following week.

[30] CVC responded to this with an email at 10:46 am on 25 September 2024, stating:

That is also our recommendation; please use any help you may require.

In the meantime, we consider your decision as:

- Dismissing management's directions, and
- Abandonment of work.

Please urgently describe your work done yesterday and the plan for today, as you are expected to generate income for the company.

[31] In a short email response at 11:16 am on 25 September 2024 Ms Darrell advised CVC that she would work at the Belfast site if CVC compensated her for the extra travel, that CVC could not change her terms of employment without consultation and agreement and she had not abandoned her employment as she was at the Wigram site.

[32] CVC then responded promptly with another email at 11:19 am on 25 September 2024 advising Ms Darrell that she had not answered their question, she had to generate income from her work so she needed to address the question (this being what work she had done and intended to do). CVC then sent a further email chasing Ms Darrell for her report on work done by her and including allegations regarding Ms Darrell overstepping her authority.

[33] Ms Darrell responded by email at 3:33 pm on 25 September 2024 asking if she no longer had a job and advising that prior to raising her personal grievance there had been no requirement

to provide detailed work reports. Ms Darrell concluded the email by expressing her discomfort with the tone and frequency of the emails she was receiving and advising that the constant threats to her employment created an overwhelming atmosphere.

[34] CVC sent the last email of 25 September 2024 at 4:09 pm. In this email it told Ms Darrell to focus on the reporting on the work she had done over the past two days and CVC would respond to her personal grievance the next day (Thursday 26 September 2024) and would set up a meeting for Friday, 27 September 2024, to go over the issues raised.

[35] On 26 September 2024 CVC held another management meeting; a management meeting report dated 26 September shows that in the meeting CVC decided that as Ms Darrell continued to report to the Wigram site, and as she was refusing to work at Belfast and refusing to take unpaid leave then there was no position for her in the business; Ms Darrell would be made redundant with immediate effect.

[36] On 26 September 2024 at 8:53 am Ms Darrell sent CVC the report of work she had undertaken on 24 and 25 September 2024.

[37] CVC responded to Ms Darrell's report of work done in an email at 9:10 am on 26 September 2024 raising a new issue that Ms Darrell had been undertaking work without clearing it with Mr Orlandea. CVC described this as a major issue of taking action bypassing a management decision.

[38] Later in the morning of 26 September 2024 Ms Darrell discovered she had not been paid for the two occasions she had been sent home from work. In an email at 9:45 am Ms Darrell raised the issue of non-payment for the two occasions she was sent home and advised that due to CVC's continual disregard for its obligations as an employer she had handed over matters to her employment advisor.

[39] CVC then sent a comprehensive email at 10:32 am on 26 September 2024 addressing Ms Darrell's various concerns. In this email CVC rejected Ms Darrell's concerns and concluded that her grievance was a result of her own misunderstandings of how the business operated and her wasting time to stall any changes to her job so she could continue to do nothing and be paid. CVC's conclusion then was that her position at CVC had become redundant effective immediately.

[40] Then in a follow up email at 10:49 am on 26 September 2024 CVC confirmed its dismissal of Ms Darrell by serving a notice of redundancy that terminated her employment with immediate effect and advised that no redundancy payment would be made.

Ms Darrell's personal grievances

[41] Ms Darrell has raised two personal grievances: unjustified dismissal and unjustifiable action causing disadvantage to her employment.

Unjustified action causing disadvantage

[42] A personal grievance for unjustified action causing disadvantage to an employee's employment is set out in s 103(1)(b) of the Act. This states that an employee may have a personal grievance where the employee's employment or any condition of employment is or was affected to the employee's disadvantage by some unjustifiable action by their employer.

[43] Ms Darrell classifies her personal grievance for unjustified action causing disadvantage as bullying. I do not consider it necessary to label the actions and prefer to approach the grievance on the basis of assessing justification for CVC's actions, if those actions caused a disadvantage to Ms Darrell's employment.

Unjustified dismissal

[44] The issues for an employment relationship problem based on unjustified dismissal, are:

- (a) Was the employee dismissed; and
- (b) If so, were the actions of the employer in deciding to dismiss the employee, justifiable?

