

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 805
3386063

BETWEEN	HAOCHEN GUO Applicant
AND	SU'S INVESTMENT LIMITED Respondent

Member of Authority:	Simon Greening
Representatives:	William Zhang, counsel for the Applicant No appearance for the Respondent
Investigation Meeting:	4 December 2025
Submissions received:	4 December 2025 from the Applicant
Determination:	12 December 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Haochen Guo was employed as a chef by Su's Investment Limited (SIL), trading as the Coffee Studio, from 27 February 2023 until he was dismissed on 20 August 2025.

[2] Cassy Su is a director of SIL and manages Coffee Studio.

[3] On 13 May 2025 Ms Su sent Mr Guo a series of WeChat messages complaining about his food preparation skills.

[4] On 14 May 2025 Mr Guo received another WeChat message from Ms Su advising due to his unprofessional behaviour and poor performance he was receiving a warning and immediately suspended.

[5] Later in the afternoon Mr Guo sent a WeChat message to Ms Su to clarify whether his suspension was paid or unpaid. Further, Mr Guo wrote if SIL did not advise whether his suspension was paid or unpaid by the end of the day, then he would return to work the following day.

[6] Mr Guo did not receive a response from SIL.

[7] The following day, Mr Guo returned to work. Mr Guo arrived at the café at the beginning of the day. The alarm went off when he opened the front door. He then attempted to call Ms Su and sent her a message on WeChat asking why the alarm code had been changed. Ms Su sent Mr Guo the new alarm code and a message on WeChat:

Please have the right attitude. Please perform good duty as a chef.

[8] Mr Guo tried to arrange a meeting with Ms Su to discuss the suspension and the break-down in the employment relationship. Over a period of two days, Mr Guo sent Ms Su a number of WeChat messages and emails requesting information about her decision to suspend him, whether a meeting could be organised, and expressing his desire to resolve matters “professionally” rather than escalating to mediation services.

[9] Mr Guo received no response from SIL. At the end of May, Mr Guo lodged an application for mediation with the Ministry of Business Innovation & Employment (MBIE). SIL did not engage with MBIE. Mr Guo continued to attend work, however Ms Su and Mr Guo did not discuss any work-related issues.

[10] On 15 July 2025 Mr Guo injured his wrist at work. He provided several medical certificates to SIL. Mr Guo was due to return to work on 17 August 2025.

[11] On 5 August 2025, whilst he was on ACC related sick leave for his injury, Mr Guo received notice from SIL of termination of employment due to redundancy.

[12] Mr Guo emailed Ms Su requesting further information about why the decision had been made to disestablish his position. Ms Su did not respond to Mr Guo’s information request.

[13] Mr Guo’s employment agreement was terminated by SIL on 20 August 2025.

[14] Mr Guo seeks compensation for hurt and humiliation because he says SIL did not provide him with a healthy and safe work environment and dismissed him unfairly. Mr Guo obtained new employment on 11 September 2025. Mr Guo seeks lost remuneration for the period 20 August to 11 September 2025. Mr Guo also seeks payment of his outstanding annual leave balance.

The Authority's investigation

[15] Mr Guo lodged a statement on problem with the Authority on 17 June 2025 and an amended statement of problem on 23 September 2025.

[16] SIL did not lodge a statement in reply or amended statement in reply. SIL has not sought leave to do so out of time. I am satisfied service had been affected in accordance with the regulations.¹

[17] The statement of problem and amended statement of problem were couriered to SIL's registered office address respectively on 8 July 2025 and 4 August 2025.

[18] On 1 October 2025 a case management conference was held to progress this application as advised to the parties by earlier directions of the Authority. Several attempts were made to contact SIL by mobile and landline phone. A call to a mobile phone was disconnected by the recipient after the Authority announced the purpose of the call. The case management conference continued in the absence of the respondent having received a fair opportunity to participate.

