

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2026] NZERA 8
3361883

BETWEEN	BARLOWE HURIWAKA Applicant
AND	WALTON MOUNTAIN LIMITED Respondent

Member of Authority: Alyn Higgins

Representatives: Dave Cain, advocate for the Applicant
No appearance for the Respondent

Investigation Meeting: 11 December 2025 in Tauranga

Submissions received: From the Applicant at the investigation meeting

Determination: 7 January 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Barlowe Hurikawa was employed by Walton Mountain Limited (Walton) on a farm commencing on 11 September 2023 until his dismissal on 4 October 2023. The job was full time and involved spraying, weed removal, tractor maintenance and other general farm work. Despite requests Mr Hurikawa was never provided with a written employment agreement.

[2] Mr Hurikawa claims that he was unjustifiably dismissed from his employment on 4 October 2023 summarily without notice or reason. At no point before his

dismissal did Mr Hurikawa receive any verbal or written warnings about his performance or conduct or that his employment might be at risk.

[3] Mr Hurikawa says that on 4 October 2023 he'd finished spraying and noticed a missed call from Mr Glen Fleming, the son of Walton's owner Mr John Fleming. Mr Hurikawa called Glen back. Mr Hurikawa says that Glen told Mr Hurikawa something along the lines of, "the old man wants you off the hill" to which Mr Hurikawa asked, "what do you mean off the hill?" Glen Fleming then said, "that's you, you're finished." Mr Hurikawa then asked Glen if he could go and see John Fleming (Mr Fleming).

[4] Mr Hurikawa then drove to Mr Fleming's house at approximately 8.30am. When Mr Hurikawa arrived, he says that it was obvious to him that Mr Fleming was intoxicated as he could smell stale alcohol and there were 5 empty Heineken bottles in front of Mr Fleming and that Mr Fleming was drinking one. Mr Hurikawa says that Mr Fleming's manner was hostile and dismissive. Nevertheless, Mr Hurikawa asked Mr Fleming, "what is going on John?" to which Mr Fleming said, "that's you mate, that's you, you're finished."

[5] Mr Hurikawa says that he felt dumbfounded and shocked and recalls asking Mr Fleming, "with no warning or anything? How come?". Mr Hurikawa says that Mr Fleming then said, "cause I'm the fucking boss."

[6] Mr Hurikawa says that he was given no details of what he'd done wrong or any reason for the dismissal or opportunity to respond to any concerns. The decision was made, and he was told to leave. Mr Fleming requested Mr Hurikawa's farm keys and left. The conversation with Mr Fleming was over in a few minutes. Following the termination on 17 November 2023 Mr Hurikawa sent Mr Fleming a text message requesting a termination letter but never received a reply.

[7] Mr Hurikawa says he felt shocked and humiliated by the sudden dismissal. Mr Hurikawa further says being spoken to and dismissed by an intoxicated person was degrading and for weeks afterwards Mr Hurikawa kept replaying the conversation in his head and trying to think what he'd done wrong. Mr Hurikawa says that he had been proud of his work and to be fired without reason made him doubt his skills and abilities.

[8] After the termination Mr Hurikawa attempted to seek mediation with the Ministry of Business Innovation & Employment (MBIE) but there was no engagement from either Walton or Mr Fleming toward MBIE.

[9] Mr Hurikawa is seeking lost wages for 37 days he was out of work until he secured further employment, compensation for humiliation, loss of dignity and injury to feelings as a result of the dismissal, a penalty against Walton for failing to provide a written employment agreement and costs.

The Authority's investigation

[10] There has been limited engagement from Walton. No Statement in Reply was lodged in response to Mr Hurikawa's Statement of Problem.

[11] A case management conference call (CMC) was held on 12 August 2025 at which timetable directions were issued for the lodgement of written witness statements and a date was set for an investigation meeting. Mr Fleming attended the case management call for Walton. The notice of investigation meeting was sent to an email address for the respondent company listed on the companies register.

[12] A written witness statement was received from Mr Hurikawa. Mr Hurikawa attended the investigation meeting, confirmed his evidence and answered questions under oath.

[13] No witnesses or any other information was received from Walton and neither did any representative of Walton attend the investigation meeting.

[14] At the scheduled start time of the investigation meeting on 11 December 2025 no witnesses or representatives for the respondent were in attendance. The investigation meeting commenced 15 minutes after the advised start time to accommodate possible lateness on the part of the respondents. The Authority Officer also attempted to contact Mr Fleming by telephone on the number used for the CMC in August 2025 that Mr Fleming did attend but with no success.

[15] I am satisfied that Walton and Mr Fleming were made aware of the proceedings because there is also email correspondence to the Authority from an email address on

the company register. I accordingly decided to proceed with the investigation meeting in accordance with clause 12 of Schedule 2 of the Employment Relations Act 2000 (the Act).

[16] The investigation meeting then proceeded by way of formal proof.

[17] As permitted by s 174E of 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 but all information provided in the course of the investigation has been considered.