[45] Ms Darrell was dismissed by CVC on 26 September 2024, when it served a notice of redundancy on Ms Darrell. So, I need to consider if CVC's actions in deciding to dismiss Ms Darrell were justifiable.

Analysis

[46] Reflecting on the events as I have established them and as set out above, I have the following observations:

- (a) I have no concern over CVC's initial discussions with Ms Darrell, in the first four weeks of her employment, regarding workload and possible solutions with Ms Darrell. This was conducted informally and in the context of CVC's recent takeover of the compliance business this was an appropriate way to engage with Ms Darrell. From Ms Darrell's perspective this was not the most conducive manner to approach the concerns as she felt threatened but launching immediately into a formal process would have been premature and probably more stressful for Ms Darrell.
- (b) That CVC then decided to send Ms Darrell home in the fourth and fifth week of her employment without pay is problematic. CVC failed to consult with Ms Darrell over this and did not get any agreement to her essentially taking leave without pay – it was imposed upon her, and she did not know she was not being paid for the two occasions she was not required to work, despite these being normal working days for her.
- (c) Then to compound matters CVC decided Ms Darrell would work at the Belfast site, without consulting with Ms Darrell; CVC simply sought to impose this decision on Ms Darrell. This is equally problematic for CVC – under Ms Darrell's employment agreement it had the right to change Ms Darrell's location of employment, but it still needed to discuss this with her and obtain her views on it.
- (d) That CVC was concerned about the amount of work for Ms Darrell at the Wigram site and that it believed something needed to be done to deal with that was clear to Ms Darrell by now. CVC's email of 23 September 2024 telling Ms Darrell she was to work at the Belfast site did outline CVC's issues regarding work at the Wigram site, and this had been raised previously by Mr Orlandea. In any event Ms Darrell knew of the downturn in work from her own work done, the number of bookings and cars on site and the fact she had time to do many other things. But in the circumstances, this did not give CVC a right to impose the change in work location on Ms Darrell or send her home without pay, without proper consultation.

- (e) CVC still had an opportunity to correct its failings when Ms Darrell raised her personal grievance with it on 23 September 2024. In her grievance Ms Darrell identified her concerns and put in issue for CVC its behaviour regarding the unilateral decision to change her work location and that Ms Darrell felt bullied and threatened with the discussions of redundancy.

CVC should have engaged with Ms Darrell directly at this point, probably in a meeting or even through mediation as informal discussion and email was not working and was part of the concern Ms Darrell had raised. Clearly there was an impasse between CVC and Ms Darrell as they had different expectations and understanding of their obligations, and it also must have been clear to CVC that Ms Darrell did not understand its concern regarding her being paid to do nothing.

CVC failed to engage properly with Ms Darrell over her personal grievance.

- (f) The failure to engage with Ms Darrell over her personal grievance was then compounded as CVC then pursued the question of redundancy. The memorandum of 24 September 2024 and CVC obtaining a redundancy letter on 24 September 2024 shows it had decided that Ms Darrell's position was redundant; this is predetermination – CVC deciding on the outcome before it had properly engaged and consulted with Ms Darrell over the issue.
- (g) CVC still had an opportunity to correct its failings over consultation on redundancy with Ms Darrell and the first email of 25 September 2024 was an attempt to engage in consultation. However, despite setting out the relevant circumstances well CVC then required Ms Darrell to answer 16 questions, many of which were unnecessary with the effect being overbearing and making consultation difficult and complex for Ms Darrell.
- (h) Again, if CVC had engaged over formal consultation on possible redundancy with an open mind, matters may have been okay. But rather than work through the consultation within 20 minutes CVC had pivoted and chased Ms Darrell for a report on the work she had done whilst at the Wigram site and threatened her regarding breaches of instruction. This was unnecessary and problematic as the

focus should have been on Ms Darrell's personal grievance and possible redundancy.

