

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 70
3284699

BETWEEN	THI LIEN NGUYEN Applicant
AND	NGOC TUYET UYEN HUYNH Respondent

Member of Authority:	Claire English
Representatives:	Dhilum Nightingale and Jordan Rennie, counsel for the Applicants Myles Norris and Ngoc Tuyet Uyen Huynh in person
Investigation Meeting:	9, 10, 11, and 12 September 2024 in Wellington
Submissions received:	7 October and 20 November 2024 from Applicant 7 November 2024 from Respondent
Determination:	14 February 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, who I will refer to as Ms Lien, worked for the respondent Ms Huynh (known as Amy) in 2023 at her nail salon. She and 6 other staff were all dismissed in late December 2023. All of the affected staff including Ms Lien were Vietnamese nationals, who had been recruited by Ms Huynh to come to New Zealand and work in her salon.

[2] The affected staff including Ms Lien gave evidence that before being offered employment by Ms Huynh, they had had to demonstrate their skills as Nail Technicians either by in person demonstration, or video footage showing her work. In addition, they all had to spend two days in Ho Chi Minh City being trained by and demonstrating their skills to Ms

Huynh's niece. Having successfully proven their skills, they were offered employment and came to New Zealand once they had received a working visa.

[3] The applicants gave evidence that they worked long hours in the salon, and that once they had arrived in New Zealand, they were required to perform additional tasks particularly massage, waxing, and preparatory work for haircuts including hair washing.

[4] All of them were terminated from their employment after some had visited a Vietnamese person active on Facebook to discuss their employment rights, and I am told, asking for various things including having their wages paid into a bank account with tax accounted for, the provision of rosters for certainty of work hours, and the ability to refuse clients who made inappropriate requests.

[5] Ms Huynh says that the applicants were all dismissed because there were problems with their work, and in any case, they cannot bring claims because they were subject to a 90-day trial period which prevents them from bringing claims of unjustified dismissal.

The Authority's investigation

[6] For the Authority's investigation, each applicant lodged a written witness statement. Ms Huynh lodged two witness statements, one a general statement and one responding to Ms Thi Dung Tran (applicant 3290799). In addition, Mr Myles Norris Ms Huynh's partner, assisted her for part of the investigation meeting. All witnesses answered questions under oath or affirmation from me and the parties' representatives. The representatives also gave closing submissions.

[7] 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

[8] The applicants each raise claims of unjustified disadvantage and unjustified dismissal¹ as well as breaches of good faith in relation to their treatment by the respondent. They seek

¹ Although claims of discrimination were initially raised, these were not pursued.

compensation for hurt and humiliation, and penalties for the breaches of good faith. Counsel for the applicants advises that they have chosen not to raise claims for wages or holiday pay, as it is intended to put these claims in the hands of the Labour Inspectorate.

[9] Ms Huynh did not file a statement in reply (although she was represented by counsel at that time).

[10] Given that the applicants all worked for the respondent over a short period of time, the similarities in their claims, and the need for a translator, it was agreed at a case management conference that the matters would be heard consecutively over four days. At the investigation meeting, Ms Huynh was able to respond to the evidence of each applicant after each applicant had given her evidence.

[11] The issues requiring investigation and determination in relation to Ms Lien were:

- (a) Was she unjustifiably dismissed?
- (b) Did she suffer an unjustified disadvantage?
- (c) If the respondent's actions were not justified (in respect of disadvantage and/or dismissal), what remedies should be awarded, considering:
 - Lost wages (subject to evidence of reasonable endeavours to mitigate loss); and
 - Compensation under s123(1)(c)(i) of the Act
- (d) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct that contributed to the situation giving rise to her grievance?
- (e) Was there a breach of good faith or of the employment agreement, and should penalties be awarded?
- (f) Should either party contribute to the costs of representation of the other party.

Thi Lien Nguyen's evidence

[12] Ms Lien worked for Ms Huynh from 10 May 2023 to 28 December 2023. Prior to moving to New Zealand, she ran a small hairdressing salon of her own in Vietnam, which was how she supported herself and her two children after her husband passed away.

