

**This determination contains an  
order prohibiting publication of  
certain information**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2026] NZERA 2  
3338301

BETWEEN            JHJ  
                                 Applicant  
  
AND                    IXX  
                                 Respondent

Member of Authority:    Philip Cheyne  
  
Representatives:         David Cain, advocate for the Applicant  
                                 The Director for the Respondent  
  
Investigation Meeting:    15 July 2025 and 19 September 2025 in Christchurch  
  
Information received:     17 & 22 December from the Applicant  
                                 6 & 7 October 2025 and 22 December 2025 from the  
                                 Respondent  
  
Date of Determination:    5 January 2026

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**DETERMINATION OF THE AUTHORITY**

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**Non-Publication**

[1]     On 22 December 2025 the respondent applied for non-publication of the parties' names and identifying business details. Several grounds are advanced. The applicant in response submitted that there are no sufficient grounds to justify a departure from the principle of open justice.

[2] The respondent is a company with a sole director/shareholder who works in the company's business. For convenience I will generally use "respondent" to refer to the company and/or the director.

[3] The respondent says he is suffering significant health issues, that public disclosure would cause undue stress and harm his recovery. There is no recent documentary evidence to support these assertions.

[4] The respondent says that publishing unproven allegations would damage the business's reputation and the livelihood of remaining staff. The respondent has not specified what unproven allegations have caused this concern, but they can probably be identified given earlier communications from the respondent. It has not been necessary in this determination to refer to or make findings about those allegations.

[5] I agree that grounds have not been made out to warrant a departure from open justice. However, I should preserve the respondent's right to challenge the ruling. Publication of the applicant's name meantime could identify the respondent, so the temporary non-publication order should extend to the applicant. I prohibit the publication of the parties' names and identifying details for 28 days following the release of this determination. Thereafter, this order lapses.

### **Employment relationship problem**

[6] JHJ worked for IXX from December 2023 until he was summarily dismissed in April 2024. JHJ says he was unjustifiably dismissed and has a personal grievance. He is claiming compensation and reimbursement to settle his personal grievance.

[7] The respondent says that it summarily dismissed JHJ because of his behaviour at the workplace on 18 April 2024. The respondent disputes the claims for compensation and reimbursement.

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

[8] An investigation meeting was scheduled and other timetabling directions were made at a case management conference with the parties. Witnesses, including those for whom the respondent had provided statements with its statement in reply, were required to attend to provide evidence under oath or affirmation and answer questions.

[9] The respondent did not attend at 9.30 am on 15 July 2025 and no witnesses for the respondent appeared. The Authority Officer called but had to leave a message for the respondent. The meeting started. Soon after, I was advised that the respondent had called back to say he would attend within 15 minutes. I adjourned to accommodate that indication. However, when he did not appear the meeting resumed at 10.00 am and was finished by 10.50 am. Soon after, the respondent phoned to say he was just finding a park. He was told that the meeting had ended.

[10] He later provided a letter from his doctor certifying him as medically unfit. After hearing from the applicant, I decided to continue the investigation meeting on 19 September 2025 to give the respondent a further opportunity to participate. I directed the respondent to lodge statements of evidence for the director and other witnesses by Friday 29 August 2025. The respondent lodged a document in the form of a statement in reply, including copies of the statements it had provided earlier.

[11] The respondent attended on 19 September 2025. I treated the document he had lodged as his statement of evidence. He took an oath, gave evidence, answered questions and was cross-examined. No other witnesses for the respondent were present or available.

[12] The applicant provided submissions as part of the investigation meeting and in December 2025 confirmed that he did not need to respond further to the respondent's material.

[13] On 19 September 2025, the respondent was given until 3 October 2025 to provide submissions in reply. The respondent lodged material on 6 October 2025. The Authority Officer responded by alerting the respondent to the duplication of items and other apparently missing material. The respondent sent a statement on 7 October 2025. He also gave a reason for non-compliance with the timetable. The October material was repeated in December 2025 at the time of the non-publication application. I have had regard to the material provided on 6 & 7 October and 22 December 2025, despite non-compliance with the timetable.

[14] In this determination, I will state relevant factual findings, state and explain relevant legal findings, and express conclusions on issues necessary to conclude the matter and set out any orders. It is helpful first to describe how the employment relationship problem arose.

**How the employment relationship problem arose**

[15] JHJ's sister worked for the respondent. She and the director were close friends and she arranged with him to employ JHJ. The director is now critical of her for siding with her brother and for supposedly not taking responsibility for her brother's conduct. However, those points are not material to whether the respondent justifiably dismissed JHJ.

[16] The working relationship between the respondent and JHJ was positive, subject to the two following points.

*March 2024*

[17] A new worker started in early March 2024. There was an exchange between her and JHJ on 5 March 2024, following which she left the workplace. The director was not present, but he heard about what had happened soon afterwards from others. A little later the same day, he sent JHJ a message of thanks and support about JHJ's exchange with the new worker.

[18] JHJ's evidence is that he had a disagreement with the new worker when he spoke to her about work that needed to be done, but she objected to him telling her what to do. She left the workplace soon after.

