

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 336
3305720

BETWEEN JESSICA FARRELLY
 Applicant

AND SURREY CRESCENT BBQ
 LIMITED
 Respondent

Member of Authority: Matthew Piper

Representatives: Applicant in person
 No appearance for the Respondent

Investigation Meeting: 2 May 2025 in Auckland

Additional information: 13 May 2025 from the applicant

Determination: 17 June 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Jessica Farrelly claimed Surrey Crescent BBQ Limited (SCB) breached its good faith obligations to her and that she was forced to resign by the unreasonable actions of its sole director and shareholder, Croydon Cole. Ms Farrelly also claimed SCB failed to pay her for work she had performed and failed to reimburse her for work expenses.

[2] Ms Farrelly sought wage arrears, reimbursement of workplace expenses incurred by her during the course of her employment, compensation, lost wages and costs.

[3] SCB did not lodge a statement in reply and failed to participate in the Authority's investigation meeting, despite having a reasonable opportunity to do so.

The Authority's investigation

[4] SCB acknowledged receipt of Ms Farrelly's statement of problem via email but did not lodge a statement in reply. No further documents were provided by SCB in response to Ms Farrelly's claims.

[5] Prior to conducting its investigation meeting the Authority confirmed the notice of investigation meeting had been served on SCB, tried to contact its director, Mr Cole, on the day of the investigation meeting and delayed the commencement of the investigation meeting by 15 minutes in case Mr Cole was running late. When Mr Cole did not respond or attend, the investigation meeting proceeded in SCB's absence.

[6] Ms Farrelly provided a witness statement and answered the Authority's questions under oath. Further evidence, including text messages and a video, was provided by Ms Farrelly on 6 and 13 May 2025.

[7] 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

[8] The issues for investigation and determination were:

- (a) Did SCB breach its good faith obligations to Ms Farrelly?
- (b) Did SCB breach its contractual duty to maintain a safe work environment for Ms Farrelly?
- (c) Was Ms Farrelly unjustifiably constructively dismissed?
- (d) If SCB's actions were not justified what remedies should be awarded?
- (e) If remedies are awarded, should they be reduced (under s 124 of the Act) for blameworthy conduct by Ms Farrelly that contributed to the situation giving rise to her grievance?
- (f) Is Ms Farrelly owed wage arrears or unpaid work expenses?
- (g) Should either party contribute to the costs of representation of the other party?

Background

[9] Ms Farrelly has extensive experience in the hospitality industry, having worked in it for more than 15 years. SCB operated an American barbeque style restaurant and catering business in Grey Lynn.

[10] Ms Farrelly was employed in January 2021 by a predecessor entity to SCB, Smokin Cole BBQ Limited, while on a work visa. Ms Farrelly said Smokin Cole BBQ Limited was, for all intents and purposes, the same business as the respondent but in 2023 its employees were switched to being employed by SCB.

[11] Initially, Ms Farrelly started work as a waitress. Within a month Ms Farrelly had become a Duty Manager, and by June 2021 she had become the Restaurant Manager. Over time Ms Farrelly was progressively given more responsibility until ultimately becoming the restaurant's General Manager in early 2023. Her most recent employment agreement, dated 4 February 2023, reflected this title and her responsibilities as General Manager involved supporting the restaurant and its catering business. Ms Farrelly also attended to a range of other business functions including managing requests for catering and delivery, the restaurant's website and events.

[12] Ms Farrelly told the Authority that Mr Cole had travelled to the United States where he had observed their barbequing style and wanted to demonstrate that cuisine in New Zealand. At the start of Ms Farrelly's working relationship with Mr Cole, he was enthusiastic and engaging about the business and spoke regularly with Ms Farrelly about her future with it. There were talks of starting other branches overseas and Ms Farrelly potentially running one of those.

[13] Ms Farrelly said her relationship with Mr Cole was initially positive and blurred between being workmates and friends. Ms Farrelly said her role in running the restaurant meant Mr Cole was heavily reliant on her, while her visa situation also meant she felt attached to SCB and that leaving it would be difficult. The two also interacted socially.

[14] Over time Mr Cole's behaviour toward staff deteriorated. Ms Farrelly describes him as being prone to loud outbursts, swearing, strong criticism of staff and temper tantrums. Ms Farrelly said there was regular shouting and sometimes Mr Cole would throw items at staff or

on the floor. She described Mr Cole's stature and demeanour as being, at times, intimidating at work because he would be in others' "space".