[13] She met Ms Huynh when Ms Huynh visited Vietnam in April 2023, picking her up from the airport, and demonstrating her massage skills by giving Ms Huynh a head massage.

She also provided videos of her work to Ms Huynh. Ms Huynh was happy with Ms Lien's work, and told her that she could come to New Zealand and start work a couple of days after arriving in New Zealand.

[14] She received an employment agreement dated 13 February 2023 from her agent. She could not understand it as it was written in English, but she sent a copy of her signature to the agent, and understands that he added this to the agreement. Ms Lien said she was aware there was a trial period in the agreement but she was not afraid of this. She was interested in the wage and hours, and the opportunity to work with the boss, that is, Ms Huynh.

[15] Ms Lien said Ms Huynh had told her she would not earn as much in the first three months, because she would be in training, but that Ms Huynh would honour the agreement after this. Ms Lien said that Ms Huynh also promised to provide somewhere for her family to live for the first three months. After that, she would be expected to move out so that new staff could move in. There was no mention of rent or bond.

[16] Ms Lien started work on 10 May 2023. She was not comfortable with the shared housing which she described as crowded and noisy. In July 2023, she moved out of the shared housing, into a rental property in Mt Cook which she and her children shared with a colleague and her family. She was responsible for rent. She said that she was not aware there was any bond. After her dismissal, Ms Huynh told her there had been a bond which she had paid and asked Ms Lien to pay her back.

[17] Although Ms Lien had been hired as a hairdresser, she was asked to learn and provide additional services such as painting nails, waxing, and massage, which she did not expect.

[18] Ms Lien worked 10.00 am to 8.00 pm, seven days per week. Her evidence was that she would occasionally be asked to come in early if a customer had made an early booking, or to stay until 9.00 pm if needed and occasionally as late as 10.00 pm. She says it was not until September that she began to regularly have Wednesdays off.

[19] Ms Lien also recalls an occasion when she was asked to massage a male customer, who at the end of the massage, made an inappropriate request of her. She complained to Ms Huynh about this. Ms Huynh told her and other staff at a staff meeting that they could turn down such requests, but that they must be polite. No other action was taken by Ms Huynh, for example, banning the customer from future bookings.

[20] Ms Lien also noted that after she had purchased a car, she was often asked to drive staff between the Lower Hutt and Wellington salons at her own expense.

[21] Ms Lien was unhappy with the conditions of work, and so arranged to visit another nail salon on her day off to enquire about a job, on 12 December 2023. Ms Huynh found out about this, and followed her to the salon together with 3 of her associates or nieces, and accused Ms Lien of working there. Ms Huynh then told Ms Lien not to come to work the following day.

[22] On 13 December 2023, Ms Huynh sent Ms Lien a letter alleging that she was working for another salon, and that this could amount to serious misconduct and a conflict of interest.

[23] On 14 December 2023, Ms Huynh's salon manager told Ms Lien not to come to work. On 15 and 16 December 2023, Ms Lien attended work, and was then told by Ms Huynh not to come in.

[24] On 21 December 2023, Ms Huynh invited Ms Lien to a disciplinary meeting the following day. The meeting was held in the salon in the public area. Ms Huynh began the meeting by asking Ms Lien if she knew what she had done wrong. Ms Lien said she did not know. Ms Huynh explained that Ms Lien had worked for another place which was unacceptable. Ms Huynh then asked Ms Lien to repay her for the bond on her rental property, which up until that point, Ms Lien did not know about. Ms Huynh told Ms Lien that this was serious misconduct and she did not need to come into the salon any longer.

[25] Ms Lien had come prepared with a letter from the salon owner, explaining that she was not working for him, but was not given a chance to provide this. The salon owner gave evidence at the investigation meeting of this also.

[26] On 24 December 2023, Ms Lien emailed Ms Huynh a copy of the letter from the salon owner. On 25 December 2023 Ms Huynh replied terminating her employment immediately.

[27] Ms Lien was deeply shocked by her dismissal. She felt let down in light of the unexpected and early termination of what she believed was a three year contract of employment, and felt she had been treated as a joke. She said that she had found this particularly hard as a single mother still having to provide for her children in a foreign land, and had lost hope.

