

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 653
3329641

BETWEEN

MARILOU LEWIS
Applicant

AND

TKW COLLECTIVE PTY
LIMITED
Respondent

Member of Authority: Matthew Piper

Representatives: James Lewis, representative for the Applicant
Beverley Edwards, counsel for the Respondent

Investigation Meeting: 17 July 2025 in Auckland

Submissions received: 30 July 2025 and 13 August 2025 from the Applicant
5 August 2025 from the Respondent

Determination: 16 October 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Marilou Lewis was briefly employed by TKW Collective Pty Limited (TKW) pursuant to a casual individual employment agreement. Ms Lewis claimed she was unjustifiably disadvantaged and dismissed when she was given feedback about her performance during the training TKW provided. She sought compensation for hurt and humiliation and that a penalty be imposed on TKW for breaching her employment agreement.

[2] TKW denied Ms Lewis' claims. It said it did not dismiss Ms Lewis and that it engaged with her in good faith regarding its training procedures.

The Authority's investigation

[3] For the Authority's investigation written witness statements were lodged from Ms Lewis, the respondent's office administrator, Ms Meri Aute and one of its trainers Ms Nusrat Lamisa. All witnesses answered questions under oath or affirmation from me and the parties' representatives.

[4] Written submissions were received from both parties after the investigation meeting, which I have found of assistance.

[5] 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.

Background

[6] TKW operates a call centre that runs inbound and outbound campaigns for its clients. The volume and type of work fluctuates based on client needs and the type of campaign being undertaken.

[7] TKW had a pool of casuals that it could call upon when client demand required. This demand may be created by existing clients' customer call volume, or by discrete campaigns for which TKW needed additional call centre workers.

[8] Ms Lewis had experience working in roles she considered likely to be more complex or demanding than the work offered by TKW. When she saw TKW's call centre role advertised, Ms Lewis felt her skills and experience were aligned with the requirements of the role, so she applied.

[9] On 29 September 2023 Ms Lewis was interviewed for a casual position as an inbound/outbound agent. The interview related to a campaign that TKW was running at the time, which was said to be of a reasonably intensive nature. Becoming a casual employee for TKW also meant becoming eligible to work on other campaigns for TKW in future on an "as and when required" basis.

[10] On 4 October 2023 Ms Aute sent Ms Lewis a proposed employment agreement, together with TKW's guidelines, policies and procedures, which Ms Lewis signed on 9 October 2023 (Agreement). Ms Aute's email also said "Training is Monday to Friday, from the 16th of October at 11am – 4PM." This became the period of casual employment for which Ms Lewis was employed by TKW.

[11] The Agreement labelled Ms Lewis's position as an Inbound/Outbound Agent and described the employment relationship as being casual in nature. It said that each shift was a separate engagement, and that casual employment would arise when the employer had need for it, but that there was no guarantee of further employment following any period of work being completed. The Agreement further said that Ms Lewis was under no obligation to accept work offered to her.

[12] During the Authority's investigation meeting, Ms Lewis expressed the view that she was employed as a casual employee. This view was shared by TKW.

Training commences

[13] On Monday 16 October 2023, Ms Lewis started her training with TKW.

[14] The campaign for which Ms Lewis was being trained related to an Australian customer that provided road-side assistance services, and whose members would call a phone number answered by TKW's employees. This meant TWK's call centre staff would be speaking to the client's customers while they were under stress and facing urgent issues (such as arranging a tow truck or mechanic).

[15] Ms Lewis was one of two trainees whose training was undertaken by Ms Lamisa that week. Ms Lamisa was experienced in providing the training for Inbound/Outbound Agents.

[16] The first three days' training was predominantly theoretical, and involved Ms Lamisa talking to the trainees about the campaign and TKW's systems. The next two days, the Thursday and Friday, were practical, involving role plays and live phone calls with customers of TKW's client.