[15] The outbursts to which Ms Farrelly said Mr Cole was prone were not directed at her until around the end of 2023. Prior to this time, she says Mr Cole did not seem to have the sorts of issues with her he had with some other staff, meaning she was not initially a target of his behaviour.

[16] Mr Cole's behaviour was said by Ms Farrelly to have led to a range of issues with restaurant employees, and caused high staff turnover. She said many staff felt they had to "walk on eggshells" around Mr Cole.

Events leading to the termination of Ms Farrelly's employment

[17] In around November 2023 SCB had most of its kitchen staff leave. SCB was left extremely short-staffed, which severely impacted the running of its business. Opening hours had to be adjusted and its catering services were adversely affected. At times front of house staff had to support food preparation just to get through a service.

[18] In December 2023 Ms Farrelly took annual leave and went on a holiday to Thailand. This occurred around the time the restaurant normally closed between the end of December and early January. Ms Farrelly says that while she was on holiday she felt pressured to continue to work because Mr Cole would call and FaceTime her about a range of business issues. She says she also worked while on leave to advertise for staff so things would be more manageable when she returned in mid-January 2024.

[19] On 13 February 2024 Ms Farrelly told Mr Cole that she was physically and mentally having a difficult time. She says she told him that the stress from the recent period, in which she had been effectively doing multiple roles in the business, meant that she could not continue as she had and that she needed to look after her health issues, of which Mr Cole had previously been made aware. This conversation occurred in the context of an upcoming "Meatstock" festival, which Mr Cole perceived as important for the business, but which would require additional work from Ms Farrelly, Mr Cole and the rest of the team. Initially Mr Cole was understanding, said not to worry about Meatstock and encouraged Ms Farrelly to just carry on with her normal work while he took care of the additional work related to the festival.

[20] On 17 February 2024 Mr Cole messaged Ms Farrelly through a rostering app called “Deputy”. In the message Mr Cole indicated he had concerns about the hours Ms Farrelly had been recording because he said they were too high. His message also involved a number of strong criticisms of Ms Farrelly. For example, it called the 12.5 hours she had worked the day prior “absurd and unacceptable” and said it was too expensive relative to turnover. The message went on to say Ms Farrelly was being paid “a huge hourly rate” and that she was not doing what her position required of her.

[21] Ms Farrelly was upset and taken aback by the message. She asked for more information about what Mr Cole meant and said she wanted to talk to him about it. The following day, when she asked Mr Cole again, he said that he wanted to talk about it another day. Ms Farrelly said this issue was never fully discussed, but it was in the back of her mind causing her to feel anxious. Ms Farrelly was concerned that Mr Cole had criticisms of her that had not been discussed and that he had serious reservations about the hours she was working and the value she was adding, but was not exploring them with her so they could be resolved.

[22] Ms Farrelly says her work hours were generally set by roster, but the exact number of hours to be worked were determined with regard to what work was required at the time. For example, when the restaurant stayed open late or where there were large catering jobs, Ms Farrelly would work additional hours. Given this context, Mr Cole’s criticisms were concerning to Ms Farrelly and his failure to talk them through was upsetting for her.

[23] Contrary to Mr Cole’s earlier assurances, the Meatstock festival, which occurred between 23 and 26 February 2024, was stressful for Ms Farrelly and required additional work and hours from her. She was involved late into the evening of the night before preparing and organising food, while also being required to be on site early the following morning. Ms Farrelly said Mr Cole was on edge about how the festival would go and was critical of what had been achieved as part of the preparing for the festival. For example, Ms Farrelly described how Mr Cole threw a box of merchandise on the floor and said “how the fuck are we supposed to sell this if it's not down there” referring to the fact that it had not already been loaded for transport to the festival.

[24] The stress of this interaction in the context of the intensity of the preparation for the festival had a significant adverse impact on Ms Farrelly. Already exhausted from recent months despite her holiday, working long hours and unsure of when Mr Cole would have his next

outburst, she described having a panic attack and feeling scared. Ms Farrelly told the Authority that the festival itself was also stressful for her and the team because Mr Cole felt under pressure and would direct his feelings and unhappiness at others through shouting and swearing.

[25] As part of SCB's attendance at the festival, Ms Farrelly personally booked and paid for staff accommodation because the company credit card had declined. Mr Cole also made a range of other requests of staff to buy things and Ms Farrelly paid for these other festival related expenses. SCB did not reimburse Ms Farrelly for these purchases despite their having been made for the business in the course of her employment.