Ms Huynh's Position Overall

[28] Ms Huynh gave evidence at the end of the third day of hearing that she was very distressed about having to fire so many people. She explained that she had to fire the applicants, because they all knew each other, and all of them created trouble by asking for what was strictly in their contracts, trying to do only the type of work they were first hired for, videoing her in the salon and also videoing when clients were around. Ms Huynh said that the videos of her in particular caused her much distress, and that she had also lost customers who were not happy with the videos (as well as other quality of work issues and raised voices in the salon). Ms Huynh said that this had been distressing for her to do, as she had been an immigrant herself, but she felt the group of applicants had left her with no other choice. Now, staff were happy, things were peaceful, and she was building her business back up.

[29] Ms Huynh explained further that she was able to fire the applicants because they all had 90-day trial periods in their employment agreements. When describing how and when these agreements were signed, Ms Huynh explained that she had provided the agent in Vietnam with an employment agreement for each applicant written in English. She then received the agreement back from the agent with a signature in the "employee" field. She did not know how or when the agreement was signed as she relied on the agent to arrange this. She did not know when the agreement was provided to each applicant, what the agent told them about the terms of the agreement, or their ability to understand and agreement written in English, although it was common ground that none of the applicants were fluent in English and spoke with Ms Huynh in Vietnamese.

[30] Ms Huynh said that once the applicants had arrived in New Zealand, she prepared a new employment agreement for each of them, making sure that it had the trial period clause, and a job description that said they would be required to perform all the services the salon offered and not just nails or hairdressing. Sometimes, the hours of work were also updated. Ms Huynh would put a new date in this agreement reflecting the date on which she expected the employee to arrive at the salon. She then sent the agreement to the agent and asked him to provide the employee's signature. He would do so, return the agreement with the signature of the relevant employee in a day or two.

[31] The applicants said they had not seen or received the second agreement. Ms Huynh was clear that she did not talk to the applicants about this or get their signature herself even

though they were in the salon together, but rather she emailed the agreement to the agent and asked him to acquire their signature, as this was easier for her. She did not know how the agent acquired the signatures, or how and when the new agreements were given to the applicants.

[32] Ms Huynh claimed that the applicants owed her rent and in some cases, a bond. She accepted that there was no written record showing the applicants were liable to pay rent or bond to her. Ms Huynh said that she had arranged shared accommodation for the newly arrived staff, with the expectation that they would move out after about three months so that newer staff could move in. This was because if their employment continued after three months, Ms Huynh would then start paying them the wages set out in the employment agreement. Up until then, they would only be receiving \$200 or \$300 per week, which was not really enough to support their own rent payments.

Was Ms Lien unjustifiably dismissed?

[33] Ms Huynh says that Ms Lien was properly dismissed following a fair process, because she found out that Ms Lien was seeking employment at another nail salon, and that she then lied about working there.

[34] Ms Huynh says that she found out that Ms Lien was working at another salon on her day off. So she went to that salon to confront Ms Lien, because she did not want her working for other salon as there was great competition between salons for nail technicians. She says Ms Lien was working there, which she knew because Ms Lien was wearing a protective apron/smock, and because later, Ms Lien provided a letter from the owner saying that Ms Lien was there to demonstrate her skills for a prospective job, which Ms Huynh says demonstrates Ms Lien was lying.

[35] Accordingly, I must consider whether Ms Lien's termination met the test of justification set out at s 103A of the Act, which requires that, before dismissal, the employer must:

- a. Sufficiently investigate the allegations against the employee;
- b. Raise the concerns with the employee;
- c. Give the employee a reasonable opportunity to respond; and
- d. Genuinely consider any explanation given by the employee

[36] Ms Huynh says that Ms Lien was dismissed because she had found other employment which Ms Huynh deemed unacceptable in light of how valued Vietnamese nail technicians were in the local market, and because Ms Lien had lied to her when confronted about this.

[37] Ms Huynh did not raise her concerns properly with Ms Lien before dismissing her. Ms Lien certainly understood that Ms Huynh was unhappy with her having other employment. This resulted in Ms Lien confidently responding to the allegation that she believed was of concern, that she was not engaged in other employment, by going as far as having the owner of the salon provide a letter confirming she was not an employee of that salon.