- (i) By this stage CVC was sending very mixed messages to Ms Darrell and it was difficult for her to know what to do. CVC was saying one thing but doing another – so for example, it said it wanted to consult over redundancy and other possible solutions but it pursued breaches of instruction. And what makes CVC's actions difficult to understand was that by this time they had acknowledged to Ms Darrell that there would be work back at the Wigram branch the next week.
- (j) Then when Ms Darrell tried to defuse the situation with her email at 10:37 am on 25 September 2024 saying she would obtain some advice and get back to CVC the following week, CVC accepted she should get legal advice but then continued to threaten her and demand a report on work done.
- (k) By this stage Ms Darrell was confused, under pressure and needed time, but CVC made things worse. The email from Ms Darrell at 3:33 pm on 25 September 2024 was clearest indication of this – she mentions being confused, asks if she still has a job, and tells CVC that she is just trying to do her job as she has done in the past and that the constant threats are overwhelming. So, there is a very clear indication that CVC just needed to stand back for a bit and give Ms Darrell an opportunity to process what was going on.
- (l) CVC appeared to do this by telling Ms Darrell it would meet with her on Friday 27 September 2024 but then it still insisted on Ms Darrell producing a report of work done over two days. Again, CVC was sending mixed messages appearing on one hand to want to discuss the issues but then on another advancing concerns it had about Ms Darrell not complying with instructions and not completing any work.
- (m) Then without having the meeting, and without getting answers to the consultation questions it had posed, on 26 September 2024 CVC confirmed in a management meeting that it would dismiss Ms Darrell for redundancy; again,

failings on CVC's part, this time making a decision without allowing Ms Darrell to have input and therefore without considering her input.

- (n) Then on 26 September 2024 when Ms Darrell provided a report on work she had done as requested, CVC simply rejected the work and used the report as another reason to pursue Ms Darrell for, essentially, undertaking work without obtaining permission or sign off from Mr Orlandea. Again, this is problematic as CVC does not appear to consider the report properly for the redundancy consultation and just seeks to use it to raise further concerns over Ms Darrell's conduct.

[47] My conclusion is that CVC actions in unilaterally deciding to send Ms Darrell home from work without pay and deciding she should work at the Belfast site, CVC failing to respond to Ms Darrell's personal grievance appropriately, and CVC's actions in engaging with Ms Darrell over the concerns around workflow and her responses to this, were all actions that caused a disadvantage to her employment.

[48] The key question is whether CVC's actions, including the dismissal of Ms Darrell, were justified.

[49] The test for justification is set out in s 103A of the Act. The test is whether the actions of the employer were what a fair and reasonable employer could have done in all the circumstances. This test is also informed by s 4 of the Act.

[50] Assessing justification where the employer is proposing to take a step that may adversely impact an employee's employment in order to show it acted justifiably or as a fair and reasonable employer could in relation to the proposed action, the employer must: discuss the proposed action with the employee, providing relevant information and explaining the possible implications of the action if appropriate; provide the employee a reasonable opportunity to respond; consider any responses given by the employee before making its final decision on what occurred and what action should be taken.

[51] Assessing justification in a redundancy dismissal involves applying s 103A of the Act, the test for justification. In *Grace Team Accounting v Brake*, the Court of Appeal considered s 103A in a redundancy situation and said at [85]:¹

If an employer can show the redundancy is genuine and that the notice and consultation requirements of s.4 of the Act have been duly complied with, that could be expected to go a long way towards satisfying the s.103A test.

[52] So, the question of whether a dismissal, in a redundancy situation, meets the justification requirements of s 103A of the Act turns on whether an employer can show that its decision to restructure and then dismiss an employee for redundancy was genuine and in coming to those decisions the employer met the notice and consultation requirements of the Act, particularly the obligations set out in s 4 of the Act.

[53] So, I will turn to consider if CVC's actions in dealing with Ms Darrell over the various work concerns were justifiable, including its decision to dismiss her.

[54] In this regard CVC purported to consult over the various aspects impacting Ms Darrell's employment but did not do so in a formal and structured way. It failed to give Ms Darrell sufficient information about its concerns; it failed to give her an opportunity to respond to the concerns; and therefore, it failed to consider any input Ms Darrell had on the concerns. The same analysis applies to the consultation over potential redundancy, with the added concern that the decision to make Ms Darrell redundant was predetermined by CVC.

[55] CVC failed to act justifiably with Ms Darrell:

- (a) The unilateral decisions made about Ms Darrell being sent home from work without pay and then working from the Belfast site were not decisions a fair and reasonable employer could have made.
- (b) The failure to engage with Ms Darrell properly and appropriately over her personal grievance was not an action a fair and reasonable employer could have undertaken.