[19] The respondent is now critical of JHJ's part in the exchange with the new worker. In support, the respondent provided statements on behalf of two other employees. These employees did not attend the investigation meetings. Reading the statements, it is unclear whether they were present to witness the exchange between JHJ and the new worker. One statement is dated "01/08/2024". The second statement has "17/04" written on it. It appears that neither statement was written at the time of the exchange.

[20] The statements are not persuasive. Rather, I accept JHJ's evidence about the exchange, supported by the contemporaneous message from the director. The March matter has no bearing on the 18 April 2024 event.

*18 April 2024 – what happened*

[21] JHJ arrived at work at about 9.30 am and at first had several unremarkable exchanges with the director about work. He says that when another worker (R) arrived, the director growled at her about some worksheets, she tried to explain why they were unnecessary, but the director began yelling at her. JHJ says that the director was frantic and perhaps sleep deprived.

[22] Soon after, a gas delivery man arrived and spoke to JHJ about where to go. He took the delivery man through to the workshop while saying to the director that he was showing the delivery man where the bottles were. JHJ says that the director reacted angrily to that, telling him he wanted him here. JHJ's evidence is that he said he would just show the delivery man where to go and come back. He says that the director then started yelling at him and was being irrational. Nonetheless, JHJ showed the delivery man where the gas bottles were and returned to the workshop.

[23] JHJ's evidence is that the director "completely lost it" when he returned to the workshop after showing the delivery man where to go. JHJ responded by telling the director he needed to get some sleep. The director said he needed to get work done. JHJ told him to stop yelling and repeated that he needed to get some sleep. The director answered "Don't tell me what to do! I'm the boss!" JHJ replied that one of them needed to leave, then the director said: "You get out of here. I'm not working with you anymore! Go Home!" JHJ says that he "squeezed past him" to grab his vest, telling him to move so he could get his vest, but the director just stood there. JHJ left. When he got home, JHJ called his sister to tell her what had happened.

[24] The respondent points to three statements from other employees to support his account of events.<sup>1</sup>

[25] A statement in the name of R is dated 1 August 2024. It says that the director "had to ask [JHJ] to leave" after he walked up to the director in an intimidating and aggressive manner.

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<sup>1</sup> Naming the employees could lead to the identification of the parties during the period the non-publication order operates. I will refer to each by the initial of their given name.

[26] A second statement in the name of P is also dated 1 August 2024. It says that the director asked JHJ to leave the workshop but JHJ then became aggressive and stood over the director. JHJ swore at the director, who then told JHJ to “Fuck off and leave”.

[27] The third statement is in the name of B. From an adjacent room, she heard raised voices coming from the work room with JHJ and the director speaking in heated tones, but she could not make out what was said.

[28] The statements are not persuasive. The named employees did not give evidence, the statements are not contemporaneous and they are materially inconsistent.

[29] In evidence, the director says that R said she would show the delivery man where to go, he noticed JHJ again offered to do that, so he told JHJ to come back to his work bench and get on with some work. He says that JHJ “flew into a rage yelling F off”, the director pointed to the door asking him to leave the room but JHJ came across the room at the director yelling, swearing and about two inches from his face. The director kept pointing at the door and telling him to leave. JHJ was “steering as hard as possible at” the director, moved slowly around him, shouted at him and then left the room.

[30] The director’s evidence is that he spent a lot of time setting out a “pros and cons type of spreadsheet” about what to do and wanted to know what other employers would do in the situation. He decided he had no choice other than to advise JHJ of his summary dismissal. The director told me that he did not retain a copy of the “spreadsheet”.

[31] Significantly, in the message to JHJ’s sister on 18 April mentioned below, the director did not dispute that he had already dismissed JHJ. Similarly, on 20 April in his email to JHJ, the director referred to what happened on Thursday as “Prompting me to immediately dismiss you”. He also confirmed “my advice ... that you are dismissed”. His “advice” was what he had said to JHJ on 18 April. These communications are not consistent with the director’s evidence that he took time to consider what to do.

[32] I prefer JHJ’s evidence that the director told him on 18 April to get out and that he would not work with JHJ anymore. This happened before JHJ approached the director to grab his vest and leave.

*Some later exchanges about what happened*

[33] There were messages between JHJ's sister and the director on 18 April 2024. At 11.49 am the director was asked "how's it going?" He replied at 2.17 pm but then unsent it, so what he wrote at the time is not in evidence. In her response, JHJ's sister told the director that he could not just fire him, that the director always had these times when he was "high energy" for no reason, that her brother could not get on with his work due to equipment failure and the director always had times at least twice a month when he caused "havoc". She thought this was most likely one of those times. I note that the sister had not witnessed the incident between the two men, so was relying on what they had told her.

[34] Next morning at 9.05 am JHJ sent an email to the director. He mentioned that the director had told his sister that he did not want JHJ to work for the respondent. He asked the director to confirm if his employment was terminated.

