

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2025] NZERA 474  
3318981

BETWEEN HAILEE-ANNE HIRST  
Applicant

AND AL ENTERPRISES LIMITED  
Respondent

Member of Authority: Antoinette Baker

Representatives: Applicant in person by AVL  
No appearance for the respondent

Investigation Meeting: 4 August 2025

Submissions: On the day

Determination: 5 August 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The applicant, Ms Hirst worked in a bakery (the bakery) operated by the respondent (AL). AL's two directors are Anton and Larissa Balkhausen.<sup>1</sup> Ms Hirst worked in the bakery during the week and also at a weekend market. In April 2024 Ms Hirst says Ms Balkhausen confronted her about market cash takings being short. Ms Hirst says Ms Balkhausen called into her into the bakery twice on her day off (the Sunday after a Saturday market) during which she considers that Ms Balkhausen accused her of theft which included saying that the Police would be called. Ms Hirst denies she stole from her employer who she had regarded as family. She says her feedback was not considered, and she refers to her and another serving from the cash box at the market stall. Ms Hirst says that her suggestion that security should

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<sup>1</sup> ://app.companiesoffice.govt.nz/companies/app/ui/pages/companies/6247289. The company is showing a notice of intention to remove.

be installed was ignored. She says she is particularly affronted because she understands that Ms Balkhausen told people in the small town they lived and worked in that she had stolen from her employer. Ms Hirst says that the employment ended unjustifiably and seeks compensation, lost wages and costs.

[2] AL in its response, being a statement in reply that was lodged through its then legal counsel, denies all claims. Ms Balkhausen records denying accusing Ms Hirst of theft and says that it was reasonable for an employer to ask Ms Hirst about the missing money. It denies dismissing her, and that when it became apparent that Ms Hirst thought she was 'fired' AL made it clear she was not. Ms Balkhausen denies telling others that Ms Hirst had stolen money. AL says that after the above, Ms Hirst simply did not return to work and Ms Balkhausen says she knew of other things Ms Hirst was dealing with at the time, so she left her alone. It is not in dispute that Ms Hirst and the directors of AL had a type of familial relationship due to Ms Hirst's prior relationship with their son who also worked at the bakery. It is not in dispute that the bakery closed its business only months after Ms Hirst stopped working there, and the building was demolished in the following months.

### **The Authority Investigation**

[3] The parties attended unsuccessful mediation. Both parties initially instructed representatives through which initiating documents were lodged and responded to. I held a phone conference call with both representatives in which the claims were refined. Ms Hirst's representative withdrew a claim of constructive dismissal for their client. An earlier claim for incorrect final pay had been rectified and was not longer claimed. I directed a timetable for the investigation process including dates for evidence provision. After further confirmation from Ms Hirst's representative, the single issue for investigation was one of unjustified direct dismissal. The position of AL was communicated at this stage through its statement in reply and its then representative. This was that AL had ceased trading and was being 'wound up,' it could not afford any order made, and that it would not take any further steps and leaving any determination to the Authority to decide.

[4] I directed<sup>2</sup> that AL was still to be emailed all documentation in the event the directors considered they would again participate. I also indicated through the same directions that in the event AL did not participate in having evidence tested then any disputes of fact may weigh in favour of sworn or affirmed evidence heard.

[5] Ms Hirst did not lodge evidence as directed. The Authority inquired about this and her representative on record said that Ms Hirst was no longer engaging them. The Authority contacted Ms Hirst directly. Ms Hirst confirmed that she wanted to continue with her claims. By this time, being close to the investigation meeting. Ms Hirst requested all material from the Authority file be resent to her which it was.

[6] AL was sent an earlier notice of investigation meeting and was later emailed a reminder to the investigation meeting which confirmed it would be held by AVL. AL did not provide any further material to the Authority beyond initiating documents referred to above. A further check was made from the earlier solicitor on record for AL as to whether they had instructions. They confirmed they did not.

[7] I held a two-hour investigation meeting by AVL on 4 August 2025. Ms Hirst alone appeared. No one from AL appeared.

