

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-A-TARA ROHE**

[2025] NZERA 299  
3303180

BETWEEN                      KALANI HENDERSON  
   Applicant  
  
AND                                NC HOSPITALITY LIMITED  
   Respondent

Member of Authority:        Claire English  
  
Representatives:              Kalani Henderson in person  
   Naveen Chhabra for the Respondent  
  
Investigation Meeting:        20 February 2025 in Tauranga  
  
Submissions received:        Up to 5 March 2025 from Applicant  
   Up to 18 March 2025 from Respondent  
  
Determination:                28 May 2025

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment Relationship Problem**

[1]     The applicant, Ms Kalani Henderson, worked for NC Hospitality Limited (NC) from 23 April 2023 to December 2023, as a cook at NC’s hotel and bar in Waihi Beach, working 20 to 30 hours per week. Ms Henderson was asked by Mr Naveen Chhabra, the owner and director of NC, to work additional hours for approximately six weeks while the business was seeking a new head chef following the retirement of the previous head chef. She agreed to work additional hours for a time. When a new chef was appointed, Mr Chhabra reassigned Ms Henderson to work in the bar and reduced her hours of work to 10 hours per week without consultation with her. She was upset by this and felt that Mr Chhabra must have known that this was not enough for her to live on given that she lived at the hotel and paid weekly rent.

She resigned and raises a claim of (unjustified) constructive dismissal. She seeks compensation for hurt and humiliation, three week's lost wages, and penalties for failing to provide wage and time records and for deductions from wages.

[2] Mr Chhabra on behalf of NC, denies these claims. He says that her hours of work would have increased but she resigned before this could occur.

### **The Authority's investigation**

[3] For the Authority's investigation written witness statements were lodged from Ms Henderson, Ms Tamara Whyte (NC's general manager and Ms Henderson's mother); a colleague Ms Melissa Bishell, and Ms Henderson's partner Ms Heidi Matijevich. The respondent company was represented by its sole director, Mr Chhabra. All witnesses answered questions under affirmation from me. The parties also gave oral and written submissions.

[4] 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**

[5] The issues requiring investigation and determination were:

- (a) Was Ms Henderson unjustifiably (constructively) dismissed?
- (b) If NC's actions were not justified, what remedies should be awarded, considering:
  - Lost wages (subject to evidence of reasonable endeavours to mitigate loss); and
  - Compensation under s123(1)(c)(i) of the Act;
- (c) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Ms Henderson that contributed to the situation giving rise to her grievance?
- (d) Should penalties be awarded in relation to deductions from wages, and failures to provide wage and time records?

## **Background**

[6] Ms Henderson was an experienced hospitality worker and a trained barista. In April 2023, her mother Ms Whyte took up a General Manager role at NC's restaurant and bar. As part of this, Ms Whyte understood that there was an opportunity for a café operation and arranged for Ms Henderson to join her in that business.

[7] Ms Henderson saw this as a good opportunity to have more autonomy, and to enjoy a different pace of life with accommodation provided together with the job. She resigned her employment and moved to Waihi to take up the new position with NC.

[8] When Ms Henderson arrived, there was some confusion as the owner and director of NC, Mr Naveen Chhabra, was not prepared for her arrival. However, he negotiated terms of employment with her, and it was agreed that Ms Henderson would work 20 hours per week in the kitchen assisting the chef. In the event, Ms Henderson's hours did vary somewhat from week to week, but her evidence is that she worked up to 30 hours per week, and rarely less than 20 hours in a week.

[9] The chef in the kitchen where Ms Henderson worked was retiring as of 1 November 2023 and had signalled this to staff including Ms Henderson and Mr Chhabra in advance. For unrelated reasons, Mr Chhabra had to travel overseas to visit family at this time.

[10] Mr Chhabra advertised for a replacement chef, however, was unable to hire a replacement chef before he had to go overseas. He spoke with Ms Henderson and asked her if she would be willing to do more hours in the kitchen as essentially a short-order cook, for a period of a few weeks until he was able to hire a new chef.

[11] Ms Henderson agreed to take on this additional work. For approximately 6 weeks, from the end of October of November through to the beginning of December, she worked 35 to 40 hours in the kitchen. She found this stressful and tiring but was willing to do this in the short term. Ms Henderson was paid on an hourly rate and was paid for the additional hours that she worked, with one exception, that being that she was not always able to take a meal break as there were insufficient staff.

[12] On 10 December 2023, Ms Henderson took a day's sick leave. Mr Chhabra told her that she was not entitled to sick pay, and did not pay her for that day. Ms Henderson

complained about this, advising that she was entitled to sick leave and that she would contact an employment lawyer if needed. Mr Chhabra then paid her a day's sick leave in her next pay run. He did not tell her he was going to do this or explain why he had changed his mind.