[38] Ms Huynh then explained at the investigation meeting that she took this to be evidence that Ms Lien had lied to her, and the allegation then changed to an allegation Ms Lien had lied and was seeking other employment. These later allegations were not properly put to Ms Lien, and she did not have an opportunity to respond, or for any explanations to be considered. Here, I note that Ms Huynh was angry that Ms Lien was seeking other employment, specifically referring to the importance to her business of trained Vietnamese staff and how other businesses would like to hire them for a competitive advantage, which Ms Huynh could not allow. This sits uncomfortably with the other evidence she gave that Ms Lien was a poor performer.

[39] I have no hesitation in finding that Ms Lien was in fact fired for seeking other employment. This is not a breach of her employment obligations. In addition, the process carried out by Ms Huynh was not in accordance with the requirements of s 103A, as I have set out above.

[40] It follows that Ms Lien's dismissal was unjustified, and her personal grievance claim is made out.

Was Ms Lien unjustifiably disadvantaged?

[41] It is submitted for Ms Lien that she suffered unjustifiable disadvantages in her employment, by way of breaching her employment agreement, failing to pay wages when due, and breaches of health and safety in the workplace. These claims are denied by the respondent.

[42] There are aspects of the employment that are not in dispute. Ms Lien's original employment agreement dated 13 February 2023 had a job description, setting out that she was

a hairdresser. This is consistent with her past work where she owned a hairdressing salon of her own in Vietnam.

[43] Ms Huynh accepts that she amended the duties once Ms Lien was in New Zealand to require her to perform other services including nails and massage.

[44] Ms Huynh accepts that Ms Lien was not paid her contractual wage when she started, but says that this was because for the first few weeks she was only training, and also because when she first arrived in New Zealand, Ms Lien did not have a New Zealand bank account. Ms Huynh says that she “loaned” Ms Lien various amounts including \$7,800, plus a further \$3,000 paid by Ms Huynh for a bond and rent in advance (there is no indication that this was paid to Ms Lien or that Ms Lien was aware of this expenditure at the time), and \$1,800 for food. There is no written agreement between Ms Lien and Ms Huynh as to these sums, and Ms Huynh relies on her memory as to what she says is owing.

[45] Ms Lien says that for the first few weeks, she was paid \$200 per week, rising to \$300 per week, and then to \$400 per week over time, and these cash payments were her wages. Ms Huynh did not attempt to pay any back pay to Ms Lien (either at the rate of minimum wage, or at her contractual wage rate) once she had opened a New Zealand bank account. In addition, Ms Lien’s final pay was diverted to Ms Huynh’s bank account.

[46] I find that Ms Lien was employed as a Nail Technician as set out in her employment agreement. It was only once Ms Lien had arrived in New Zealand (and was not receiving regular wages) that Ms Huynh unilaterally changed her job description. Ms Huynh has then proceeded to critique Ms Lien’s work performance as a defence against paying her wages at all, paying her contractual rate, and to justify her dismissal. The unilateral change of job description at a late stage when Ms Lien had already made significant personal and financial commitments to come to New Zealand on the basis of the previous arrangement, and the critique of her for allegedly failing to satisfactorily fulfil duties she did not agree to perform amount to an unjustified disadvantage in her terms and conditions of employment. This is exacerbated by the fact that Ms Huynh offered Ms Lien a specific job description consistent with her previous work experience.

[47] Ms Huynh accepts that Ms Lien was not paid her contractual wage. It is well established that a failure to pay wages in full and when due may be an unjustified disadvantage.

Even if I accept Ms Huynh's explanations that she could not pay Ms Lien her wages in full until Ms Lien had a New Zealand bank account and IRD number, this does not explain why Ms Lien was not paid her arrears in full once she had set up her bank account, or why she did not begin receiving her full wages from that point onwards. I find that the failure to pay wages in full and when due was unjustified and disadvantaged Ms Lien in the terms and conditions of her employment. I accept Ms Lien's evidence of the practical difficulties as well as the stress and distress that the failure to pay wages caused her.