[8] The Authority has the power to proceed if any party fails to attend an investigation meeting “without good cause”<sup>3</sup>. Accordingly, I continued with the investigation meeting hearing evidence from Ms Hirst on oath and now make this determination.

[9] This determination states findings and makes conclusions as necessary to bring an end to the employment relationship problem before me and make appropriate orders. It has not recorded all evidence and submissions received.<sup>4</sup>

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<sup>2</sup> Directions of the Authority dated 11 February 2025.

<sup>3</sup> Employment Relations Act 2000, Schedule 2, clause 12

<sup>4</sup> As permitted by s 174E of the Employment Relations Act 2000 (the Act).

[10] I further rely on s 160(3) of the Act and have treated matters before me not necessarily of the type described by the parties. After having investigated based on what is before me, I have concentrated on resolving the employment relationship problem however described.

### **The issues to determine**

[11] The issues for me to determine:

- a. Did AL dismiss Ms Hirst?
- b. If so, was AL justified to dismiss Ms Hirst?
- c. Depending on the above what if any remedies are to be ordered under the Act for:
  - i. Compensation under s 123(1)(c) of the Act?
  - ii. Lost wages under s 123(1)(c)(ii) of the Act?
- d. Under s 124 of the Act are any remedies awarded for unjustified dismissal to be reduced for employee contribution to the grievance?
- e. Are costs to be ordered?

### **Did AL dismiss Ms Hirst? If so, was AL justified to dismiss Ms Hirst?**

[12] The New Zealand Court of Appeal<sup>5</sup> has said the employer in justifying a decision to dismiss needs to have had ‘clear evidence upon which any reasonable employer could safely rely or having carried out reasonable inquiries’ to make a finding that on the balance of probabilities there were ‘grounds for believing ... the employee was at fault.’

[13] Section 103A of the Act sets out the test for justification based on what a fair and reasonable employer could have done in all the circumstances at the time. It is not for the Authority to re-run the employer’s investigation and decide what it thinks the outcome should have been but rather to examine whether the decision was one that was within the range of the justification test. With this in mind I continue.

[14] I find that AL likely dismissed Ms Hirst through my following findings in relation to the sequence of events from 6 April 2024 onwards. I explain my reasons below. I note my findings have been based on documentary material before me and the affirmed oral evidence

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<sup>5</sup> *Airline Stewards & Hostesses of New Zealand Union v Air New Zealand Limited* (1990) 3 NZLR 549 (CA) at 556.

of Ms Hirst against AL's choice not to participate to affirm any evidence that could have been tested in what largely was an undocumented series of events.

*AL first talks to Ms Hirst about missing takings*

[15] I find it likely that Ms Balkhausen phoned Ms Hirst on the afternoon of 6 April 2024 sometime after the bakery's stall at the Saturday market had finished. She asked Ms Hirst about money missing from the cash box takings. Ms Hirst says in oral evidence that this call was cordial and that her response was to say she was very confused that money was missing from the lock box which I accept she had responsibility to transport to and from the market. I accept Ms Hirst's evidence that this was a very short call, and that Ms Balkhausen said she would get back to her if she needed to.

*First meeting*

[16] The following morning was a Sunday and Ms Hirst was not rostered to work. The bakery was closed to the public that day. Ms Balkhausen called Ms Hirst early that morning and asked her to come to the bakery (the first meeting). Ms Hirst thinks she arrived later in the morning having been rung before she had got up. There is no record of reasons for AL to ask their employee to come in on their day off. Given the call the day before, I find it likely based on what is before me that both parties understood it was to further the discussion about the alleged shortfall in the cash takings that Ms Balkhausen had rung Ms Hirst about the afternoon before. When I asked Ms Hirst why she agreed to go into a meeting on her day off when she says she was already anxious about the matter, Ms Hirst explained to me she felt she had no option due to her perception of the authority of Ms Balkhausen and that she herself was a 'people pleaser.' I note again that it is not in dispute that there had been a type of familial relationship between Ms Hirst and Ms Balkhausen. Overall, I found Ms Hirst's evidence about this plausible.

