

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 531
3260359

BETWEEN NIKITA LEVI-ADAMS
Applicant

AND DONALD GREENE
Respondent

Member of Authority: Jeremy Lynch

Representatives: Claudia Serra, advocate for the Applicant
Respondent in person

Investigation Meeting: 13 November 2024, and 13 August 2025

Submissions Received: At the meeting, and on 13 August 2025 from the
Applicant
At the meeting from the Respondent

Determination: 28 August 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Donald Greene operated the Yess Learning Centre (Yess), providing youth education and support services.

[2] Nikita Levi-Adams worked as a tutor at Yess's Auckland premises, from 20 March 2023. She was given notice of her dismissal on 7 August 2023, and her employment ended on 21 August 2023.

[3] Ms Levi-Adams says she was unjustifiably dismissed and seeks personal grievance remedies including reimbursement of lost wages, and compensation for humiliation, loss of dignity and injury to feelings. She also seeks penalties in respect of a breach of the duty of good faith, as well as the failure to provide her wages and time record. In addition, she seeks an order for costs.

The Authority's investigation

[4] For the Authority's investigation, a written witness statement was lodged by Ms Levi-Adams in accordance with the timetable directions.

[5] Despite advising that he would be lodging a witness statement by 24 July 2024, Mr Greene did not do so, nor did he seek any extension from the Authority. Instead, two days prior to the November 2024 investigation meeting, Mr Greene lodged signed (but undated) letters from Yess's former assistant manager Dyannah Mika, and the director of the Waitakere Alternative Education Consortium (the Consortium), Frank Veacock. Neither Ms Mika nor Mr Veacock attended the investigation meeting to give evidence.

[6] At the investigation meeting, Ms Levi-Adams was given the opportunity to address the Authority on the issue of the undated letters of Ms Mika and Mr Veacock. Ms Levi-Adams said the contents of the documents was not relevant to the Authority's investigation, and did not lodge any formal objection to the documents being before the Authority.

[7] Under oath or affirmation, both Ms Levi-Adams and Mr Greene gave extensive oral evidence at the investigation meeting.

Adjournment for further mediation

[8] After the Authority had finished taking the parties' evidence at the 13 November 2024 investigation meeting (but prior to the parties' closing submissions), an adjournment was sought. Both parties expressed a view that settlement discussions could be beneficial. It was agreed that further mediation was to be attempted.

[9] The Authority adjourned its investigation part-heard, and arranged for an employment mediator from MBIE to assist the parties.

[10] That same day, the mediator advised the Authority that whilst he was confident an agreed settlement could be reached, the parties had agreed that an adjournment of the mediation process for a period was appropriate, to enable one of the parties to obtain and provide further information.

[11] In April 2025 Ms Levi-Adams advised the Authority that the further mediation had been unsuccessful, and requested that the Authority's investigation be resumed.

[12] Mr Greene objected to the investigation meeting being resumed, and advised that he had complied with all requests made during the mediation process. The Authority made enquiries with the mediator directly, who was unable to confirm whether or not the mediation process was at an end. The mediator advised he would again contact the parties to ascertain whether settlement was still a possibility, or whether the mediation file should be closed.

[13] Throughout April and May 2025, the Authority requested updates from the mediator, who remained hopeful of the parties achieving a resolution.

[14] However, in June 2025, the mediator advised the Authority that he had exhausted all options with the parties, no settlement had been reached, and the mediation service would be closing its file.

[15] The Authority then offered the parties dates for a resumption of its investigation.

[16] A further investigation meeting was held on 13 August 2025, for the parties to provide their closing submissions.

[17] The Authority has carefully considered all the material provided.

[18] As permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination has not recorded everything received from the parties, but has stated findings of fact and law, expressed conclusions and specified orders made as a result.