[13] Mr Chhabra hired a new chef. Ms Henderson was not involved in this process. She recalls that Mr Chhabra turned up at the resultant one day together with the new chef, and the new chef started working that day. She was expected to train him. On 16 December 2023, she queried her employment status with Mr Chhabra via text but received no response. On 17 December, Mr Chhabra posted the rosters for the following week, assigning Ms Henderson to work in the bar for 10 hours only.

[14] Mr Chhabra had not spoken to Ms Henderson about either reducing her hours or work or moving her from the kitchen to working in the bar.

[15] Ms Henderson complained to Ms Whyte as general manager, who queried this with Mr Chhabra. Mr Chhabra declined to give Ms Whyte more than 10 hours work, or any pay increase.

[16] Ms Henderson then resigned, giving 1 weeks' notice. Her evidence is that she was shocked and disappointed that Mr Chhabra would treat her like this after she had been a hard worker for many months and had agreed to take on extra responsibilities in the absence of a chef and then being asked to train the new chef. She felt that Mr Chhabra had treated her very poorly by suddenly reducing her hours without speaking with her after she had "stepped up" at his request. She also wondered whether the sudden reduction in hours was in retaliation for insisting on being given a day's paid sick leave.

[17] She felt that she could not continue in her employment both on a practical basis as 10 hours work per week was not enough to live on, and more broadly that she could not continue working in circumstances where Mr Chhabra had breached the original agreement with her to provide at least 20 hours work per week and had then failed to change his mind when she complained about the sudden reduction.

[18] She found the sudden reduction in income and loss of employment shocking and humiliating. She said she found it especially difficult as she and her partner lived on premises and had to find somewhere else to live.

[19] She found a new job three weeks later and said that this was a great relief as overall the working conditions were much better for her.

[20] Mr Chhabra's evidence was that when Ms Henderson first asked for sick leave, he declined this because he believed she did not have any entitlement to paid sick leave. When she told him that she was so entitled, he took advice and went back and checked her start date and hours of work. He then accepted that she was entitled to a paid sick day, so he made sure she received this pay in the next pay run. He accepted that he did not speak with her about this or explain his reasoning or what he was going to do.

[21] In relation to his decision to reduce Ms Henderson's hours of work to 10 hours per week only working in the bar rather than in the kitchen, Mr Chhabra said that he had thought that Ms Henderson would find working in the bar acceptable, although he had not discussed it with her.

[22] After hearing Ms Henderson's evidence, Mr Chhabra accepted that he had agreed with her that she would work 20 hours per week, and that she had in fact worked between 20 hours and 30 hours per week during her employment. He also accepted that for a few weeks immediately prior to her resignation, she had worked longer hours in the kitchen at his request.

[23] He said that when the new chef was hired, he did not need Ms Henderson to continue working the hours that she had, and he needed to reduce her hours and the cost of her wages, but that he had not discussed this with Ms Henderson, or considered what her usual hours of work were. He could not explain why he did not offer to reconsider when the complaint was raised with him by email at the time.

[24] In essence, Mr Chhabra made a thoughtful and responsible concession that he had made this decision in haste and had failed to consult with Ms Henderson or consider her needs or her contractual provisions when doing so. He also suggested that things would have changed and Ms Henderson could have expected to be allocated more hours of work if she had remained rather than resigning, although this was not something he discussed with her at the time.

## **Analysis**

[25] I will first consider Ms Henderson's claim that she was constructively dismissed, followed by her claims for remedies and penalties.

[26] The essential questions to be addressed in a constructive dismissal claim have been described as<sup>1</sup>:

- a. What were the terms of the contract?
- b. Was there a breach of those terms by the employer that was serious enough to warrant the employee leaving?

[27] The evidence was clear that Ms Henderson was to work 20 hours per week, mainly in NC's kitchen, paid on an hourly rate, with additional hours worked and paid for by agreement. By all accounts, Ms Henderson's hours of work were consistent with this throughout her employment, with her consistently working 20 hours per week or more. The exception to this was the period when she agreed to work, and did work, extra hours in the kitchen pending the hiring of a new chef. Significantly, and consistently with what had occurred previously, this was an increase in her hours of work not a decrease.

[28] Mr Chhabra reduced her hours to a mere 10 hours per week, without Ms Henderson's agreement, and without consulting with her at all. In addition, he moved her place of work and associated duties from the kitchen to the bar. The sudden reduction of her hours coupled with the change in duties, was a breach of Ms Henderson's agreed terms and conditions of employment. The breach is exacerbated by three things, namely the failure to consult with Ms Henderson, the timing of this coming immediately after Ms Henderson had agreed to take on extra work and responsibility in the absence of a chef and then training the new chef, and Mr Chhabra's refusal to revisit this decision or discuss it directly with Ms Henderson when it was queried.