[17] Ms Hirst describes arriving at the bakery and Ms Balkhausen locking the door of the bakery after Ms Hirst entered. I find little that is objectively strange about this because I accept that the bakery was closed to the public that day. I find however that Ms Hirst was genuinely disturbed by this action. It appears not in dispute that the two women were alone in the meeting.

[18] Ms Hirst gave oral evidence that at the first meeting Ms Balkhausen had ‘maths’ workings about the allegedly missing market takings. As I understand it Ms Hirst was responsible for tallying up product sold against cash taken but Ms Balkhausen presented her own workings to Ms Hirst albeit not giving her a copy. Neither party has provided any material about the takings or assessment thereof. Ms Hirst said AL had never before raised issue with market takings which I accept was likely. It seems that AL was investigating not just the takings from the market day prior, but as confirmed in Ms Balkhausen’s written response to grievances her explanation was that, “Following my calculations, cash amounts of upwards of \$400 were missing on *multiple*<sup>6</sup> occasions. [Ms Hirst] was responsible for counting the bakery items sold and the money received. Therefore, I wanted to discuss whether she knew why the money was missing.”

[19] I accept Ms Hirst did not get a copy of any allegations or concerns and that nothing was recorded of this meeting. AL repeats in all documents provided that it was not conducting a disciplinary process. However, a young unsupported employee was being questioned by an older boss who they considered family, who had called her to come to work on her day off to discuss serious matter regarding missing money. It is not a stretch to find this was, on the face of it, the start of a process that could lead to a disciplinary outcome which could have serious consequences if employee fault was found.

[20] I accept from Ms Hirst that there was a second person working on the market stall who also served customers taking and putting cash into the lock box as did Ms Hirst. There is nothing to show AL was asking that person questions or communicated from the outset that they would. Clearly and transparently asking everyone present in relation to cash taking missing or not adding may have gone some way towards a fairer process and countered the reasonably likely inference here taken by Ms Hirst that it was only she being singled out.

[21] I further accept Ms Hirst’s oral evidence that there could be discounts provided when stock was being sold towards the end of the day to move perishable bakery stock, and the bakery owners knew about this and at time suggested it. Ms Hirst says she sometimes looked after regulars or known friends of the Balkhausens with a small discount (she mentioned \$1.00 or so here and there) and did not always record this due to being busy. Even if Ms Hirst

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<sup>6</sup> My emphasis added

did not feed this back when being asked about discrepancies by Ms Balkhausen, I find some likelihood that the manner in which the investigation was being conducted likely did not allow for much feedback or analysis. There is nothing to show AL asked questions about this and I find some plausibility that discounts could have been given towards the end of market day to move on perishable bakery goods.

[22] I accept Ms Hirst's oral evidence that the meeting ended tensely. Ms Balkhausen told Ms Hirst that she would come back to her if she had more questions.

### *Second meeting*

[23] On the afternoon after the above meeting, likely only a short few hours later, Ms Balkhausen rang Ms Hirst again and asked her to come back to the bakery which she did. Ms Hirst says Ms Balkhausen was very 'hostile' on this call. I have nothing to show that anything had changed in AL's investigation by this time. Again, I asked Ms Hirst why she agreed to go back a second time to the bakery on her day off, particularly if there was 'hostility' from Ms Balkhausen. Ms Hirst explained that by then she had talked with others about what to do, that most told her not to go, and one suggestion from an older person was that she could go back and offer a 'solution'. The solution, Ms Hirst says, was that she wanted to suggest that to avoid wrongly accusing employees about missing money, some sort of security system could be installed. Ms Hirst's oral evidence was that once she came back to the bakery and (door locked again) Ms Balkhausen became angry about her suggestion regarding security measures. Ms Hirst says Ms Balkhausen seemed intent on simply getting her to admit to taking money and that during this conversation she said she would call the police. AL's statement confirms that Ms Balkhausen referred to the police in this meeting.