[19] Subsequent to the case management conference (CMC), Authority directions dated 1 October 2025 were emailed to the parties. The directions set out the topics discussed at the CMC, including issues for determination and information parties were directed to lodge with the Authority. The notice of investigation meeting was also couriered to the parties at the same time.

[20] At the scheduled start time of the investigation meeting, SIL was not in attendance. At my direction the investigation meeting commenced 15 minutes after the advised start time to accommodate possible lateness on the part of SIL.

¹ Employment Relations Authority Regulations 2000, reg 16.

[21] For the Authority's investigation a written witness statement was lodged by the applicant. The parties had a written individual employment agreement in place. Under affirmation, the applicant answered questions from me.

[22] 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

[23] The issues requiring investigation and determination are:

- (a) Did SIL unjustifiably disadvantage Mr Guo by its decision to suspend him?
- (b) Did SIL unjustifiably disadvantage Mr Guo by failing to provide a healthy and safe work environment?
- (c) Did SIL unjustifiably disadvantage Mr Guo by failing to provide him with his holiday and leave records, upon request?
- (d) Did SIL breach s130(2) of the Act by not providing Mr Guo a copy of his wages and time record, and if so, should a penalty be imposed?
- (e) Did SIL unjustifiably dismiss Mr Guo?
- (f) Does SIL owe Mr Guo annual leave?
- (g) If a personal grievance is established, what remedies (if any) should Mr Guo receive, including consideration of:
 - i. Compensation under s 123(1)(c) of the Act; and
 - ii. Reimbursement of lost wages under s 128(2) of the Act.
- (h) Should any remedy awarded be reduced under s 124 of the Act for blameworthy conduct by Mr Guo which contributed to the circumstances which gave rise to the grievance?
- (i) Is either party entitled to an award of costs?

Was Mr Guo unjustifiably disadvantaged by SIL's decision to suspend him?

[24] A personal grievance for unjustified disadvantage is a claim that an employee's employment, or one or more conditions of the employee's employment, is or are affected to the employee's disadvantage by some unjustifiable action by the employer.²

² Employment Relations Act 2000, s 103(1)(b).

[25] The Authority is required to consider the actual effect of the employer's decision by focusing on what has occurred and then assessing the impact on the employee's employment.³

[26] Mr Guo says he was unjustifiably disadvantaged by the decision of SIL to immediately suspend him without notice on 14 May 2025.

[27] On 14 May 2025, Mr Guo received the following message from Ms Su:

During your working hours, you don't even do the most basic kitchen tasks that a chef should do anymore. In the past two years of your employment, your frequent slacking off and making excuses to avoid work have been noticed by everyone. Now you've even started deliberately doing things that affect the quality of the dishes and shown completely unprofessional behaviour. This kind of behaviour is absolutely intolerable. We must issue you a serious warning. You are suspended from work starting today for correction. Take this time to reflect and develop the proper attitude of a chef.

[28] Mr Guo sent two WeChat messages and an email to Ms Su asking about why he had been suspended and expressing his desire to resolve the matter professionally. Mr Guo wrote he would return to work the following day if he did not receive a response. Ms Su did not respond to Mr Guo.

[29] An employer is generally required to give notice to an employee of a proposal to suspend and seek the employee's comments before the decision is made.⁴

[30] The employment agreement did not expressly give SIL the right to suspend Mr Guo. On the same day as receiving the suspension notice, Mr Guo emailed SIL requesting an explanation for his suspension and raising concerns about the lack of due process. In his email, Mr Guo explained how upset he was to have received notice of suspension without warning or justification.

[31] Although the suspension did not take effect because Mr Guo returned to work on 15 May, SIL did not provide an opportunity for Mr Guo to comment on its decision, follow a fair process, or respond to his concerns. In addition, the notice did not specify whether the suspension was paid or unpaid. This created financial uncertainty for Mr Guo. These were not the actions of a fair and reasonable employer. Mr Guo was

³ *Wiles v The Vice-Chancellor of the University of Auckland* [2024] NZEmpC 123 at [98].