[29] Taking all this into consideration, I find that this was a breach that was sufficiently serious to warrant Ms Henderson's resignation. It is particularly significant that Mr Chhabra did not show any inclination to engage with Ms Henderson after she raised concerns about the sudden drop in her hours of work. Although Mr Chhabra suggested that this was or could have been a temporary change and that if Ms Henderson had not resigned, he would at some point have increased her hours again, he never told Ms Henderson this at the time, and this suggestion is not matched by his lack of communication and engagement once Ms Henderson complained.

---

<sup>1</sup> In *Wellington etc Clerical etc IUOW v Greenwich (t/a Greenwich and Associates Employment Agency and Complete Fitness Centre)* (1983) ERNZ Sel Cas 95 (AC) at 112–113.

[30] I find that Ms Henderson was unjustifiably (constructively) dismissed. She is entitled to remedies accordingly.

### **Remedies**

[31] Ms Henderson claims remedies of three week's lost wages, and compensation for hurt, humiliation, and injury to feelings<sup>2</sup>.

[32] In relation to the claim for lost wages, Ms Henderson's evidence is that she actively searched for work and found another job three weeks after leaving. She has claimed for three weeks lost wages, at her agreed hourly rate of \$22.70 per hour, for 20 hours per week. This amounts to a weekly sum of \$454.00 gross per week, times three, being \$1,362.00. Orders are made accordingly.

[33] For the avoidance of doubt, although Ms Henderson gave evidence about certain days when she did not take a full 30-minute break, she made no claim for this in her statement of problem or in her witness statement which quantified her claims, so I make no orders in this respect.

[34] Ms Henderson has also claimed for compensation for hurt, humiliation, and injury to feelings. I have summarised her evidence as to the impacts on her above. Her partner Ms Heidi Matijevich also gave evidence on Ms Henderson's behalf about the impacts on her that she had observed.

[35] I accept their evidence, and I am of the view that the sudden change in her hours and duties had an adverse impact on Ms Henderson in all the circumstances, such that compensation should be properly awarded for these impacts. In reaching this conclusion, I have also been mindful that Ms Henderson and others gave evidence that she found the additional hours of work in particular, when she was working in the absence of a chef, very stressful and exhausting, such that when she resigned, she felt a sense of relief. I have set out above that she agreed to take on this extra work, and consider it appropriate to make an award that takes into account the impacts of her constructive dismissal only. I find that the sum of \$15,000 is sufficient to account for this. Orders are made accordingly.

---

<sup>2</sup> I understand from the evidence given at the investigation meeting, that a claim for 1 weeks wages being her notice period had been resolved as this was in the end paid.

[36] I have considered whether any reduction in remedies might be required to take into account any conduct by Ms Henderson that contributed to her dismissal. I find there was no such conduct by Ms Henderson. Her hours were not reduced due to any action or inaction on her part. Indeed, when confronted with Mr Chhabra's reduction of her hours, she first queried this and only decided to resign after being told that he would not revisit his decision. Ms Henderson's actions did not contribute to the circumstances that lead to her personal grievance, and no reduction in remedies is required.

### **Penalties for breaches of statute**

[37] Ms Henderson's statement of problem sets out claims that penalties should be awarded for breaches of statute, namely unlawful deductions from wages for rent payments in breach of s 5 of the Wages Protection Act 1983, and a failure to provide wage and time records as required by s 130 of the Act.

[38] Ms Henderson's employment agreement included a clause providing for the deduction of \$125 per week for on-site accommodation. I was provided with an unsigned copy of this agreement, however, both Ms Henderson and Mr Chhabra were consistent in their in-person evidence that the sum had been discussed and negotiated between them at the start of employment. A higher sum had been proposed by Mr Chhabra, but the employment agreement records a lower sum that had been negotiated and agreed. In these circumstances, I decline to find any breach of the Wages Protection Act.

[39] In terms of the failure to provide wage and time records, Mr Chhabra was able to provide handwritten timesheets for Ms Henderson but was not able to provide all the associated payslips, as NC's payroll account had been closed. He stated that payslips had been emailed to Ms Henderson, and that she should have a record of them via her email address.

[40] I am satisfied that Mr Chhabra provided what records he had retained, once he understood that he was obliged to do so. It is also relevant that Ms Henderson did not take issue with the timesheets that were provided. In other words, the timesheets themselves, and the pay received, were not the subject of dispute between the parties.

[41] In these circumstances, I decline to find a breach of s 130 of the Act sufficient to support a penalty claim. No orders are made.

[42] As both parties were self-represented, there is no issue as to costs.

### **Orders**

[43] Ms Kalani Henderson has a personal grievance in that she was unjustifiably (constructively) dismissed.

[44] NC Hospitality Limited is ordered to pay to Kalani Henderson within 28 days of the date of this determination:

- a. The sum of \$1,362.00 gross as compensation for lost remuneration; and
- b. The sum of \$15,000 without deduction as compensation for hurt and humiliation with no reduction for contribution.

Claire English  
Member of the Employment Relations Authority