¹ See *Grace Team Accounting Ltd v. Brake* [2014] NZCA 541.

(c) The convoluted and overbearing nature of the email exchanges purporting to amount to consultation over redundancy and issues with Ms Darrell's conduct and work performance were not actions that a fair and reasonable employer could have done.

(d) The decision to dismiss Ms Darrell for redundancy was not a decision a fair and reasonable employer could have come to.

[56] Then, in terms of substantive justification for CVC's decision to dismiss Ms Darrell, CVC needs to show its decision to dismiss was what a fair and reasonable employer could come to in the circumstances. There are two aspects to the substantive decision – there was clearly a downturn in work at the Wigram site and alternatives to dismissal for redundancy had been considered and ruled out.

[57] In terms of the downturn in work I accept this was the case – the evidence supports this, including evidence from CVC regarding Ms Darrell not working over various days evidenced by her internet browsing history and Ms Darrell accepted this was the case. The problem for CVC is that it told Ms Darrell in one of the emails on 25 September 2024 that there would be work at the Wigram site for her the following week, so the downturn in work was not an ongoing problem.

[58] It is also the case that there was inadequate consultation over alternatives to dismissal – the options were not properly explored and understood by Ms Darrell. Given full consultation she may well have accepted leave without pay or work at the Belfast site, thus avoiding any dismissal.

[59] For these reasons the decision to dismiss Ms Darrell was not substantively justified.

[60] Overall CVC's actions were not those that a fair and reasonable employer could do in the circumstances, and therefore its actions, which caused disadvantage to Ms Darrell's employment, were unjustified and its dismissal of Ms Darrell was unjustified.

Remedies

[61] As Ms Darrell has been successful with her personal grievances, I must turn to consider what remedies she may be entitled to.

Compensation

[62] Compensation is an award for the humiliation, loss of dignity and injury to feelings that an applicant suffers. An award is made pursuant to s 123(1)(c)(i) of the Act.

[63] When assessing compensation, I must quantify the harm and loss caused by any humiliation, loss of dignity and injury to feelings arising out of the various unjustified actions by CVC including the dismissal of Ms Darrell.² So, I must consider the effect of the actions on Ms Darrell and establish what that shows in terms of the harm caused to her and the loss she suffered as a result. Then I must quantify that harm and loss. This is done by assessing that harm and loss against others who have similar personal grievances and establishing where that sits compared to the range of compensation awarded.³

[64] Ms Darrell's evidence is that:

- (a) She felt threatened, harassed and bullied by CVC's ongoing discussions with her about the downturn in work and redundancy, particularly the email exchanges on 23 – 26 September 2024.
- (b) She was upset about how she was treated, feeling belittled and unheard as well as being overwhelmed by everything.
- (c) She was devastated about the loss of her job, losing the job satisfaction she had as well as the security of ongoing work.
- (d) The dismissal knocked her confidence and self-worth.
- (e) She suffered significant financial hardship because of losing her job, impacting in stress and anxiety, manifesting in sleeplessness.
- (f) She was embarrassed about her dismissal and felt isolated.

[65] This is evidence of harm and loss manifesting out of the actions of CVC during her employment such as feeling insecure, unsettled and vulnerable about her work, feeling unsafe

² *Stormont v Peddle Thorp Aitken Ltd* [2017] NZEmpC 71, *Waikato District Health Board v Kathleen Ann Archibald* [2017] NZEmpC 132, *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

³ *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

at work through actions she perceived as threatening, bullying and harassing, suffering harm to her emotional health through stress and anxiety and suffering loss of self-esteem and confidence.

[66] The evidence of harm and loss arising out of the dismissal includes injury to feelings through stress and anxiety, hurt through diminished self-worth, and humiliation through embarrassment and social isolation.

[67] Comparing this loss and harm to other cases of unjustified actions and dismissal and the amounts of compensation awarded I quantify Ms Darrell's loss and harm at \$27,000.

