IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2025] NZERA 709
3328440

	BETWEEN	XIAOMENG FENG Applicant
	AND	YOGA LIMITED Respondent

Member of Authority:	Helen van Druten
Representatives:	Adrian Plunket, advocate for the Applicant Timothy Oldfield, counsel for the Respondent
Investigation Meeting:	7 August 2025 at Auckland
Submissions received:	8 August 2025 from the Applicant 7 August 2025 from the Respondent
Determination:	6 November 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Ms Xiaomeng (Fiona) Feng raised a claim for unjustified dismissal and unjustified disadvantage against Yoga Limited following termination of her employment on 6 March 2024. She also sought penalties for a breach of good faith by Yoga Limited. In an amended statement of reply lodged 28 July 2025, Ms Rebeckh Burns, as director of Yoga Limited, acknowledged that Ms Feng was unjustifiably dismissed. However, Yoga Limited opposes the remedies claimed and any breach of good faith.

[2] It is no longer necessary to determine the unjustified disadvantage grievance claim as the facts giving rise to it are the same as the dismissal grievance and pleaded in the alternative. This determination focuses on the investigation and determination of

remedies and any contributory conduct by Ms Feng that may impact on the remedies sought.

The Authority's investigation

[3] Initially, this matter was delayed due to an unexpected change in representation for Yoga Ltd. Additionally, during the case management call on 7 April 2025, Ms Feng's advocate confirmed that the claim under s 130 for outstanding wages and holiday pay was withdrawn as this was resolved.

[4] For the Authority's investigation written witness statements were lodged from Ms Fiona Feng as the Applicant, Mr Junpeng (Leo) Liu as impact witness and Ms Rebeckh Burns as director of Yoga Limited. All witnesses answered questions under oath or affirmation from me and the parties' representatives. The representatives gave written closing submissions.

[5] 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

[6] The issues requiring investigation and determination were:

(a) What remedies, if any, should be awarded, considering:
   i. Compensation under s123(1)(c)(i) of the Act; and
   ii. Lost wages (subject to evidence of reasonable endeavours to mitigate her loss)?

(b) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Ms Feng that contributed to the situation giving rise to her grievance?

(c) Whether penalties pursuant to section 4 of the Act should be awarded and should a portion of any penalty go to Ms Feng?

(d) Should Yoga Limited contribute to the costs of representation of Ms Feng?

Background Facts

[7] Ms Feng was employed by Yoga Limited from 6 June 2023 as a "Studio Management, Yoga & Pilates Teacher Apprenticeship" under the Mana in Mahi apprenticeship program, which was supported by the Ministry of Social Development. As part of this New Zealand Qualifications Authority (NZQA) programme, Ms Feng was expected to complete a structured learning program with formal and on-the-job training.

[8] Ms Feng says that she enjoyed yoga and when Ms Burns talked about the Mana in Mahi programme and offered her a teaching position, she accepted it. According to her employment agreement, Ms Feng was employed for 30 hours per week.

[9] During her employment, Ms Feng says that she got two pay rises in October and December 2023 and Ms Burns was happy with her work.

[10] On 4 March 2024 the studio moved premises and this was the catalyst for Ms Feng's dismissal. Ms Feng was working from home that day though later went into the studio to help and described the move as "chaotic". Ms Feng says that on the Wednesday following the studio move, she was dismissed in an email from Yoga Limited for a failure to follow a reasonable instruction of her employer.

[11] According to Ms Burns, Ms Feng's failure to manage the studio move was the final stage in a number of issues with Ms Feng's performance. In a later response to the personal grievance, Ms Burns gave eight examples of feedback and emails sent to Ms Feng about various concerns prior to her dismissal.

[12] As Ms Burns accepted that Ms Feng was unjustifiably dismissed, it is unnecessary to further detail the circumstances leading to that dismissal.

Remedies

Compensation for humiliation, loss of dignity and injury to feelings

[13] As Ms Feng's unjustifiable dismissal claim is made out, she is entitled to a consideration of remedies. As she provided in evidence, the primary impact for her was emotional and she seeks compensation for humiliation and injury to feelings pursuant

to s 123(1)(c)(i) of the Act. I have considered the submissions and evidence from both parties in order to quantify an appropriate award of compensation subject to any reduction for contribution.

[14] Both representatives provided a range of cases in their submissions. Looking to those cases as comparators, Mr Plunket sought an award of $20,000 to $25,000. There is no evidence in support of such a claim looking at other awards in similar circumstances.

[15] Cases referred to by the parties focussed in part on duration of employment. I take note of the comments in *Richora Group v Cheng* [2018] NZEmpC 18 where Chief Judge Inglis said that:[1]

> the degree of harm cannot be measured by reference to timeframe alone. Accordingly, I do not think it appropriate to automatically adopt a sliding scale of award having regard to length of employment.

[16] I differentiate Ms Feng's circumstances from recent Authority cases such as *Bell v Hubergroup New Zealand Ltd* [2025] NZERA 561 where Ms Bell had over 30 years of service and was awarded $25,000 compensation when dismissed from her lifelong career of choice after both substantive and procedural deficiencies by her employer.

[17] From Ms Feng's perspective, the dismissal was unexpected and immediate. The sudden end to the employment is a relevant factor.[2] There was no opportunity to clarify or discuss the decision with her employer, no opportunity to seek support, the notification was sent by email and the dismissal was without notice. I accept the evidence by both Ms Feng and Mr Liu that the dismissal had a mental health impact on Ms Feng.