[24] Ms Hirst's oral evidence to me was straight forward in that she explained she felt Ms Balkhausen had simply decided she had stolen the money and was not interested in what she had to say. She says she reacted to this at the second meeting, they both raised their voices, the meeting became heated, and Ms Hirst left the premises and did not return to work after this. In her oral evidence Ms Hirst went on to say that she forgot the door was locked, tried to get out and hit her lip. She claims Ms Balkhausen laughed at this. To the latter I have

nothing of AL's view. However, AL's documentation shows it was not in dispute that this meeting became heated on both sides.

*Communications after Ms Hirst left the workplace*

[25] Ms Hirst emailed the following to Ms Balkhausen the next day (Monday 8 April 2024) which I accept from Ms Hirst would again have been her day off. I find this email provides me with the closest to a contemporaneous recording of at least how Ms Hirst saw the situation soon after the second meeting above:

You have called me in twice on Sunday (my day off) to accuse me of theft. I have never stolen from you. I have no way to defend myself on this charge, as you have dismissed any security measures I've suggested and pointed the finger at me. I have helped establish your business, not only in the bakery, but at the Saturday market as well. It would be counter-productive of me to steal from people who pay my wages. I'm now in a position where I have no job, no income, no way to pay my debts and this has now jeopardised [other matters not necessary to record here.] All over a false accusation of theft, which you never told me about until the weekend.

[26] Ms Balkhausen responded the following morning of Tuesday 9 April 2024 in three sentences:

Good Morning [Ms Hirst]. I didn't fire you. If you want to quit yourself, please work for two weeks.

[27] Ms Hirst confirms she did not respond to the above. She continued to consider, she says, that her employment was over given the circumstances that had played out to that point. Further messaging reinforces that in reality the employer did not expect Ms Hirst to return to work. Ms Balkhausen's son (A) in messaging with Ms Hirst initially appears unaware of the above. Ms Hirst sends copies of the above exchange between her and Ms Balkhausen for him and (suggests) for co-director of AL, Mr Balkhausen. A then sends a message stating it is from his mother saying she does not want to cause Ms Hirst harm and then A asks several times across more than one day for the bakery key back.

[28] Ms Hirst did not return to the workplace and apparently did not again communicate with Ms Balkhausen directly who in turn did not communicate back again to her. Ms Hirst explains an estrangement within the family running the bakery. I find Ms Balkhausen's words in her written response to the grievance raised that she would just leave Ms Hirst alone due to other things that Ms Hirst was dealing with to be inconsistent with what I take to be AL asking Ms Hirst for the key back in the above referred messaging. The message from A that Ms Balkhausen 'doesn't want to cause you harm' is ambiguous and Ms Balkhausen's, 'If you want to quit yourself, please work for two weeks' coming immediately after Ms Hirst raised serious issues with AL about its investigatory process and her concern she was being accused of something serious that she says she did not do, were not the words or approach of an employer genuinely holding a view that it intended the employment to continue.

[29] I find that on a fine balance, this was a situation where AL dismissed Ms Hirst directly by sending her away. Ms Hirst confirmed to me that words of 'I dismiss you' or the like were not said by Ms Balkhausen in either of the above meetings. While Ms Balkhausen emailed a message to say Ms Hirst was not fired when it was clear that was the interpretation Ms Hirst had taken, this was followed immediately by Ms Balkhausen's words of 'If you want to quit yourself, please work for two weeks.' On its own this would clearly communicate to an employee that they remained employed. However, the second sentence is abrupt after Ms Balkhausen had conducted a set of two rapidly successive informal and unrecorded meetings with a likely inference that she had concluded Ms Hirst was stealing from the business. This could all reasonably have left an employee to conclude that in reality they were not wanted back. The further communications seeking the key back and Ms Balkhausen saying somewhat ambiguously of Ms Hirst that she 'doesn't want to cause you harm' further support the employer's likely intention for Ms Hirst's employment to end.