⁴ *E TU Incorporated v Singh* [2024] NZEmpC 84 at [54].

unjustifiably disadvantaged by SIL because it failed to follow a fair process in respect of its decision to suspend Mr Guo.

[32] Mr Guo's personal grievance for unjustified disadvantage has been established.

Was Guo unjustifiably disadvantaged because SIL did not maintain a healthy and safe work environment?

[33] SIL owed an implied duty to Mr Guo to maintain a healthy and safe work environment. The content of this implied duty is informed by the Health and Safety at Work Act 2015.⁵ Section 36 of this Act provides that employers must ensure, so far as is reasonably practicable, the health and safety of employees while at work.⁶

[34] The requirement to take all practicable steps to ensure an employee's safety only arises where an employer knows, or ought to reasonably know, about the circumstances giving rise to the risk of harm.⁷

[35] Mr Guo says that SIL did not maintain a healthy and safe work environment because he was bullied by Ms Su.

[36] Mr Guo cites the following as examples of bullying:

- (a) He was ignored by Ms Su when he attempted to address the unlawful suspension and his concerns about being treated unfairly. On 15 May 2025 he sent a WeChat message to Ms Su:

I hope we can have a formal meeting to clarify misunderstandings face to face.
Every employee has the right to respond to a complaint.
I feel you have ignored even refused my request.
Today I tried to explain the situation, you said you don't want an explanation.
I feel disrespected.

- (b) He felt upset the alarm code had been deliberately changed so that he would have difficulty attending work on 15 May 2025.

- (c) For three days each week Mr Chang, another employee of SIL, would support Mr Guo in the kitchen. However, in April 2025 Mr Chang resigned. Mr Guo was the sole chef with a heavy workload. Mr Guo felt like he was

⁵ *Robinson v Pacific Seals New Zealand Ltd* [2014] NZEmpC 99 at [25].

⁶ Health and Safety Act 2015 s 36(1).

⁷ Above n 5 at [29].

not allowed to take toilet breaks. For example, on 11 May (Mother's Day) he tried to take a break to go to the toilet, however Ms Su asked her friend to go to the toilet area and call Mr Guo back to the kitchen.

[37] An employer's failure to address bullying may give rise to an unjustifiable disadvantage claim.⁸ In *FGH v RST* the Employment Court referred to the definition of bullying in the WorkSafe Guidelines which states:⁹

Workplace bullying is repeated and unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety.

[38] SIL did not provide Mr Guo with a healthy and safe work environment. Ms Su ignored Mr Guo's attempts to constructively work through the concerns, changed the alarm code causing Mr Guo to feel like he was a "burglar" when he arrived at work on 15 May, and did not address significant workload concerns faced by Mr Guo.

[39] Ms Su's conduct was unreasonable and undermined the trust in the employment relationship. Mr Guo has been disadvantaged by SIL's failure to provide a healthy and safe work environment due to the emotional distress he experienced at work.

Did SIL unjustifiably disadvantage Mr Guo by failing to provide him with his holiday and leave records upon request?

[40] Mr Guo did not receive a further payslip after 7 August 2024.

[41] From December 2024, Mr Guo raised concerns with Ms Su about whether his annual leave and sick leave balances were correct.

[42] There was no response from Ms Su. In April 2025 Mr Guo followed up again with Ms Su about his concerns regarding leave entitlements being recorded correctly. This time Ms Su did reply advising the accountant would provide information about his leave entitlements in due course.

[43] On 8 May 2025, Ms Su sent Mr Guo a screenshot of one pay slip. This pay slip covered the period 14 April to 27 April 2025.

⁸ *FGH v RST* [2018] NZEmpC 60 at [201].

⁹ Above n 8, at [210].

[44] Mr Guo was not able to determine his annual leave balance from the one payslip that was provided.