Reimbursement

[68] Ms Darrell also seeks reimbursement for lost earnings because of her unjustified dismissal.⁴

[69] Ms Darrell is entitled to be reimbursed for lost remuneration because she lost income as a result of being unjustifiably dismissed by CVC. Pursuant s 128 of the Act Ms Darrell is entitled to thirteen weeks ordinary time remuneration – this is \$15,600.

Contribution

[70] As I have awarded remedies to Ms Darrell, I must consider whether she contributed to the situation that gave rise to her grievance.⁵ This assessment requires me to determine if he behaved in a manner that was culpable or blameworthy, and this behaviour contributed to her grievance.⁶

[71] CVC says Ms Darrell took no responsibility for what was occurring and did not accept that she needed to be productive at work so that she covered her wages and share of business costs. CVC says Ms Darrell blatantly chose to attend at Wigram knowing there was no work for her and she was content to sit at her desk and surf the internet.

⁴ Section 123(1)(b) of the Act.

⁵ Section 124 of the Act.

⁶ *Xtreme Dining Ltd v Dewar* [2016] NZEmpC 136

[72] Given the failings by CVC in consulting with Ms Darrell and the unilateral decisions it made I am satisfied that Ms Darrell's actions that CVC complains of are not such that she can be said to have contributed to her grievance; no reduction in her remedies is required.

Wage arrears

[73] Ms Darrell was not paid four weeks' notice, which she was contractually entitled to – this is \$4,800 plus holiday pay on this amount calculated at 8%, being a total of \$5,184.

[74] Ms Darrell was not paid for the two occasions she was sent home from work by CVC, which she should have been paid for - this is \$360.

[75] Ms Darrell seeks interest on the wage arrears. I accept this is appropriate and interest is to be paid on the total sum owed of \$5,544 calculated from 26 September 2024 until payment is made.

Penalty

[76] Ms Darrell asked for penalties to be imposed on CVC for breaching the Wages Protection Act 1983.

[77] CVC breached the Wages Protection Act on six occasions; three of these breaches were remedied and three remained. I am satisfied that a penalty should be imposed on CVC for these breaches.

[78] Section s 133A of the Act sets out relevant factors to consider when imposing penalties; in this regard I have considered:

- (a) CVC misunderstood its obligations under Ms Darrell's employment agreement so it acted intentionally but as it believed it could – despite this CVC should be aware of its obligations and the onus is on it to understand and apply those obligations correctly, so it acted negligently.
- (b) There were six breaches and despite remedying three of the breaches the extent of the outstanding breaches meant Ms Darrell was deprived of a reasonable amount of money.

(c) CVC did not remedy the three ongoing breaches despite being told of them.

(d) CVC has not been found previously to have breached the Wages Protection Act.

[79] I have then considered the range of penalties awarded in similar circumstances and I have decided that a penalty of \$2,000 is appropriate.

[80] Ms Darrell has sought to have part of this penalty paid to her, but I am not satisfied that this is necessary or appropriate given that the wage arrears and interest have been awarded to her.

Summary

[81] This employment relationship problem is resolved in favour of Ms Darrell:

(a) CVC acted unjustifiably toward Ms Darrell, and this caused a disadvantage to her employment and caused her dismissal to be unjustified.

(b) Ms Darrell is owed wage arrears of \$5,544 together with interest calculated from 26 September 2024.

(c) CVC breached the Wages Protections Act 1983. A penalty is imposed against CVC for the breaches of \$2,000.

Orders

[82] In settlement of Ms Darrell's personal grievances CVC must pay Ms Darrell:

(a) \$27,000 for compensation pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000.

(b) \$15,600 (gross) for lost remuneration pursuant to s 123(1)(b) of the Employment Relations Act 2000.

[83] Ms Darrell is owed wage arrears of \$5,544. CVC must pay Ms Darrell \$5,544 (gross) together with interest calculated from 26 September 2024.

[84] CVC must pay a penalty of \$2,000 to the Crown within 28 days of this determination.

Costs

[85] Costs are reserved.

[86] The parties are encouraged to resolve any issue of costs between themselves.

[87] If they are not able to resolve costs and a determination on costs is needed, Ms Darrell may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of this determination. From the date of service of that memorandum CVC will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[88] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.⁷

Peter van Keulen
Member of the Employment Relations Authority

⁷ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1