[17] Ms Lamisa said that she tried to provide feedback to the trainees as the week progressed, including while they engaged in roleplay scenarios. Ms Lewis said she

received positive feedback from Ms Lamisa on the Thursday, and that her relationship with Ms Lamisa was generally friendly.

[18] During the first part of the Friday shift, Ms Lewis took a number of live calls. These were conducted under Ms Lamisa's supervision, either through her listening in to the call or by standing near Ms Lewis. Ms Lamisa said she gave tips and encouragement to Ms Lewis as the calls progressed.

[19] Ms Lamisa considered that despite her support, Ms Lewis was not doing well on the calls. She said Ms Lewis seemed very nervous and had difficulty typing notes. On one occasion Ms Lamisa felt she needed to step in to conduct a call because Ms Lewis was not doing an adequate job dealing with the caller.

[20] Under cross-examination, Ms Lewis accepted that she was dealing with calls from people who were under pressure in a language which was not her first. She admitted that at times she struggled to find the right words to say, but attributed this to being nervous because the situation was new to her and she was being closely observed as part of her training.

The lunchroom meeting

[21] Given Ms Lamisa's reservations regarding Ms Lewis' work on the live calls, TKW decided it was appropriate to sit with Ms Lewis and provide her with its view that she was not demonstrating the abilities it considered necessary to work on the campaign. The meeting to deliver this message involved Ms Aute, Ms Lamisa and Ms Lewis and took place in the office's lunchroom on Friday 20 October 2023. It lasted about 15 minutes.

[22] Ms Lewis' evidence was that there were no others in the lunchroom, but she said could see a fellow trainee through the window. Given the lunchroom had no door, she felt others could have heard the conversation, but no evidence was provided to the Authority that the conversation was, in fact, overheard.

[23] Ms Lamisa told the Authority that the conversation was unlikely to have been heard by others in the office because of the way the conversation occurred and the office layout. She further told the Authority she was concerned about how Ms Lewis would

experience the conversation and that she wanted Ms Lewis to “feel OK about the whole thing”.

[24] When Ms Aute asked Ms Lewis during the meeting how she was finding things, Ms Lewis said that it was “overwhelming”. Ms Lamisa then said that “it wasn’t personal” but she did not think Ms Lewis was up to working on the campaign she had been training for.

[25] Ms Lewis said this conversation made her feel small and that she felt she was given insufficient feedback about how she was going, including not being given a reason for why she was not fit to do the work. In her submissions, Ms Lewis also complained that she was not given notice of the meeting nor time to consider the feedback that was provided by TKW.

[26] Ms Lamisa told the Authority she did not have any issue with Ms Lewis personally and was prepared to consider her for future work on other assignments, but that she considered Ms Lewis did not have the capability required for the roadside assist campaign.

[27] I find it likely that the conversation in the lunchroom was intended to be one where feedback was provided to Ms Lewis about whether she was suitable to be called upon for further casual work as part of the roadside assist campaign, and that the conversation was undertaken in a reasonable way. Ms Lewis was likely also told that if there were future vacancies she would be considered for other casual work.

[28] Toward the conclusion of the meeting, Ms Lamisa told Ms Lewis that she could go home if she wished, rather than completing the afternoon’s training to which Ms Lewis responded that she would prefer to stay at work, even if this was on an unpaid basis. Ms Lamisa told the Authority she had been trying to be kind by offering Ms Lewis the opportunity to go home and that she did not mind that Ms Lewis wanted to stay for the afternoon.

[29] Although Ms Lewis told the Authority it was not confirmed to her that she would be paid for the balance of the day, I find on balance it is likely that Ms Lamisa told her that she would be.

After the meeting

[30] Ms Lewis remained at work for the balance of her shift, observing the other trainee, but did not participate in any further calls. Ms Lewis was paid for this time.

[31] Ms Lewis told the Authority she was upset by the conversation in the lunchroom because she believed she was being hired to work on the roadside assist campaign and that TKW had not done enough to ensure she was trained to perform the work. She described feeling shocked and upset on and after the journey home and a deep sense of embarrassment at TKW's assessment of her abilities. Ms Lewis believed her employment had been terminated by TKW in the lunchroom meeting.