[18] As Ms Feng's friend, Mr Liu gave evidence on the emotional support he provided to Ms Feng. He said that she initially stopped communicating, was very anxious about finances and did not want to go out socially. She was in New Zealand with a limited support network and he was concerned for her mood as she would often be in tears when communicating with him. They met up approximately one month after

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[1] *Richora Group Ltd v Cheng* [2018] NZEmpC 18, at [58] and [59].
[2] Above n 1 at [53].

her dismissal and he continued to support her online. Mr Liu's evidence confirms the initial impact of the dismissal on Ms Feng's mental wellbeing and notes that "thankfully she found some new income a few weeks afterwards but before that, she was very anxious".

[19] As Yoga Limited noted, Ms Feng's medical certificate was non-specific on the reason she was medically unfit for work. There was insufficient detail to link this to the dismissal as the cause. The accompanying paper noting WINZ and the Authority also raises concerns about the reason for the medical certificate. I place minimal weight on the medical certificate provided in evidence.

[20] I consider that the stress caused to Ms Feng was at a low level compared to similar cases but based on the evidence from Ms Feng and Mr Liu it was very real and impactful for her in the first few weeks. Evidence was not presented to suggest that Ms Feng has serious and ongoing health consequences. Fortunately, Ms Feng had the confidence and resilience to apply for another role relatively quickly and move forward. An award of $8,000 under s 123(1)(c)(i) of the Act is appropriate.

Reimbursement of lost wages

[21] Ms Feng also claimed lost wages. With respect to this claim, s 128(2) of the Act requires the payment of the lesser of a sum equal to lost remuneration or three months' ordinary time remuneration. The Authority may, in its discretion under s 128(3) of the Act, order payment of a greater sum by way of compensation for remuneration lost by that employee as a result of the personal grievance.

[22] In the amended statement in reply received on 28 July 2025, Yoga Limited accepts Ms Feng lost remuneration as a result of the dismissal and that $4,400 (for the period 6 March 2024 to 4 April 2024) is an appropriate award for lost remuneration under s123(1)(b) and 128 Employment Relations Act 2000.

[23] Ms Feng was able to mitigate her financial loss of income obtaining new employment within four weeks of her dismissal.

[24] The evidence presented by Ms Feng on her financial stability or financial loss was conflicting. Ms Feng's mortgage payments were greater than the amount she

earned each week from Yoga Limited and account details showed income sources from other individuals. While there were complexities to navigate, I do not consider that Ms Feng suffered financially beyond the four week notice she would likely have received if her employment was terminated with notice.

[25] The impact of the decision on Ms Feng's career and professional reputation was also considered. This was not Ms Feng's long term career path. She joined this new career as an apprentice. Prior to this she had worked in an office-based role with Mr Liu. The impact of the dismissal decision from a loss of career perspective was minimal on Ms Feng compared to others who may lose a lengthy and enduring career when dismissed.

[26] While after the fact, Yoga Limited's acknowledgement that the termination of Ms Feng's employment amounted to unjustified dismissal is recognised. As impact on personal reputation is a factor to consider, this action has eliminated the requirement for a substantive Authority investigation and reduced any negative impact on Ms Feng's personal reputation, if there was any.

[27] Ms Feng would likely have been entitled to her four week notice period if the disciplinary process resulted in termination of employment and was conducted as required under the Act. I see no need to depart from what is proposed by Yoga Limited. As such, I award Ms Feng $4,400 in lost wages for the four-week period to 4 April 2024.

Contributory conduct

[28] Section 124 of the Act requires the Authority to consider the extent to which the actions of the employee contributed towards the situation that gave rise to the personal grievance and if a reduction in remedies is required.[3]

[29] There is evidence that Ms Feng should reasonably have known that since January 2024 she was not performing to the level required by Yoga Limited. As a small business, Ms Burns needed Ms Feng to do what was needed as a "Studio Manager Yoga and Pilates Instructor" within the studio. The emails and texts show that Ms Feng did

[3] Employment Relations Act 2000, s 124.

not see herself as a studio manager and this was demonstrated in her lack of responsibility for the success of the studio move in Ms Burns's absence. She was aware that Ms Burns was overseas and even with short notice, it was reasonable to expect that Ms Burns could rely on her studio manager to take a leadership role managing the move.

[30] Having reviewed Ms Burns statement, she faced unexpected challenges while overseas and expected Ms Feng to take the initiative to manage the move whereas Ms Feng waited for instruction from Ms Burns. As the disconnect was a miscommunication rather than any specific contribution to the situation leading to the personal grievance, I do not consider it requires a reduction in remedies awarded.

Penalty

[31] Mr Plunket claims a penalty should be awarded for a breach of good faith by Yoga Limited.

[32] Ms Burns has accepted that she made errors in the management of the employment relationship with Ms Feng. The breaches of good faith in the employment relationship were evident throughout the evidence provided, but there were several mitigating factors relating to Ms Burns that I would be remiss not to consider. Her actions dismissing Ms Feng seemed driven by frustration rather than any good faith breach or intention to mislead or deceive.

[33] There was no evidence provided to suggest that the actions of Ms Burns or Yoga Limited met the threshold of the Act for a penalty to be awarded.[4] I also note that the good faith breach originally related to claims related to s 130 of the Act and that claim was withdrawn.

Orders

[34] For the above reasons I order Yoga Limited to pay Ms Feng within 28 days of the date of this determination:

(a) $8,000 in compensation under s 123(1)(c)(i) of the Act; and

(b) $4,400 under ss 123(1)(b) and 128 of the Act.

[4] Employment Relations Act 2000, s 4A.

Costs

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

[36] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Ms Feng 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, Yoga Limited 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.

[37] 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.[5]

Helen van Druten
Member of the Employment Relations Authority

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