[30] Based on the above I find Ms Hirst was dismissed and there being no fair process that could have allowed a substantive finding to support, I find the dismissal was unjustified.

## Remedies

### *Compensation under s 123(1)(c) of the Act?*

[31] I accept that Ms Hirst was likely humiliated by AL's procedural approach to investigating what I accept from Ms Hirst were unfairly investigated matters relating to cash takings being short. I note her words to Ms Balkhausen at the time were that it would seem counterproductive for an employee who had helped AL establish their business to steal from that employer. Ms Hirst's evidence was plausible in that she explained that she had sought to return to the bakery after a prior term of employment when she heard Ms Balkhausen may have had health problems. I agree this all adds to the humiliation of the unjustified way that AL through its director treated Ms Hirst.

[32] I remain unclear the extent to which I have sufficient before me to attribute the added potential humiliation described by Ms Hirst. This is about others being told by someone, being in her view likely Ms Balkhausen, that Ms Hirst stole from AL. Ms Hirst says she knew about this because Ms Balkhausen's 'best friend' told her that Ms Balkhausen was telling everyone in town, but this person would not put their name to hearing this. I cannot reasonably, even with the uncontested evidence before me, make a finding about this. AL's documents show that Ms Balkhausen says she did not tell others about this.

[33] I also considered that there were other things happening for Ms Hirst at the time that undoubtedly would have caused her the sort of stress related problems that an unjustified dismissal may cause. I accept her evidence that she had to seek emergency support to have some form of income pending getting another job. She is now in further employment and says it is going well. I will consider the lost earnings below but for now I accept there was a human impact for some weeks after the dismissal in terms of financial stress and perhaps for some time later due to the human impact.

[34] AL has indicated that the bakery business was wound up. Currently the New Zealand Companies Office Register<sup>7</sup> shows the company about to be removed. AL despite representing through its then representative that final accounts were being prepared has done

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<sup>7</sup> See Note 1 above.

nothing to assist me with anything to consider here in terms of AL meeting a financial liability. As such I give little consideration to this factor.

[35] Based on the above and weighing in some of my reservations, compensation of \$10,000.00 is appropriate.

*Lost wages under s 123(1)(c)(ii) of the Act?*

[36] AL challenged in its response that there was a lack of evidence to support a lost earnings claim. Ms Hirst disengaged her representative. Her reasons for this are entirely hers. I accept however that she gave some affirmed oral evidence to me to assist me with a potential wages claim at the investigation meeting. I heard uncontested evidence that she sought and obtained emergency benefit assistance when she finished her employment. That type of financial support is not to be counted against a lost earnings claim. I accept that Ms Hirst then obtained further employment six weeks after her employment ended. I find that is the appropriate time frame to consider a lost wages claim.

[37] Ms Hirst provided affirmed oral evidence about her average earnings at the end of her employment with AL and based on this uncontested evidence I calculate the lost earnings as follows:

- a. Earnings on average for 4 x 8 Hour days + approximately 1 x 9 hours on market days:  
41 hours x \$25.00 gross per hour (\$1,025.00 gross) = \$1,025.00 gross, therefore
- b. \$1,025.00 x 6 weeks = \$6,150.00 gross.

**Outcome**

[38] Based on the above, the outcome is that AL Enterprises Limited is to pay Hailee-Anne Hirst the following:

- a. \$10,000.00 under s 123(1)(c)(i) of the Act.
- b. \$6,150.00 gross under s 123(1)(c)(ii) of the Act.

## **Costs**

[39] While costs can be awarded to a successful party based on the starting point of the Authority tariff<sup>8</sup> Ms Hirst has represented herself apart from the early stage when the proceedings were lodged and I held a phone conference call. The Authority tariff is based on a starting rate for any estimated representation costs towards an investigation meeting with straight forward preparation and evidence provision but not including appearance at mediation. Given that Ms Hirst largely remained unrepresented for what was a very short investigation meeting by AVL I have not made an order for costs.

Antoinette Baker  
Member of the Employment Relations Authority

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<sup>8</sup> [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)