The issues

[18] The issues requiring investigation and determination were:

- (a) Was Mr Hurikawa unjustifiably dismissed?
- (b) If Mr Hurikawa was unjustifiably dismissed, what remedies should be awarded, considering:
 - (i) Compensation for humiliation, loss of dignity, and injury to feelings?
 - (ii) Lost wages or any other entitlements lost as a result of any grievance?
- (c) If any remedies are awarded, should they be reduced (under s124 of the Act) for any blameworthy conduct by Mr Hurikawa that contributed to the situation giving rise to his grievance?
- (d) Was there a breach by Walton for failing to provide a written employment agreement?
- (e) Whether penalties should be awarded for any breaches and if so, what quantum and to whom?
- (f) Should either party contribute to the costs of representation of the other party?

Was Mr Hurikawa unjustifiably dismissed?

[19] Section 103A (2) of the Act sets out the legal test for justification for dismissal. Specifically, the Authority must consider, on an objective basis, whether Walton's actions, and how it acted, were what a fair and reasonable employer could have done in all of the circumstances at the time the dismissal occurred.

[20] Also relevant to the Authority's consideration are the good faith obligations in s 4 of the Act. Section 4(1A) (c)(i) of the Act requires an employer that is proposing to make a decision that could adversely affect an employee's employment, to provide the employee with access to information and an opportunity to comment on it before a decision is made.

[21] The onus was on Walton to establish a substantive justification for Mr Hurikawa's dismissal. In applying the statutory test of justification, the Authority must also consider the four procedural requirements set out in s 103A (3) of the Act, which set out minimum standards of procedural fairness that need to be observed by an employer in order to justify an employee's dismissal. These are:

- (a) whether, having regard to the resources available to the employer, the employer sufficiently investigated the allegations against the employee before dismissing or taking action against the employee; and
- (b) whether the employer raised the concerns that the employer had with the employee before dismissing or taking action against the employee; and
- (c) whether the employer gave the employee a reasonable opportunity to respond to the employer's concerns before dismissing or taking action against the employee; and
- (d) whether the employer genuinely considered the employee's explanation (if any) in relation to the allegations against the employee before dismissing or taking action against the employee.

[22] Walton was not at the investigation meeting to justify or speak to its actions. Neither did Walton lodge any information, evidence or even a Statement in Reply.

[23] There was no evidence of any investigation into any allegations or concerns, as Mr Hurikawa was not told what they were. Evidence suggests that there was no investigation as Glen was unable to explain and Mr Fleming gave no cogent reason when Mr Hurikawa asked.

[24] There was also no raising of any concerns, which was exacerbated as Mr Hurikawa made an effort to ask Glen and then Mr Fleming but still no substantive explanation was provided.

[25] Mr Hurikawa was given no opportunity to respond at a proper meeting or discussion prior to the termination and when Mr Hurikawa attempted to discuss the situation with Mr Fleming he was simply told he was finished because Mr Fleming was the boss. It therefore follows from the lack of willingness or opportunity to discuss that no genuine consideration of Mr Hurikawa's position ever occurred.

[26] All of the required grounds under s 103A (3) of the Act failed, which was exacerbated by Walton's failure to explain when Mr Hurikawa fronted up to his employer even after having been told by Glen that his employment had come to an end.

[27] Mr Hurikawa was not given any information to consider and was not aware of what Walton or Mr Fleming was concerned about that had put his ongoing employment in jeopardy. Mr Hurikawa therefore had no ability to respond to any concerns or information influencing Walton's decision making before he was dismissed.

[28] It follows by putting Mr Hurikawa to the proof of his claims that I find Mr Hurikawa's unjustified dismissal claim substantiated. There is an absence of any evidence indicating that Walton followed any justifiable process in respect of the dismissal. There was also no apparent reason for the dismissal.

[29] In conclusion I accept all of Mr Hurikawa's evidence and find that he was dismissed from his employment verbally by Mr John Fleming on 4 October 2023 without justification. I find that Mr Hurikawa's dismissal was both procedurally and substantively unjustified.

Is Mr Hurikawa entitled to remedies?

[30] Having found that Mr Hurikawa's dismissal was unjustified he is entitled to remedies.

Compensation for lost wages pursuant to s 123 (1) (b) of the Act

[31] Mr Hurikawa found alternative employment relatively quickly following his dismissal commencing a new job on 20 November 2023.

[32] Mr Hurikawa claims a gross amount of \$7,696.56 in lost wages for 37 working days between 5 October until Mr Hurikawa secured new employment on 20 November

2023. He bases this on the fact he was paid an average of \$1,040 per week, which when divided by 5 days (Monday to Friday) provides for an average daily rate of \$208.00 gross per day. Over 37 days this is \$7,696.00 gross.

[33] Again, there was no rebuttal of Mr Hurikawa's claims from Walton. I am satisfied as to Mr Hurikawa's claim as to wages lost as a result of his personal grievance and the actions of Walton. I am also satisfied as to the proactive steps appropriately taken by Mr Hurikawa to minimise his loss, but the period 5 October to 19 November 2023 comprises 32 not 37 working days. Accordingly, I order Walton to make payment to Mr Hurikawa of the sum of \$6,656.00 gross as compensation for wages lost as a result of the grievance.