The issues

[19] The issues for investigation and determination are:

- (a) whether Ms Levi-Adams was unjustifiably dismissed from her employment?
- (b) If so, what remedies (if any) should she receive?
- (c) Should any remedy awarded be reduced under s 124 of the Act for blameworthy conduct by Ms Levi-Adams, which contributed towards the situation which gave rise to her grievance?
- (d) Has Mr Greene breached the provisions of s 130 and/or the duty of good faith under s 4 of the Act, and if so, should a penalty be awarded?
- (e) Should either party be required to contribute to the other's costs?

Background

Employment arrangements

[20] Ms Levi-Adams received a letter of offer dated 20 March 2023 (the letter of offer). Although the letter of offer is on Yess letterhead, there is no such legal entity as Yess Learning Centre. Mr Greene's evidence is that he was a sole trader, and accepts that he personally employed Ms Levi-Adams.

[21] The parties accept that no employment agreement was provided. Instead, Mr Greene's evidence is that all Ms Levi-Adams' terms and conditions of employment were set out in the letter of offer, which was signed and accepted by her at the time of her employment.

[22] Although the two-page letter of offer does set out Ms Levi-Adams' remuneration and hours of work, it does not meet the requirements of s 65 of the Act, and is not an employment agreement.

[23] Confusingly, the letter of offer describes Ms Levi-Adams' employment as being on a "fixed term, casual fulltime" basis.

[24] In response to questions from the Authority, Mr Greene accepted that this description was in error, and that the employment was not on a casual basis. He said that the letter should have described the employment as being on a fixed term basis (to align with the end of the current funding period). However, he accepted that the letter did not say this, and there was nothing in the letter to indicate that the employment was on anything but an ongoing, permanent basis.

[25] There is no dispute that Ms Levi-Adams worked Monday to Friday, and her usual hours of work were 9.00 am to 3.00 pm.

[26] The Authority is satisfied that Ms Levi-Adams was employed on a permanent, fulltime basis.

Ms Levi-Adams is dismissed

[27] Ms Levi-Adams' evidence is that:

On Friday, 4th of August 2023, we took the students out for their afternoon physical education at Starling Park in Rauni.

As we were winding up this last activity of the day and getting ready to leave, Don mentioned that he wanted to talk with me after we had completed drop-offs.

I didn't think it was anything bad as he said "talk" not "meeting"... I thought maybe it was just a check-in to see how I was doing as I had no reason to think I was being let go, no warnings and the fact we were not in his office.

Don came outside and climbed into the van leaving the door open. He put some windows down and then lit a cigarette. He then says "You know mate, you've had a lot of days off lately & we've been quite lenient towards you as you are our friend and we care about what you may be going through. Unfortunately, I've been getting it from consortium as well as our work colleagues that it's just not good enough. With me being sick and wanting to take more days off, we need someone here to help Dee and we can't always rely on you. We have given you a written warning and Dee has given you a verbal warning. This is one of the hardest decisions I've had to make in a long-time mate & I'm sorry but we're going to have to let you go, mate".

... He said I could work out my two weeks' notice and the 21st of August 2023 would be my last day.

[28] Mr Greene accepts this conversation occurred, and broadly accepts Ms Levi-Adams' account of the dismissal. However, his evidence was that Ms Levi-Adams had received a number of warnings. He says she "...had been given 3 verbal warnings 'then was told' she would be receiving a written warning which was then given to her".

[29] Mr Greene further says:

[Ms Levi-Adams] was spoken to (verbal warnings) several times regarding her absenteeism, by myself, my assistant manager, and also the Director of the Waitakere Alternative Education Consortium. As shown, due to the lack of improvement in her absenteeism [Ms Levi-Adams] was then given a written warning.

It is an untruth that [Ms Levi-Adams] was unaware that her constant absenteeism threatened her continued employment...

[30] In response to questions from the Authority, Mr Greene said that he had personally given Ms Levi-Adams two verbal warnings, but was unable to advise of the approximate date of these, or anything that was said. Ms Levi-Adams accepts that she had been spoken to a few times about her punctuality. However, she described these instances as "discussions" and disputed that these were verbal warnings.

[31] There is insufficient evidence for the Authority to find that Ms Levi-Adams received any verbal warnings from Mr Greene during her employment.