[26] During the car ride home from the festival, which Mr Cole and Ms Farrelly shared, she said she was not sure she could continue in her employment because of the stress and the impact the role was having on her health and wellbeing. Mr Cole responded that he wanted her to stay working for SCB.

[27] On 28 February 2024 a customer from 2022 contacted SCB and asked it to cater for them again. Ms Farrelly was heading to the hospital for treatment and emailed the customer just before leaving for her appointment. Ms Farrelly says Mr Cole called her while she was on the way to the hospital and berated her, claiming she had talked the price of the catering job down. He went on to say he needed to talk to the person who assisted with SCB's accounts about this and other catering jobs he said Ms Farrelly had mishandled. Ms Farrelly was stressed and dumbfounded by Mr Cole's comments, but was eager to talk to Mr Cole to clear things up.

[28] Although Mr Cole had initially said he would speak with Ms Farrelly later that evening, he subsequently said he was unable to fully review the documents involved and said he would need to talk with her at a later time. Mr Cole said Ms Farrelly should bring a support person to this conversation.

[29] The next day, 29 February 2024, Ms Farrelly was talking to the head chef on the kitchen side of the pass when Mr Cole appeared carrying trays of meat. Ms Farrelly said something and Mr Cole "seemed to switch" and started screaming at her. The Authority was provided with a video, taken by another employee, of Mr Cole's expletive laden and aggressive outburst in which he can be heard calling Ms Farrelly and her support person "cunts" and "fucking bitches", and telling them to "fuck off" before throwing or swinging a towel aggressively in

their direction. Ms Farrelly says that in the part of the interaction not captured on the video, Mr Cole also shouted that she had lost him money and catering jobs.

[30] Later that evening, Ms Farrelly emailed Mr Cole resigning from her employment. The email said Mr Cole had blamed her for lost catering jobs without giving her the chance to comment on whether this was true and had blown up at her over it. Ms Farrelly's email went on to say Mr Cole had treated her badly since the beginning of the year and that he had screamed "to high heaven at everything" which meant she and other staff were scared of him. Ms Farrelly said she would serve her month's notice, but that if Mr Cole abused her further she would not return.

[31] Mr Cole messaged the balance of the employees later that evening saying Ms Farrelly would not be in for the rest of the week due to personal reasons, which may mean that rosters would change. Early the following morning at 1:42 am Mr Cole sent a further message saying Ms Farrelly had decided to stand down from the GM position and take extended leave for her well-being.

[32] Ms Farrelly said she was deeply distressed by these events and went to her doctor on 1 March 2024 for medical assistance. She was certified unfit for work until 6 March 2024 but, as set out below, never returned to work.

[33] In the days following Mr Cole's outburst, he and Ms Farrelly had a number of exchanges about logistical issues relating to her leaving. In these exchanges Mr Cole suggested Ms Farrelly had sabotaged the business and threatened to make disclosures about wrongs he said she had committed in other contexts. Mr Cole repeated similar threats when he received Ms Farrelly's personal grievance.

[34] On 5 March 2024 Ms Farrelly went to a doctor and was certified unfit for work for two weeks on the basis she was suffering from acute stress disorder. That same day Mr Cole said he needed Ms Farrelly to bring in her computer to remove company information. He went on to say he needed Ms Farrelly's key and all system logins.

[35] On 8 March 2024 Ms Farrelly contacted Mr Cole querying why she had received payment for the week ending 3 March 2024 but was yet to receive payment from the week prior, which was the week of the festival. She also asked to be reimbursed for work expenses

that she had incurred at the festival including accommodation expenses, food purchases and the purchase of some alcohol Mr Cole had requested.

[36] Mr Cole acknowledged receipt of Ms Farrelly's email on 13 March 2024, but did not provide any substantive response until he sent her an email at 2:42AM on 16 March 2024. The 16 March 2024 email, which was sent during Ms Farrelly's notice period and at a time Mr Cole was aware Ms Farrelly was stressed, was threatening and unreasonable. In the email Mr Cole called Ms Farrelly a "fake" and a "pretender" before going on to make numerous harsh criticisms of her character and performance at work.

[37] Although some of the personalised attacks in Mr Cole's email could potentially be said to be about issues in the friendship he had previously had with Ms Farrelly, he failed to separate this from his role as her employer's representative. The email was, in reality, sent in this latter capacity by Ms Farrelly's employer.

Did SCB breach its good faith obligations to Ms Farrelly?

[38] Section 4 of the Act says parties to an employment relationship must deal with each other in good faith. This means they must be active and constructive in establishing and maintaining a productive employment relationship by being responsive and communicative¹.

