IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2026] NZERA 77
3367843

	BETWEEN	EBD Applicant
	AND	LJB Respondent

Member of Authority:	Jeremy Lynch
Representatives:	RAC for the Applicant Adrian Plunket, advocate for the Respondent
Investigation Meeting:	12 November 2025, in Kerikeri
Submissions and Other Material Received:	At the investigation meeting, and on 24 November 2025 from the Applicant At the investigation meeting and on 14 November 2025 from the Respondent
Date of Determination:	13 February 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This is an application for recovery of wages and expenses brought by EBD against its former employee LJB.

[2] This matter is related to Authority file 3319580 (*LJB v EBD* [2026] NZERA 78), which is a personal grievance proceeding brought by LJB against EBD (the related proceeding). EBD's claim against LJB was only raised after she lodged her personal grievance in the Authority, and for this reason LJB says EBD's proceeding against her is vexatious and retaliatory.

[3] LJB strenuously rejects any wrongdoing, and denies EBD's claim in its entirety.

Non-publication

[4] LJB seeks a permanent non-publication order, in respect of her own name or any identifying details, and the names of her support witnesses.

[5] LJB does not seek non-publication in respect of EBD. She says that naming EBD will not lead to her identity being disclosed. LJB submits that suppressing EBD's name would undermine the public's confidence in the transparency and fairness of the Authority's process.

[6] EBD opposed non-publication, citing (inter alia) the principle of open justice, the "public interest in understanding and monitoring employment law", and LJB's failure to establish undue hardship to herself or others.

[7] The principle of open justice is of fundamental importance and forms the starting point for determining whether the circumstances of any particular case justify an order for non-publication. An applicant for a non-publication order must establish that sound reasons exist for the making of such an order, displacing the presumption in favour of open justice.[1]

[8] In *MW v Spiga Limited*[2], the Employment Court considered the issue of non-publication and set out a two-step test. There must first be a reason to believe the specific adverse consequences could reasonably be expected to occur.[3] Second, the Authority must consider whether the adverse consequences that could reasonably be expected to occur, justify a departure from open justice in the circumstances of the case.[4]

[9] In this matter, LJB submits that serious allegations have been made about her, which if made public have the potential to have a lasting prejudicial effect on her life, including as to ongoing reputational damage, impact on her social standing, future employment opportunities, and relationships.

[10] I am not satisfied that the first limb of the *Spiga* test has been made out. LJB has not provided sufficient information in support of her belief that specific adverse

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[1] *Erceg v Erceg [Publication Restrictions]* [2016] NZSC 135.
[2] *MW v Spiga Limited* [2024] NZEmpC 147.
[3] Above n 2, at [88].
[4] Above n 2, at [89].

consequences could reasonably be expected to occur.

[11] I decline LJB's request for non-publication.

[12] However, as also noted in *Spiga*,[5] the Authority may anonymise the parties' names without the need for a formal order. The Court also noted that anonymising parties' names affords protection, especially in respect of internet searches.

[13] Given the relatively close-knit community in which EBD continues to operate, there is some risk that LJB may be inadvertently identified if details of her former role, or details of EBD are published.

[14] In the circumstances of this matter I consider it appropriate to anonymise party names. This goes some way to preserving the parties' positions in the event that either party wishes to challenge the outcome of the Authority's determination as to the issue of non-publication, or its substantive determination (as indicated by EBD in its closing submissions).

[15] A randomly generated string of three letters has been used in this determination to refer to the applicant (EBD) and the respondent (LJB), as well as EBD's representative (RAC). These letters have no resemblance to the parties' actual names.

The Authority's investigation

[16] For the Authority's investigation a written witness statement was lodged by EBD's HR manager, as well as by one of its supervisors.

[17] LJB lodged a written witness statement, together with a written witness statement from her former manager (the marketing manager).

[18] Under oath or affirmation, all witnesses answered questions from the Authority and from the parties' representatives. The representatives made closing submissions at the conclusion of the evidence.

[19] As permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination has not recorded everything received from the parties, but has stated findings of fact and law, expressed conclusions and specified orders made as a result.

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[5] Above n 2, at [96].

[20] The Authority has carefully considered all the material provided.

Background

[21] LJB and the marketing manager accept that they had lunch together at one of EBD's hospitality outlets. There is no dispute that this was a regular Friday occurrence, nor is there any dispute that the associated food and beverage cost was charged to the marketing account.

[22] LJB says this was authorised by her manager. EBD says this was unauthorised.

[23] In addition, EBD says LJB took extended lunch breaks, in excess of the 30 minute (unpaid) lunchbreak provided for under her employment agreement, and seeks to recover what it describes as this "unproductive time".

[24] LJB says that the lunches were always with her manager, and the two of them "always took work with us to complete and discuss during the lunches…". LJB's evidence to the Authority was that 95 per cent of her time at the lunches was spent working. LJB also says that the lunches were organised by her manager.