Subsequent communications

[32] On 31 October 2023, Ms Lewis received an automated email from TKW's payroll system and sent Ms Aute an email asking how to deal with it. When Ms Aute responded to say the payroll email was a notification that time logs for Ms Lewis' training hours had been entered and approved, Ms Lewis responded asking that her details be deleted from TKW's system.

[33] Later that evening, Ms Lewis emailed Ms Aute again saying she intended to raise a personal grievance.

The issues

[34] The issues requiring investigation and determination were:

- (a) What was the nature of Ms Lewis' employment?
- (b) How did Ms Lewis' employment end?
- (c) If Ms Lewis was dismissed, was she unjustifiably dismissed from her employment?
- (d) Was Ms Lewis unjustifiably disadvantaged in her employment?
- (e) If TKW's actions were not justified (in respect of disadvantage and/or dismissal), should compensation under s 123(1)(c)(i) of the Act be awarded?
- (f) If remedies are awarded, should they be reduced (under s 124 of the Act) for any blameworthy conduct by Ms Lewis that contributed to the situation giving rise to the grievance?

- (g) Did TKW breach the parties' employment agreement, namely clause 17?
- (h) If so, should a penalty be imposed on it under s 134 of the Act?
- (i) Should either party contribute to the costs of representation of the other party?

What was the nature of Ms Lewis' employment?

[35] As noted above, during the course of the investigation meeting, Ms Lewis clarified that she accepted she was a casual employee. This was consistent TKW's position on the issue, the Agreement and TKW's behaviour in all the circumstances.

[36] The Authority finds Ms Lewis' employment was casual in nature.

How did Ms Lewis' employment end?

[37] As noted above, Ms Lewis was given feedback on her fifth day of training that her difficulties dealing with the pressure placed on her by callers who were themselves under pressure meant TKW would not be offering her further casual work on the campaign.

[38] During the investigation meeting, Ms Lewis was asked how much training she would have needed to be ready to work on the campaign. She answered a further month's training would have been reasonable. TKW's evidence was that although it could have extended the training by a few days, it did not regard additional training as likely to have been a worthwhile exercise.

[39] Given Ms Lewis was a casual employee, it was within TKW's discretion to not offer her further shifts. This discretion extended to whether it considered she was the right person to perform work as part of the campaign.

[40] TWK could have merely allowed Ms Lewis to complete the training shifts it had offered her, and then not offered her any further work. Although such an approach may have been consistent with its rights under the Agreement, TKW preferred to provide her with feedback that the campaign in question was not for her, but that she would be eligible for other casual work on more suitable campaigns.

[41] Ms Lewis claimed she was dismissed during the lunchroom meeting. She told the Authority that during the meeting she was “let go” and that this was a “sending away” or dismissal.

[42] Toward the end of the conversation, and after it had been made clear to Ms Lewis she would not be undertaking further shifts on the campaign, she was told she could go home and still be paid for the afternoon. I find this was done as in attempt to be kind to Ms Lewis, not as a dismissal.

[43] This conclusion is reinforced by the fact Ms Lewis stayed at work for the balance of her shift to observe the other trainee, that she was paid for this time and the fact TKW was prepared to offer her future work on other campaigns. She was, therefore, not sent away nor was her contractual arrangement with TKW repudiated.

[44] I find TKW did not wish to terminate the casual arrangement altogether and would have preferred to have retained the relevant contractual framework between the parties necessary to engage her on future occasions. In other words, TKW would have preferred to keep Ms Lewis in its pool of casual employees, but it was Ms Lewis who terminated this arrangement by asking that TKW delete her personal information on 31 October 2023.

If Ms Lewis was dismissed, was she unjustifiably dismissed from her employment?

[45] Given the Authority has found Ms Lewis was not dismissed, it is not necessary to consider whether she was unjustifiably dismissed.