[45] Mr Guo was disadvantaged by SIL's decision to not provide him holiday and leave records because he was unable to determine his annual leave balance and what SIL owed him, and what annual leave he was entitled to take whilst employed.

[46] SIL's failure to provide this information prejudiced Mr Guo's ability to bring an accurate claim in respect of holiday pay owing to him.

Did SIL breach s130(2) of the Act by not providing Mr Guo with a copy of his wages and time record, and if so, should a penalty be imposed?

[47] On 22 July 2025, Mr Guo's legal counsel made a request to SIL for the wages and time record for Mr Guo. SIL did not respond to this request.

[48] SIL had an obligation to comply with this statutory obligation. At various times during the employment relationship, Mr Guo expressed his concerns to Ms Su regarding correct pay.

[49] Section 133A sets out a number of factors the Authority must have regard to in determining an appropriate penalty. In addition, the full Court in *Borsboom v Preet PVT Ltd* has set out other factors that must be considered when determining a penalty application.

[50] A penalty is justified in the circumstances. There was no genuine engagement by SIL with Mr Guo's request. The breach occurred while the employment relationship was on foot. The failure of SIL to engage with Mr Guo undermined the employment relationship.

[51] A penalty of \$500 is appropriate in the circumstances. This sum is to be paid to the Crown.

Was Mr Guo unjustifiably dismissed by SIL?

[52] The legal test for determining whether a dismissal is justified, is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred.¹⁰

[53] The Authority must also have regard to the resources available to the employer when considering the employer's actions in context.¹¹ However even small-scale employers, like SIL which operates a café, are required to follow a basic redundancy process.¹²

[54] Mr Guo was dismissed on 15 August 2025 on the basis that his position was made redundant. In *Grace Team Accounting Limited v Brake* the Court of Appeal explained the legal basis for making a position redundant and the process an employer is required to follow.¹³ Applying the legal principles in *Brake*, SIL's decision to dismiss Mr Guo was unjustified because:

- (a) SIL did not consult with Mr Guo before the decision was made to disestablish his position and terminate the employment agreement.
- (b) SIL did not provide any information to Mr Guo or provide a proposal seeking his feedback before the decision was made to make his position redundant.¹⁴
- (c) Because SIL did not provide Mr Guo with any information in support of its business case for disestablishing his position. On the face of it, there was no genuine reason for making Mr Guo's position redundant especially in light of Mr Guo's key role as the sole chef for the café.
- (d) SIL provided Mr Guo with notice of termination of employment by reason of redundancy on 5 August 2025.

[55] Mr Guo has established a personal grievance for unjustified dismissal.

¹⁰ Employment Relations Act 2000, s 103A(2).

¹¹ *E TU Incorporated v Singh* [2024] NZEmpC 84 at [49].

¹² *Stormont v Peddle Thorp Aitken Limited* [2017] NZEmpC 71 at [71].

¹³ *Grace Team Accounting Limited v Brake* [2014] NZCA 541 at [85].

¹⁴ Employment Relations Act 2000, s 4(1A)(c).

Does SIL owe Mr Guo annual leave?

[56] Mr Guo has worked out, based on his limited records, that his unpaid annual leave entitlement equates to \$1,638.

[57] I am satisfied SIL's failure to provide holiday and leave records to Mr Guo prevented him from bringing an accurate claim. This sum is therefore owed to Mr Guo.

[58] It is appropriate that interest based on the calculation provided by the civil interest debt calculation is applied to this sum and paid to Mr Guo.¹⁵

Remedies

[59] Mr Guo has established personal grievances for unjustified disadvantage and unjustified dismissal. He is entitled to a consideration of the remedies sought.