[25] EBD also seeks to recover the amount wages paid to LJB, for the work she performed after the lunches. EBD claims that following the lunches, LJB did not perform her full duties.

[26] EBD says that LJB's actions have negatively impacted its reputation within the workplace and the community, for which it seeks an award of damages.

[27] LJB denies any wrongdoing, and says that at all times she acted with the approval of her manager.

[28] LJB says EBD's actions are vexatious and retaliatory, and represent a breach of the duty of good faith, for which she seeks a penalty against EBD.

The issues

[29] The issues for determination in this reinstatement application are:

(a) whether LJB should be ordered to reimburse EBD the sum of $2,292.75 for unauthorised expenses, including in respect of extended lunch breaks, and unauthorised consumption of EBD's food and/or beverages?

(b) Should LJB be ordered to reimburse any overpayment of wages to EBD?

(c) Should LJB be ordered to pay damages to EBD in respect of its claim that her actions have damaged its reputation?

(d) Has EBD breached the duty of good faith and/or the employment agreement, and if so, should it be required to pay a penalty to LJB?

(e) Is either party entitled to an award of costs?

Reimbursement in the sum of $2,292.75

[30] EBD seeks an order that LJB reimburse it the sum of $2,292.75 for unauthorised expenses. EBD says this amount comprises "unproductive time during extended lunches" in the sum of $1,456.00, said to arise from LJB's alleged two hour lunch breaks over a 26 week period; together with LJB's alleged share of the food and beverage cost it says was charged to the marketing account.

The lunches

[31] LJB's evidence is that the lunches were organised by her manager, and it was her manager that arranged for the cost to be charged to the marketing account. Her evidence is that:

> Some months prior to my dismissal, [the marketing manager] said she had gone to [RAC] and asked if these lunches could be charged to the marketing account. She said [RAC] had given approval for this.
>
> From that time forward… [the marketing manager] would… have our meals charged to the marketing account.

[32] LJB's evidence is that nobody ever raised any issue to do with the lunches with her during her employment.

[33] The marketing manager's evidence is that she "took the initiative and asked [RAC] if it would be possible to charge our lunches to the marketing account. He said yes".

[34] The marketing manager's evidence is that at the end of the lunches:

> The staff would then print a receipt and I would sign to confirm the transaction against the marketing account. This signed receipt would then be included with the daily banking and reconciliation at the end of the day.

[35] However, despite this, EBD did not provide any receipts, transaction summaries or banking reconciliations to support its claim.

[36] In addition, the marketing manager says that LJB "… asked me if the Friday lunches were approved by [RAC] and I passed on that I had his approval". She further says that RAC was aware of the Friday lunches, as he would watch the two women on CCTV, and when they returned to the office, RAC "would ask what we had eaten and if it was any good".

[37] I accept LJB's evidence that she believed that her manager had approval to charge the lunches to the marketing account.

[38] Furthermore, even if LJB was mistaken, and no approval had been given for the charging of the lunches, EBD is not without remedy.

[39] In an email exchange with LJB following her dismissal, the HR manager advises:

> in respect to the unauthorised time and lunches consumed… we want to be compensated. You should be paying your share. If not, then [the marketing manager] is willing to accept responsibility and pay your share if that is what you prefer.

[40] In response, LJB writes:

> You advised that you would need to speak with [the marketing manager] regarding her agreement to cover any costs for the lunches and time taken. My complete understanding directly from [the marketing manager] is that she has agreed to take full responsibility for any costs calculated for lunches including food… and time taken.

[41] The HR manager acknowledged this email three days later. In addition, shortly after this acknowledgement the HR manager emailed LJB again, advising:

> As stated to you the cost of your time regarding unauthorised lunches and consume of food (sic)… at these lunches over a period of at least the past year will now be to [the marketing manager's] dept.

[42] Consistent with this, the marketing manager's evidence is that after LJB's dismissal:

> I tried to call and offered multiple times to cover the cost of the lunches, both to RAC, and the HR manager. Despite my offers to pay, they never took any action to accept or follow up on this.

[43] There is no dispute that EBD has not taken any steps to seek reimbursement from the marketing manager. In response to LJB's submission that EBD appears to have forgone any legal claim for reimbursement against the marketing manager, EBD's

submission is simply "we don't have to explain if we did or did not, that is irrelevant to this case".

[44] I disagree. In circumstances where the marketing manager has made multiple offers to make payment, and EBD has chosen not to seek payment from her, but instead (after LJB had lodged her personal grievance in the Authority) commenced a legal proceeding for recovery of monies against LJB (and not against the marketing manager), that choice is highly relevant.

The extended break time

[45] There are inconsistencies in respect of this aspect of EBD's claim, and it lacks in specificity.