Was Ms Lewis unjustifiably disadvantaged in her employment?

[46] Ms Lewis claimed she was unjustifiably disadvantaged in her employment because the training she received did not reflect a sufficiently identifiable standard and she was not given adequate feedback on how she was going, or an opportunity to comment on that feedback.

[47] The Authority finds the level of training provided by TKW was, in all the circumstances, reasonable. Ms Lamisa was suitably qualified, and the training proceeded in a manner that was reasonable. Ms Lewis was provided with feedback on a dynamic basis as the training progressed, as was appropriate in the circumstances. The informal nature of the relationship between Ms Lamisa and Ms Lewis would also

have meant Ms Lewis could have responded to the feedback she was given as the training progressed.

[48] Ms Lewis further claimed the meeting in the lunchroom was unreasonable because it took place in a “public” area, and she was humiliated by the feedback she received. She said loud voices were used while the negative feedback was insensitively delivered. Ms Lewis said that TKW should have raised its concerns with her before stopping her training, and her not having the opportunity to dissuade TKW from terminating her training was unfair.

[49] Given the sensitivity of the feedback being provided, it may have been better for it to have been delivered in an environment in which Ms Lewis would have been confident that no one else could have heard. That said, I consider it unlikely that the lunchroom conversation was in fact overheard by anyone else.

[50] The feedback being given was not in the nature of a formal performance process. Rather it was to inform Ms Lewis that the way the live calls had gone meant future offers of work on the campaign would not be forthcoming. TKW was entitled to provide Ms Lewis with this view and did so in a manner which was reasonable in all the circumstances.

[51] Accordingly, Ms Lewis was not unjustifiably disadvantaged by TKW in the course of her employment.

Did TKW breach clause 17 of the parties’ employment agreement and if so, should a penalty be imposed on TWK?

[52] As above, Ms Lewis accepts she was employed as a casual employee. Clause 2.2 of the Agreement said she was employed “for a specified period of casual employment and each shift/day of work/roster cycle is considered a separate engagement”.

[53] Ms Lewis claimed TKW breached clause 17 of the Agreement. The first two paragraphs of clause 17 said¹:

17. Termination

17.1 As this Agreement relates to casual employment, the Employee is not entitled to notice if their employment is to be terminated at the end of a shift/day of work/roster cycle. Nor does the Employee have any entitlement to redundancy.

17.2 The Employer may terminate this Agreement without notice in the case of serious misconduct by the Employee. Examples of serious misconduct are those listed in, but not limited to, the Fourth Schedule to this Agreement.

[54] Ms Lewis claimed TKW breached Clause 17 because she said she should have been given notice about the lunchroom meeting in order to be able to prepare for it and because TKW was required to have cause “before acting against her”.

[55] As will be apparent from the Authority’s findings about the nature of the lunchroom meeting and how the employment relationship ended, Ms Lewis has failed to establish that she was dismissed. Further, given the overall circumstances and the casual nature of the employment relationship it was reasonable for TKW to conduct the feedback session in the way it did. Prior notice was not required and no allegations were put to Ms Lewis of any kind of misconduct.

[56] Accordingly, TKW did not breach clause 17 of the Agreement.

[57] Given the Authority’s finding that TKW did not breach Ms Lewis’ employment agreement, it follows that no penalty should be imposed on TKW.

Summary and orders

[58] Ms Lewis has not established her personal grievance claims. Accordingly, no orders are made.

Costs

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

¹ There were four paragraphs in clause 17. The latter two paragraphs dealt with abandonment and return of property, which are not relevant to Ms Lewis’ claim.

[60] If they are not able to do so and an Authority determination on costs is needed TKW may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of the written determination in this matter.

[61] From the date of service of that memorandum Ms Lewis would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[62] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.²

Matthew Piper
Member of the Employment Relations Authority

² See www.era.govt.nz/determinations/awarding-costs-remedies.