Compensation for humiliation, loss of dignity and injury to feelings

[60] An award of compensation is for the impact on the employee of the personal grievance and not intended as a punitive action to signal disapproval of the employer's conduct.¹⁶ In considering an award of compensation, the assessment required is the nature and extent of harm caused to the employee by the employer's breach.¹⁷

[61] I listened carefully to Mr Guo's evidence at the investigation meeting. Mr Guo did not feel "emotionally safe" at work following SIL's abrupt decision to suspend him, change the alarm code, and ignore him on his return to work. Mr Guo felt anxious going to work each day because of the way the employer had acted. Mr Guo explained to me that he had lost his confidence.

[62] Like the suspension decision, the decision to terminate Mr Guo's employment on the grounds of redundancy without consultation or any form of process, and while he was on ACC related sick leave, caused significant emotional harm to Mr Guo. Mr Guo felt uncertain and anxious about his future financial situation.

¹⁵ www.justice.govt.nz/fines/civil-debt-interest-calculator.

¹⁶ *Paykel Ltd v Ahlfield* [1993] 1 ERNZ 344 at [342].

¹⁷ *Pyne v Invacare New Zealand Limited* [2023] NZEmpC 179 at [41].

[63] SIL did not respond to Mr Guo's request for information about his annual leave entitlements and balance. All of these actions by SIL had a significant emotional impact on Mr Guo.

[64] Taking all of these factors into account, an award of compensation under s 123(1)(c)(i) of the Act is appropriate in this case:

- (a) \$8,000 for the disadvantage claim arising from bullying in the workplace.
- (b) \$16,000 for the dismissal claim.
- (c) \$1,000 for the disadvantage claim arising from SIL not Mr Guo with holiday and leave records.

Reimbursement of lost wages

[65] The Authority must order the employer to pay the lesser of a sum equal to that lost remuneration or to three months' ordinary time remuneration, subject to contribution and the discretionary power in s 128(3) of the Act to order an employer to pay a greater sum.¹⁸

[66] Mr Guo's final day of employment was 20 August 2025. Mr Guo secured new employment on 11 September 2025. During the intervening period Mr Guo considered other roles, but none of the roles were suitable for his set of skills as a chef. The steps Mr Guo took in the period between the loss of job and securing new employment were reasonable, therefore he is entitled to recover his losses for that period which amount to \$2,784.¹⁹

Contribution

[67] The Authority must consider whether there ought to be a reduction in the remedies that would otherwise have been awarded to the employee.²⁰ This in turn requires an assessment of the extent to which the actions of the employee contributed towards the situation that gave rise to the personal grievance and whether those actions require a reduction in remedies.²¹

¹⁸ Above n 7 at [28].

¹⁹ *Maddigan v Director-General of Conservation* [2019] NZEmpC 190 at [64].

²⁰ Employment Relations Act 2000, s 124.

²¹ Above n 7 at [39].

[68] There must be a causal connection between the employee's conduct and the situation which gave rise to the dismissal.²²

[69] The onus is on the employer to establish performance concerns were properly brought to the attention of the employee and an opportunity provided to address these performance concerns before a reduction in remedies under s 124 would be contemplated.²³

[70] SIL did not follow any sort of process in addressing the performance concerns it had concerning Mr Guo. Accordingly, no reduction in remedies is made under s 124 of the Act.

Orders

[71] Within 21 days of the date of this determination I order:

- (a) SIL pays Mr Guo the sum of \$25,000 as compensation pursuant to section 123(1)(c)(i) of the Act; and
- (b) SIL pays Mr Guo the sum of \$2,784 (gross) for lost remuneration arising from his dismissal; and
- (c) SIL pays Mr Guo the sum of \$1,648 (gross) being the sum of outstanding holiday pay owed to Mr Guo; and
- (d) SIL pays the Crown a penalty of \$500 under s130(4) of the Act.

Costs

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

[73] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Guo 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, SIL 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.

²² *Salt v Fell* [2008] NZCA 128 at [78].

²³ *Paykel v Ahlfeld* [1993] 1 ERNZ 334 (EmpC).

[74] 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.²⁴

Simon Greening
Member of the Employment Relations Authority

²⁴ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.