

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 606
3309400

BETWEEN	TAINED HOLLOWAY Applicant
AND	FRANCIS T-CUTTZ LIMITED Respondent

Member of Authority: Matthew Piper

Representatives: Applicant in person
Sylvester Tonga for the Respondent

Investigation Meeting: 29 September 2025 by audio-visual link

Oral Determination: 29 September 2025

Written record issued: 29 September 2025

ORAL DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Francis T-Cuttz Limited (Francis T-Cuttz) operates as a barber in Orewa. Taine Holloway worked for Francis T-Cuttz between September 2023 and April 2024.

[2] Mr Holloway claimed that when he gave four weeks' notice he was resigning from his employment, Francis T-Cuttz summarily ended his employment and did not pay him his notice.

[3] Francis T-Cuttz said that it was entitled to summarily end Mr Holloway's employment, and he was not entitled to be paid his notice.

The Authority's investigation

[4] The Authority held a case management conference (CMC) by telephone in respect of this matter on 30 June 2025, which Francis T-Cuttz did not attend. During the CMC Mr Holloway confirmed the only issues for determination were whether he was entitled to be paid his four weeks' notice pursuant to his employment agreement and whether any issues of costs arose.

[5] Mr Holloway failed to lodge his witness statement by 18 July 2025 as had been directed, and Mr Tonga lodged his late on 18 August 2025. No witness statement in reply was lodged by Mr Holloway.

[6] Given the narrow scope of the issues, the documents already provided and the fact the parties were to be heard from directly, the Authority's investigation proceeded on 29 September 2025. The text message by which Mr Holloway resigned was produced during the investigation meeting and both parties confirmed it was the text sent at the time.

[7] Mr Holloway and Mr Tonga answered questions under affirmation from me and each party was given the opportunity to ask questions of the other. Each party was also provided an opportunity to present legal submissions.

[8] 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

[9] The issues requiring investigation and determination were:

- (a) Was Mr Holloway entitled to be paid for his notice period when his employment ended?
- (b) Should either party contribute to the costs of representation of the other party?

Background

[10] Mr Holloway commenced employment as an Assistant Barber with Francis T-Cuttz on 22 September 2023, pursuant to an employment agreement dated 23 August 2023.

[11] In March 2024 Francis T-Cuttz undertook a review of Mr Holloway's employment agreement and offered him a new agreement on 9 April 2024.

[12] Mr Tonga said the update to Mr Holloway's employment was necessary for a number of reasons, including to accommodate the need to increase Mr Holloway's hourly rate of pay because the minimum wage was moving to \$23.15 from 1 April 2024, and this exceeded Mr Holloway's hourly rate of \$23.00.

[13] Mr Tonga further said that a new agreement was required so that Mr Holloway could become a permanent employee because he was employed pursuant to a trial period position. This position was not accepted by the Authority because the agreement was for employment of an indefinite duration and because any trial period provision had expired in December 2023.

[14] Mr Holloway told Mr Tonga that he did not wish to sign the new agreement and was content to stay on his existing terms. He told the Authority this was because he did not accept the hourly rates proposed.

[15] In a subsequent exchange of emails, Mr Tonga made clear his expectation that Mr Holloway sign the new agreement, including saying that he must "sign it or move on". Under questioning from the Authority, Mr Tonga accepted that he could not force Mr Holloway to sign a new employment agreement.

[16] Mr Tonga was operating under the misapprehension that a change to the minimum wage invalidates an employment agreement that does provide for at least that new minimum rate. This is not correct. An employee's terms and conditions continue to apply where the minimum wage increases even where their employment agreement specifies a lower rate, and the employment relationship continues. All that changes is that the employer is obliged to comply with the Minimum Wage Act 1983 by paying at least the minimum wage¹.

¹ See s 6 of the Minimum Wage Act 1983.

[17] On 15 April 2024 Mr Holloway resigned from his employment by text message and provided four weeks' notice. Although Mr Tonga challenged the validity of the text message on the basis that it was rendered informal by it not being in a letter, this argument was not accepted by the Authority.

[18] In an email to Mr Holloway later on 15 April 2024, Mr Tonga claimed that Mr Holloway's refusal to sign the proposed updated agreement meant it would have been unlawful to continue to employ him. As noted above, this was not correct.

[19] In the same email, Mr Tonga also noted that he understood Mr Holloway had found another job despite his efforts to offer him a better rate. He closed the email by saying that as of 15 April 2024 Mr Holloway was no longer employed by Francis T-Cuttz.

[20] Mr Holloway did not return to work, other than to return company property, and received no payment for his notice period.

Was Mr Holloway entitled to be paid for his notice period?

[21] Mr Holloway's employment agreement said he must give four weeks' notice if he wished to resign from his employment. Mr Holloway gave such notice on 15 April 2024.

[22] The agreement further said that if notice of resignation was given, Mr Holloway may be paid for it rather than being made to work it out. There was no provision in the agreement that allowed Francis T-Cuttz to shorten or not pay Mr Holloway's notice period and no facts were present that would have justified ending the employment relationship summarily as the agreement allowed for in cases of serious misconduct.

[23] For these reasons, Mr Tonga's email of 15 April 2024 immediately ending Mr Holloway's employment and Francis T-Cuttz's failure to pay Mr Holloway his notice was in breach of Mr Holloway's contractual entitlement to be paid for his notice period.

[24] Mr Holloway is therefore entitled to be paid an amount equivalent to that he would have received for his notice period, being \$2,760.

Should either party be awarded costs?

[25] Neither party instructed representatives. Accordingly, no order for costs of representation is made.

[26] Mr Holloway is entitled to be reimbursed the filing fee of \$71.55.

Orders

[27] By no later than 27 October 2025, Francis T-Cuttz is ordered to pay Mr Holloway \$2,760 (gross) being the amount due to be paid to him for his notice period and \$71.55 being reimbursement of the filing fee.

Matthew Piper
Member of the Employment Relations Authority