[35] The director replied on 20 April 2024 at 8.37 pm. The email included:

...  
 I left a message with my Employment Lawyer first thing, this morning Asking For An appointment as soon as possible, to discuss what had taken place on Thursday afternoon? Prompting me to immediately dismiss you. This letter confirms my advice to you that you are dismissed without notice, that means that your employment ends immediately. You caused a serious and imminent risk to the health or safety of a person [director]  
 ...

[36] JHJ through his representative raised his personal grievance on 2 May 2024. Other exchanges followed but it is not necessary to set them out.

**The respondent unjustifiably dismissed JHJ**

[37] As above, I find that the director dismissed JHJ on 18 March 2024 by telling him "You get out of here. I'm not working with you anymore! Go Home!"

[38] The respondent must show that the dismissal was justified.

[39] Whether the dismissal was justifiable must be determined on an objective basis by assessing whether the respondent's actions and how it acted were what a fair and reasonable employer could have done in all the circumstances at the time. I must consider whether the respondent sufficiently investigated the matter considering

available resources; whether it raised its concerns with JHJ before deciding to dismiss him; whether it gave JHJ a reasonable opportunity to respond to the concerns before dismissing him; and whether it genuinely considered his responses before deciding to dismiss him. I may consider other factors, if appropriate.

[40] The respondent did nothing to investigate the matter. It did not raise its concerns with JHJ, did not give him an opportunity to respond and did not consider any explanation from him before it dismissed him.

[41] The respondent's failures were not minor. They resulted in JHJ being treated unfairly.

[42] The respondent claimed in his submissions that he listed the "pros and cons", went through relevant employment regulations and sought advice from an experienced fellow business-man to help him to assess how an employer might reasonably act in the situation. If any of those things happened, they followed the dismissal. They are not relevant to whether the respondent's decision to dismiss JHJ was justified.

[43] I find that JHJ was unjustifiably dismissed and he has a personal grievance against the respondent.

### **Remedies**

[44] JHJ has lost remuneration as a result of the personal grievance. By effect of s 128(2) of the Employment Relations Act 2000, I must order IXX to pay the lesser of the sum equal to that lost remuneration or 3 months' ordinary time remuneration. Under s 128(3) of the Act, I have a discretion to order IXX to pay a greater sum as reimbursement of loss.

[45] Three months' ordinary time remuneration totals \$14,040.00, as JHJ usually worked 40 hours per week and was paid \$27.00 per hour.

[46] JHJ took reasonable steps to mitigate his loss but it exceeded three month's ordinary time remuneration. Subject to contribution, IXX must pay JHJ three month's ordinary time remuneration as reimbursement.

[47] JHJ's evidence is that the dismissal crippled him emotionally and he felt depressed. He felt useless as he had to rely on his sister, rather than help her at a time

she was heavily pregnant. The dismissal affected his sense of purpose. There is no reason to doubt any of this evidence, but I note that no medical or other professional supporting evidence. I infer such assistance was not required. It is also apparent that the effects described by JHJ have lessened over time and with the steps he took to resume work.

[48] The proven harm attracts compensation in the lower range of the mid-range of cases.<sup>2</sup> I would fix compensation at \$17,500.00.

[49] In deciding the nature and extent of the remedies, I must consider the extent to which JHJ's actions contributed towards the situation that gave rise to the grievance and, if those actions so require, reduce remedies that would otherwise have been awarded accordingly.<sup>3</sup>

[50] I accept JHJ's evidence that the director growled at R and then yelled at her, before his interaction with the director. I also accept his evidence that the director reacted angrily and yelled at him when he told him he would show the delivery man where to go. JHJ's actions to that point were not in any sense blameworthy, so as to require a reduction in remedies.

[51] JHJ showed the delivery man where to go, despite the director's anger. In the context of the employment relationship and based on the director's previous behaviour, JHJ's actions in doing that were not blameworthy. When he returned to the workshop and was met by the director's angry reaction, JHJ told the director that he needed to get some sleep. Again, in the context of the employment relationship and based on the director's previous behaviour, JHJ's actions in doing that were not blameworthy.

[52] I do not accept IXX's evidence that JHJ flew into a rage and came towards him yelling and swearing. After he was dismissed, JHJ did come close to IXX to get his vest. However, that did not contribute to the dismissal because it happened afterwards.

[53] In summary, there was no conduct by JHJ that contributed to the situation that gave rise to the grievance in a blameworthy manner.

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<sup>2</sup> *GF v Comptroller of the New Zealand Customs Service* [2023] NZEmpC 101.

<sup>3</sup> Employment Relations Act 2000 s 124.

**Summary and orders**

[54] JHJ was unjustifiably dismissed by IXX and has a personal grievance.

[55] To settle the personal grievance IXX is to pay JHJ the following amounts within 28 days:

- (a) Reimbursement of \$14,040.00 (gross); and
- (b) Compensation of \$17,500.00.

[56] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If the parties are not able to resolve costs, and an Authority determination on costs is needed, the applicant may lodge, and then should serve, a memorandum within 28 days of the date of this determination. From the date of service of that memorandum the respondent will then have 14 days to lodge and serve a reply. The Authority will then determine costs on the papers taking account of the parties' submissions and the Authority's standard practice.

Philip Cheyne  
Member of the Employment Relations Authority