[46] EBD seeks reimbursement of wages paid of two hours (which it says was the duration of each Friday lunch), for a period of 26 weeks. The HR manager's evidence is that the lunches "had been ongoing for approximately a year". The supervisor's evidence is that the lunches occurred "every Friday… for approximately one year, from sometime in 2023 until April 2024".

[47] Neither LJB nor the marketing manager accept that the lunches lasted for two hours. LJB says that the duration of Friday lunch was approximately 90 minutes, with the first 30 of those minutes being her unpaid meal break, and that these were very much working lunches.

[48] Despite having comprehensive CCTV camera coverage throughout its premises, and providing evidence that a number of employees were aware of the Friday lunches occurring, EBD did not provide any specific evidence of the duration of the lunches, or the dates on which they occurred. No timesheets, wages and time record, or any other supporting information as to the timing, during and occasion of the lunches was provided by EBD.

[49] EBD simply seeks reimbursement of two hours' wages over 26 weeks, but does not specify the particular weeks for which it seeks reimbursement. The marketing manager's evidence was that the lunches only occurred during certain months of the year. She says that she and LJB would have lunch on Friday during the months of April to November, but outside of this time period, they would not have lunch as this was peak season for the business, and they were unable to take time off for lunch. She says

that "during approximately April to November we would have Friday lunches together about three out of every four Fridays of the month".

[50] If EBD seeks reimbursement for the overpayment of wages, it needs to adequately particularise this claim. It is insufficient to simply seek an order for the recovery of $2292.75 from LJB. LJB should be able to sufficiently understand which specific weeks the claim comprises, and be able to respond appropriately.

[51] In addition, EBD does not appear to have made any allowance for the fact that the first 30 minutes of each of the Friday lunches included LJB's unpaid meal break.

[52] Furthermore, despite providing evidence that its staff were aware of LJB and the marketing manager's lunches, and had been aware of the lunches for over a year, EBD did not provide any explanation as to why it did not take any steps to address its concerns at the time. The HR manager's evidence is that he "directly observed …these lunches on Fridays… On several occasions I assisted in the restaurant, and was concerned to see them taking long lunches…" . In the circumstances it is surprising that the HR manager would not address this, given EBD's evidence that the lunches occurred every Friday, for an extended period.

[53] EBD has not provided sufficient information or evidence to the Authority to support the order it seeks.

[54] I decline to order LJB to reimburse EBD the sum of $2292.75.

Overpayment of wages

[55] EBD seeks the reimbursement of all wages paid to LJB following the Friday lunches. EBD says that LJB should be ordered to repay the wages paid to her for the period of the day following lunch, as she was not able to fully perform her duties.

[56] This is strongly disputed by LJB.

[57] EBD did not provide any evidence to support its claim that LJB was unable to work effectively.

[58] As set out above, there is extensive CCTV coverage throughout EBD's premises. In addition, as LJB's employer, it was EBD's obligation to keep and maintain

a wages and time record of the particular hours worked by LJB, and the payment for those hours.[6]

[59] Given this, it is surprising that EBD did not particularise this claim at all. It did not provide any information as to the quantum of reimbursement sought, nor the particular hours to which its claim for reimbursement related.

[60] EBD has not provided sufficient information to support the order it seeks.

[61] I decline to make an order that LJB reimburses EBD for an unspecified sum of wages, on the basis that she was not able to fully perform her duties.

Damage to reputation

[62] EBD seeks an award of damages in respect of the harm to its reputation caused by LJB's actions. EBD says LJB's actions has impacted EBD's reputation within the workplace and the community.

[63] The Authority has no jurisdiction to consider defamation claims. This claim cannot proceed.

LJB's claim for penalties

Breach of the duty of good faith

[64] LJB says that EBD's actions in bringing this proceeding against her constitutes a breach of good faith, and therefore a breach of EBD's duties under s 4 of the Act, for which LJB seeks a penalty against EBD.

[65] EBD commenced its proceeding against LJB well after the employment relationship had ended. The duty of good faith under s 4 of the Act does not survive the employment relationship. Accordingly there is no ability to impose a penalty.[7]

Breach of the employment agreement

[66] LJB has confirmed she is no longer seeking a penalty under s 134 of the Act for a breach of the employment agreement.

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[6] Employment Relations Act 2000, s 130.
[7] *Lumsden v Sky city Management Limited* [2017] NZEmpC 30 at [24].

Outcome

[67] There is insufficient information before the Authority to support the orders sought by EBD. EBD's application is unsuccessful.

[68] LJB's claim for a penalty against EBD is unsuccessful.

Costs

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

[70] If the parties are unable to resolve costs, and an Authority determination on costs is needed, LJB 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 EBD 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.

[71] 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.[8]

Jeremy Lynch
Member of the Employment Relations Authority

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