[32] Ms Levi-Adams also accepts that she had attended a meeting at which the director of the Consortium Mr Veacock was present, at which attendance was discussed. However, she says this was an all-staff meeting, and she was not personally spoken to

or warned about her attendance. Ms Levi-Adams refutes that she was given a verbal warning by Mr Veacock, who did not attend the investigation meeting to challenge this point. The Authority accepts Ms Levi-Adams' evidence on this point.

[33] In addition, despite his statement that Ms Levi-Adams was told she would receive a written warning and then did in fact receive a written warning, this is not supported by any evidence.

[34] Ms Levi-Adams says that on 7 August 2023 (three days after her dismissal), she received an email from Mr Greene with "Yess Reference" in the subject line. The email sets out "Kia Nikita, hope your [sic] well mate, attached is the reference I've written for you. God Bless". Attached to the email is a letter dated 21 June 2023, which is not a reference but instead appears to be a written warning.

[35] Ms Levi-Adams says the first time she received this was when it was emailed to her after her dismissal on 7 August 2025, and not at any time prior to this.

[36] At the November investigation meeting, Mr Greene accepted that this warning letter had not been provided to Ms Levi-Adams on any other occasion prior to 7 August 2023. However, at the resumption investigation meeting of 13 August 2025, Mr Greene submitted that he had emailed this warning letter to Ms Levi-Adams prior to her dismissal.

[37] The Authority granted a brief adjournment for Mr Greene to search through the 'Sent Items' folder of his email account to find evidence of the warning letter being sent to Ms Levi-Adams. When the meeting resumed, Mr Greene said he was unable to find any record of the letter being sent to Ms Levi-Adams other than on 7 August 2023, and he accepted that this warning letter had not been provided to her at any stage prior to her dismissal.

[38] In response to questions from the Authority, Mr Greene said he was not aware of any of the procedural requirements for a dismissal, as he had never had to dismiss anyone before.

[39] Mr Greene accepted that prior to the discussion in the work van on 4 August 2023 at which Ms Levi-Adams was dismissed (the dismissal meeting), he did not inform her that she could seek representation for the meeting. Mr Greene also accepted that nothing was investigated prior to this meeting; any concerns he had about Ms Levi-

Adams' performance (including her punctuality and attendance) were not put to her for comment prior to the decision to dismiss.

[40] Mr Greene's evidence was that prior to this meeting, another employee had come to him in tears because of her workload, the inference being that this was exacerbated by Ms Levi-Adams' absence. This appears to have been accepted at face value by Mr Greene, who made no attempt to test or question this claim.

[41] Mr Greene provided the Authority with a list detailing Ms Levi-Adams' absences and lateness. Some of these were disputed by Ms Levi-Adams. Mr Greene confirmed that this document was not provided to Ms Levi-Adams during her employment, she was never subject to any form of performance improvement plan in respect of punctuality, and she never faced any formal disciplinary process.

[42] Mr Greene's evidence to the Authority was that he did not put any of his concerns to Ms Levi-Adams prior to the dismissal meeting, because the meeting was about "drawing a line under it and moving on". Mr Greene said that the dismissal meeting was a mere formality, because the decision to terminate Ms Levi-Adams had already been made.

Was Ms Levi-Adams' dismissal unjustified?

[43] When the Authority considers justification for the actions of Mr Greene, including the decision to dismiss, it does so by applying the test of justification in section 103A of the Act.

[44] In determining justification for a dismissal, the Authority considers whether Mr Greene's actions, and how he acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred.¹

[45] the Authority must also consider whether Mr Greene's process in carrying out the decision to terminate Ms Levi-Adams' employment was fairly conducted.

[46] Mr Green, as a fair and reasonable employer, could also be expected to comply with the good faith obligations set out in section 4(1A)(c) of the Act, and in particular

¹ Employment Relations Act 2000, s 103A(2).

the obligation to provide access to information relevant to the continuation of Ms Levi-Adams' employment, and an opportunity to comment on such information.