[39] Mr Cole's repeated raising of serious criticisms of Ms Farrelly without properly discussing them with her amounted to SCB breaching its duty of good faith. Mr Cole's actions in this regard were destabilising for Ms Farrelly and the employment relationship.

[40] Being communicative does not mean merely venting about your views, it requires engagement about issues and two-way communication. Ms Farrelly sought out this engagement regarding the issues which were raised with her, but Mr Cole failed to appropriately engage in response.

[41] Mr Cole's behaviour was not merely incomplete communication or poor management. It was the repeated provision of unreasonable barbs toward Ms Farrelly and a failure to explore underlying issues with her. Mr Cole's failure to engage in good faith regarding these alleged issues was serious and spanned multiple instances.

¹ Section 4 of the Act

Did SCB breach its contractual duty to maintain a safe work environment for Ms Farrelly?

[42] The duty to take reasonable steps to maintain a safe workplace is a term implied into all employment agreements². In addition to this implied term, Ms Farrelly's employment agreement said "The Employer is committed to providing, so far as is reasonably practicable, a safe work environment". SCB was, therefore, obliged to protect Ms Farrelly from unnecessary risk of harm, including the risk of psychological harm.

[43] Between January and April 2024, as detailed in paras [20] through [37] above, Mr Cole engaged repeatedly in unreasonable behaviour toward Ms Farrelly. When doing so he was acting on behalf of SCB as her employer. Mr Cole's outbursts, unreasonable work demands and unexplored and destabilising allegations constituted a pattern which adversely affected Ms Farrelly's wellbeing. The interaction on 29 February 2024 where Mr Cole shouted abuse at Ms Farrelly in a relatively public setting cannot be justified and Mr Cole's late-night email on 16 March 2025 was abusive.

[44] Mr Cole's behaviour created significant risks to Ms Farrelly's psychological wellbeing, caused her harm and SCB took no steps to manage these risks. SCB therefore breached its contractual duty to maintain a safe workplace for Ms Farrelly.

[45] The harm Ms Farrelly suffered as a result of SCB's breach of its contractual duty to maintain a safe workplace was reasonably foreseeable in all the circumstances given the information she had previously provided to Mr Cole about her health. In particular, Ms Farrelly had previously told Mr Cole that she suffered from anxiety and that her work at SCB was impacting her health and wellbeing.

[46] Although Ms Farrelly claimed to have been unjustifiably disadvantaged by SCB's breach of its duty to provide a safe workplace, this issue also forms the basis of Ms Farrelly's unjustified constructive dismissal claim and is therefore dealt with under that head below.

Was Ms Farrelly unjustifiably constructively dismissed?

[47] An unjustified constructive dismissal may occur through an employee being given an option of resigning or being dismissed, where an employer has followed a course of conduct

² *Attorney-General v Gilbert* [2002] 2 NZLR 342

with the deliberate or dominate purpose of coercing an employee to resign, or where a breach of a duty caused the employee to resign³. This case falls into the third of these categories.

[48] As set out above, SCB breached its duty of good faith to Ms Farrelly and its duty to provide her with a safe workplace. These breaches of duty were serious and destabilising for Ms Farrelly, who lost confidence in Mr Cole's ability to treat her fairly in the performance of her role and ensure she had a safe workplace.

[49] The evidence supports a claim that SCB's breach caused Ms Farrelly's resignation, and that her resignation was reasonably foreseeable. Accordingly, although Ms Farrelly resigned from her employment on 29 February 2024, in substance her resignation was a dismissal. SCB's actions in this regard were not those a fair and reasonable employer could have taken and were unjustified. Ms Farrelly was, therefore, unjustifiably constructively dismissed in all the circumstances.

What remedies should be awarded?

Lost wages

[50] Given Ms Farrelly has a personal grievance against SCB, she is entitled to consideration of an award of wages lost as a result of the grievance.

[51] Ms Farrelly had not worked since her employment with SCB ended until the date of the Authority's investigation meeting. She said this was because of a combination of the traumatic impact the termination of her employment had on her, the medical support she had needed as a result and difficulty finding a job.

[52] Ms Farrelly was deeply impacted by the events surrounding the termination of her employment with SCB. She took appropriate steps to manage this, including medical, counselling and community-based services support.

[53] Ms Farrelly unsuccessfully applied for numerous roles after August 2024 and during the period prior to that she was too unwell to look for work.