Compensation for humiliation, loss of dignity and injury to feelings pursuant to s 123 (1) (c) (i) of the Act

[34] Compensation may also be awarded pursuant to s 123(1)(c)(i) of the Act for the humiliation, loss of dignity and injury to feelings that an applicant suffers as a result of unjustified actions, but this is not intended as a punitive action to signal disapproval of the employer's conduct.¹

[35] In assessing any amount of compensation that should be awarded, my task is to quantify the harm and loss caused by the humiliation, loss of dignity and injury to feelings arising out of Walton's unjustified actions. Various Employment Court decisions provide guidance on this exercise of quantification.²

[36] Essentially I must consider the effects of the unjustified action on Mr Hurikawa and in doing so I must identify the harm caused and the loss suffered as a result. Then I must quantify that harm and loss by assessing where that sits on the spectrum of harm and loss suffered by those unjustifiably dismissed. Then I must consider where that corresponds to the spectrum of quantum awarded as compensation.³

[37] Mr Hurikawa described that he felt "shocked, humiliated and worthless" following his sudden termination and that the way in which Mr Fleming addressed him

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

² See *Stormont v Peddle Thorp Aitken Ltd* [2017] NZEmpC 71; *Waikato District Health Board v Kathleen Ann Archibald* [2017] NZEmpC 132; and *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

³ *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

on 4 October 2023 was degrading and for many weeks afterward Mr Hurikawa struggled to understand the dismissal and described feelings of withdrawal. Mr Hurikawa further says that the loss of his job and income had a significant impact both emotionally and financially as the primary income earner at home.

[38] Walton did not attend the investigation meeting or provide any response to Mr Hurikawa's claims and there is nothing in Mr Hurikawa's evidence that gives me any reason to doubt what Mr Hurikawa has described as the impact of his sudden dismissal. At the investigation meeting he still did not know the reason for his dismissal.

[39] I am satisfied that Mr Hurikawa was adversely impacted by the sudden and without warning nature of his dismissal. I accept Mr Hurikawa's evidence of impact, particularly given the sudden and immediate way in which the dismissal occurred and the absence of any notice or concerns being raised. The manner in which the dismissal occurred was also completely unjustified and understandably took a toll on Mr Hurikawa.

[40] Taking all of these factors into account, I consider an award of \$15,000 as compensation for humiliation, loss of dignity, and injury to feelings is appropriate.

Contribution

[41] Section 124 of the Act requires that, when awarding remedies, I must also consider the extent to which Mr Hurikawa's actions contributed towards the situation that gave rise to the personal grievance, and if those actions so require, that I reduce the remedies that would otherwise have been awarded accordingly.

[42] There was no evidence before the Authority indicating that Mr Hurikawa in any way contributed to the circumstances giving rise to his personal grievance. Accordingly, I make no reduction to remedies for contribution under s 124 of the Act.

Should any penalties be awarded for any breaches and if so, what quantum and to whom?

[43] Mr Hurikawa claims a penalty against Walton for Walton's failure to provide him with a written employment agreement. Mr Hurikawa has also asked that some or all of any penalty be paid to him.

[44] Mr Hurikawa further claims that he was prejudiced as a direct result of Walton's failure to provide a written employment agreement that could have detailed the terms of his employment including *inter alia* a notice period and policies in respect of performance and disciplinary concerns. This breach attracts a maximum penalty of \$20,000.00 against a company.⁴

[45] Section 135(5) of the Act provides a strict timeframe for a penalty action to be commenced. Recovery of a penalty must be commenced within 12 months after the earlier of either the date when the cause of action first became known to the person bringing the action; or the date when the cause of action should reasonably have become known to the person bringing the action.⁵ Mr Hurikawa included a penalty claim for breach of s64 of the Act in the Statement of Problem which was dated 4 March 2025 but this action was outside the timeframes for recovery action of penalties under s 135 (5) the Act.

[46] Walton Mountain Limited is a company incorporated in 1993 and at the investigation meeting Mr Hurikawa stated that Walton had employed numerous staff over many years. While I accept that a written employment agreement could have set out the terms that applied to Mr Hurikawa's employment including notice and disciplinary procedures, none of this is actually required to be included in employment agreements.

[47] While there also appears no apparent excuse for not meeting the requirement to provide a written employment agreement, because the recovery action is outside the statutory timeframe for recovery of penalties I am unable to order a penalty in this case.

Summary of orders

[48] Within 28 days from the date of this determination Walton Mountain Limited is ordered to pay Barlowe Hurikawa the following:

- (a) Lost wages of \$6,656.00 gross;
- (b) Compensation for the humiliation, injury to feelings and loss of dignity of \$15,000.00.

⁴ Employment Relations Act 2000 s 135 (2)

⁵ Employment Relations Act 2000 s135 (5)

Costs

[49] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. The investigation meeting lasted for less than half a day.

[50] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Hurikawa 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 Walton Mountain Limited will then have 14 days to lodge any reply memorandum.

[51] 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.⁶

Alyn Higgins
Member of the Employment Relations Authority

⁶ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1