[47] Had Mr Greene consulted with Ms Levi-Adams, he may well have been able to establish grounds for disciplinary action. However, the Authority observes that the process Mr Greene adopted in effecting Ms Levi-Adams' dismissal was inadequate, and lacked in transparency.

[48] Ms Levi-Adams' employment was terminated without warning during the dismissal meeting. Mr Greene failed to comply with any of the minimum procedural fairness tests under the Act. The manner of Ms Levi-Adams' dismissal was abrupt, and there was no practical opportunity for her to obtain representation or have any input into the process prior to the decision to dismiss her. There was no evidence that Mr Greene sufficiently investigated his concerns, in breach of section 103A(3)(a) of the Act. Mr Greene failed to raise his concerns with Ms Levi-Adams in breach of section 103A(3)(b) of the Act. Mr Greene failed to give Ms Levi-Adams any opportunity, much less a reasonable opportunity, to respond to his concerns in breach of section 103A(3)(c) of the Act.

[49] Instead, Ms Levi-Adams was simply informed of her dismissal, after Mr Greene had made his decision. Because of this, Ms Levi-Adams was deprived of any opportunity to provide an explanation for Mr Greene to consider, in breach of section 103A(3)(d) of the Act. The concerns Mr Greene had were not put to Ms Levi-Adams.

[50] Mr Greene's failure to meet any of the minimum procedural fairness tests in section 103A(3) of the Act, or comply with the obligations under s 4(1A)(c) of the Act renders Ms Levi-Adams' dismissal unjustifiable

[51] Mr Greene's actions, and how he acted, were not consistent with what a fair and reasonable employer could have done in all the circumstances at the time of Ms Levi-Adams' dismissal

What remedies (if any) should Ms Levi-Adams receive?

[52] Ms Levi-Adams has established a personal grievance for unjustified dismissal. She is therefore entitled to a consideration of the remedies sought.

Lost wages

[53] Upon establishing a personal grievance for unjustified dismissal, an employee is entitled to a consideration of reimbursement of the remuneration he or she would otherwise have received, but for the unjustified dismissal.²

[54] I am satisfied that Ms Levi-Adams has lost remuneration as a result of her unjustified dismissal. Her evidence (not challenged by Mr Greene) was that there was a medical reason preventing her from immediately seeking new employment. I am satisfied that in the circumstances of this matter, no issues as to mitigation arise.

[55] Both parties accept that there were a number of occasions when Ms Levi-Adams was either unable to attend work, or was unable to work her full rostered hours. As noted above, Ms Levi-Adams was not provided with an employment agreement. Instead, she received a letter of offer which set out her total weekly remuneration, based on a 30-hour working week. Mr Greene's evidence (which was not disputed by Ms Levi-Adams) was that Ms Levi-Adams was paid an hourly wage.

[56] Under s 123(1)(b) of the Act, Ms Levi-Adams is entitled to reimbursement of a sum equal to the wages she has lost as a result of her grievance (but not more than this). She seeks three months' full remuneration, or in other words, a total sum of \$13,049.92 (gross), which is based on her working a full 30-hour week, for 13 weeks (being three months). However, this does not address the fact that on Ms Levi-Adams' own evidence, she was frequently unable to work her full scheduled weekly hours. I decline to order the sum sought by Ms Levi-Adams. Mr Greene is to calculate Ms Levi-Adams' average weekly gross remuneration, for the entire period of her employment. Using the sum reached from this calculation, Mr Greene is ordered to pay to Ms Levi-Adams 13 average weeks' lost wages (gross).

Compensation for humiliation, loss of dignity and injury to feelings

[57] Ms Levi-Adams' evidence is that she was severely impacted by her dismissal. She says she was hysterical, confused, and that she was "so upset that I didn't know what to do".

² Sections 123(1)(b) and 128.

[58] She says that the period following her dismissal was a “very dark time”. Her evidence is that she felt so embarrassed that she had to seek professional help.