³ *Auckland Shop Employees IUOW v Woolworths (NZ) Ltd* [1985] 2 NZLR 372

[54] Reimbursement of lost wages awarded under s 128 of the Act are discretionary and s 128(2) provides that reimbursement be for the lesser amount of either the actual lost wages or three months' ordinary pay.

[55] Section 128(3) of the Act gives the Authority discretion to order payment of a greater sum than provided for in s 128(2). Such discretion must be exercised in a principled way, and moderation is required.

[56] Having regard to the circumstances of the termination of Ms Farrelly's employment, its significant impact on her health and the steps she has taken to mitigate her loss, an appropriate award of lost wages is that equal to six months of her ordinary time pay at SCB.

[57] According to her employment agreement, Ms Farrelly was entitled to 30 hours per week at an hourly rate of \$48, which equates to \$1,440 per week. She is therefore entitled to \$34,560 (gross) in lost wages.

Compensation for hurt and humiliation

[58] SCB's failure to provide Ms Farrelly with a safe working environment had a material adverse impact on her. She required treatment for anxiety and panic attacks connected to the termination of her employment and had difficulty attending interviews for other jobs.

[59] When her employment ended, Ms Farrelly experienced social isolation because members of her friendship group were associated with SCB and pressure was placed on her relationship with her partner because of her loss of income.

[60] Ms Farrelly also felt distressed about what her termination meant for her career. Mr Cole's shouted abuse on 29 February 2024 occurred in front of others and was humiliating. In addition, Mr Cole's threats to expose alleged wrongdoing by her in other contexts were a source of worry for her (even though she says there was no such wrongdoing on her behalf).

[61] Ms Farrelly provided moving and detailed evidence to the Authority of the support she needed to recover. The impact on Ms Farrelly was significant and has taken time to recover from. Detail of Ms Farrelly's medical circumstances are not included in this determination to preserve her privacy.

[62] In the circumstances the Authority finds that an award of \$25,000 in compensation pursuant to s 123(1)(c)(i) of the Act is appropriate. This figure is not designed to punish SCB but is to compensate Ms Farrelly for the injury and harm she has suffered.

Contribution

[63] Given the Authority has determined that Ms Farrelly has successfully established she has a personal grievance against SCB, s 124 of the Act requires that consideration be given to the extent her actions contributed towards the situation that gave rise to the grievance and whether any remedies should be reduced.

[64] The Authority had no evidence before it demonstrating blameworthy contributory conduct by Ms Farrelly that justified a reduction in remedies. Accordingly, no reduction is appropriate.

Is Ms Farrelly owed wage arrears or unpaid work expenses?

Wage arrears for the week ending 25 February 2024

[65] Ms Farrelly was not paid for the week ending 25 February 2024, when she attended the Meatstock festival. Based on her evidence, a conservative estimate is she would have worked 50 hours that week.

[66] Ms Farrelly is entitled to wage arrears of \$2,400 (gross) for that week of work.

Reimbursement of work expenses incurred by Ms Farrelly

[67] Ms Farrelly's employment agreement provided that SCB was to reimburse her for reasonable out-of-pocket expenses incurred in connection with the performance of her duties. Documentary evidence of the expenses claimed for was provided to the Authority.

[68] The SCB team travelled to Hamilton to participate in the Meatstock festival and Ms Farrelly incurred expenses as part of that activity. Ms Farrelly attended the festival in support of SCB in her capacity as an employee and the expenses she incurred were with Mr Cole's consent as part of the restaurant's participation in the festival. Ms Farrelly provided proof of the expenses to Mr Cole and he refused to pay them.

[69] The expenses Ms Farrelly incurred on SCB's behalf as part of her work were:

- a. Accommodation: \$688.04;
- b. Food/ grocery purchases: \$203.51; and
- c. Liquor: \$52.99.

[70] Ms Farrelly is entitled to be reimbursed these expenses, totalling \$944.54.

Orders

[71] For the reasons set out above, within 28 days of the date of this determination, SCB is ordered to pay Ms Farrelly:

- a. Wage arrears of \$2,400 (gross);
- b. Lost wages of \$34,560 (gross);
- c. Compensation for humiliation, loss of dignity and injury to feelings of \$25,000;
and
- d. Reimbursement of work expenses incurred in the course of her employment of \$944.54.

Costs

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

[73] If they are not able to do so and an Authority determination on costs is needed Ms Farrelly may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of the written determination in this matter. From the date of service of that memorandum SCB would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[74] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.⁴

Matthew Piper
Member of the Employment Relations Authority

⁴ See www.era.govt.nz/determinations/awarding-costs-remedies.