[59] Ms Levi-Adams’s evidence establishes that she has experienced harm under each of the heads in s 123(1)(c)(i) of the Act.

[60] In *Wikaira v Chief Executive of the Department of Corrections*, the Employment Court held that it was desirable that awards of compensation pursuant to s 123(1)(c)(i) of the Act “... Should be, although not over-generous, nevertheless fair, realistic and not miserly”.³

[61] having regard to the particular circumstances of this case, and in light of awards of compensation in comparable matters, an award of \$13,500 under s 123(1)(c)(i) of the Act is appropriate to compensate Ms Levi-Adams for the humiliation, loss of dignity and injury to feelings she experienced as a result of her unjustified dismissal.

Contribution

[62] Where the Authority determines an employee has a personal grievance, it is required under s 124 of the Act to consider the extent to which the employee’s actions contributed towards the situation that gave rise to the personal grievance, and if the actions so require, reduce the remedies that would otherwise have been awarded.

[63] The unjustifiability of Ms Levi-Adams’ dismissal has been established in Mr Greene’s failure to follow the statutory requirements. These obligations were not Ms Levi-Adams’, and there is to be no deduction from the monetary remedies for reason of contribution.

Penalty claims

Breach of good faith

[64] Section 4(1A)(c) of the Act provides that an employer who is proposing to make a decision that will have an impact on the continuation of an employee’s employment, is required to provide to the affected employee, access to information about the decision, and the opportunity to comment on the information before a decision is made.

³ *Wikaira v Chief Executive of the Department of Corrections* [2016] NZEmpC 175 at [237].

[65] It is not clear to the Authority how Ms Levi-Adams' claim for a breach of the duty of good faith is distinct from her personal grievance for unjustified dismissal. As set out above, the Authority has awarded Ms Levi-Adams personal grievance remedies. As such, it is not clear why a separate penalty should be ordered, payable to Ms Levi-Adams. The Authority declines to exercise its discretion to order a penalty in relation to the alleged breach of good faith.

Wages and time record

[66] Ms Levi-Adams seeks a penalty under s 130 of the Act for Mr Greene's failure to provide her wages and time record. Section 130 of the Act provides that an employer must provide the wages and time record immediately upon request. The Authority is satisfied a penalty against Mr Greene should be contemplated for his failure to provide Ms Levi-Adams' wages and time record.

[67] Contained in her personal grievance letter dated 6 September 2023, is a request for Ms Levi-Adams' wages and time record. This was Ms Levi-Adams' only request for her wages and time record.

[68] Mr Greene's failure to provide wages and time record is a breach of s 130 of the Act. However, a breach need not necessarily result in a penalty.

[69] There is evidence that during the employment relationship Ms Levi-Adams queried the calculation of her pay on one occasion, concerned that she had been short-paid by \$400.00. However, Mr Greene's evidence was that upon receipt of this query, his bookkeeper contacted Ms Levi-Adams and explained that the apparent shortfall in pay was due to her absence from work. Ms Levi-Adams did not challenge this evidence, and confirmed to the Authority that she did not seek any wage arrears in respect of this instance, or for any other period during her employment.

[70] The Authority is satisfied that this is not a matter in which the absence of a wages and time record has impeded Ms Levi-Adams' ability to prosecute her claims. In its discretion, the Authority makes no order for a penalty in relation to Mr Greene's failure to provide Ms Levi-Adams' wages and time record.

Summary of orders

[71] within 28 days of the date of this determination, Donald Greene must pay to Nikita Levi-Adams the following amounts:

- (a) a sum equivalent to 13 average weeks' lost wages under ss 123(1)(b) and 128 of the Act, in accordance with the calculation set out above at [56] (plus eight per cent holiday pay on this sum).
- (b) Compensation in the sum of \$13,500 (without deduction) under s 123(1)(c)(i) of the Act.

Costs

[72] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[73] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Ms Levi-Adams 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, Mr Greene will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[74] 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.⁴

Jeremy Lynch
Member of the Employment Relations Authority

⁴ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.