[48] There are also the concerns raised by Ms Lien that she was required to massage naked male clients and that she was asked by male clients for inappropriate intimate massage. When she raised this with Ms Huynh, she was told she was able to refuse, but that she should do so politely, and that these requests were a normal part of doing business. Ms Lien raised concerns that she was not authorised to respond more strongly and that Ms Huynh did not take any steps to prevent this from happening or at least reduce occurrences, such as making it clear what services were offered. She says she felt unsafe and this reduced her trust and enjoyment in the workplace.

[49] It is submitted for Ms Huynh that there was no evidence of recurring harassment, or that the steps taken by her were inadequate in the circumstances. I am not persuaded that it is adequate or appropriate to respond to staff who have been sexually harassed by clients by telling them to be polite to those clients. I accept that Ms Huynh supported staff to a degree by advising them they could refuse/say no, but Ms Lien's concern was that there were steps which could have been taken to help reduce or prevent this from happening in the first place, such as clarifying services that would not be offered up front, and on a practical level, setting rules around clothing to be worn by customers. Section 117 of the Act sets out that an employer in this position must inquire into the facts, and then "must take whatever steps are practicable to prevent any repetition". Ms Huynh did not do this. This failure is an unjustified disadvantage in employment.

[50] Ms Lien experienced unjustified disadvantages in her employment, and she is entitled to remedies accordingly.

[51] For completeness, I note that it was submitted for Ms Huynh that Ms Lien had raised grievances outside the 90-day period. This was said to be a grievance about being required to

use her personal car for salon business without proper remuneration/reimbursement. As will be apparent from the above, I have not made any findings on this issue.

Remedies

[52] Ms Lien is entitled to remedies in respect of her personal grievances. She claims eight weeks lost wages and compensation for hurt, humiliation, and injury to feelings in respect of her grievances. I note that in her statement of problem, Ms Lien claimed a compensatory sum of \$20,000, but in submissions filed after the investigation meeting, she increased this to \$50,000. She has also claimed a penalty for breach of good faith, a penalty of \$20,000 for breaches of her employment agreement, that penalties be paid to her rather than the Crown, and costs and reimbursement of the filing fee.

[53] I will first consider the claim for eight weeks lost wages resulting from unjustified dismissal, which the respondent resists on the grounds that there is no evidence of mitigation.

[54] Ms Lien gave evidence that even though she felt angry and scared after her dismissal, she continued to look for jobs. She said this was difficult due to her limited English and in a completely different country, but she persisted and searched for every opportunity including online. She found a job at the end of February 2024 doing nails and hairdressing. I consider this to be direct evidence of steps taken in mitigation. Section 128 (2) of the Act provides that where an employee has a personal grievance and has lost remuneration as a result, the Authority must order the employer to pay the employee a sum equal to that lost remuneration. Ms Lien has lost eight weeks wages, and is entitled to be reimbursed for this.

[55] Ms Lien's employment agreement dated February 2023 provided that she would work a guaranteed minimum of 40 hours per week, at \$27.76/hour. Forty hours at the rate of \$27.76 per hour equates to \$1,110.40 per week. Over eight weeks, this amounts to \$8,883.20 gross. Orders are made accordingly.

[56] I must now consider an award of compensation for hurt and humiliation. It is submitted for the respondent that no compensation is justified. I am not persuaded by this bare assertion. I accept Ms Lien's evidence of the impact on her, including the on-going stress of the working conditions and lack of wages, and the increased stress including her need to take sleeping pills following her dismissal. Ms Lien initially sought \$20,000 in compensation. Taking into account other comparable cases, I consider this an appropriate award under s 123(1)(c)(i), and

that it reasonably reflects the impacts on Ms Lien. I do not consider it would be fair to award the significantly higher amount that was only sought following the investigation meeting. Orders are made accordingly.

Breach of Good Faith and the employment agreement

[57] The statement of problem sets out a claim for breach of good faith, being that Ms Lien was exploited by being grossly underpaid, that her terms of employment were unilaterally varied, she was dismissed, and that she did not receive her notice payment.

[58] As will be apparent, these claims are the same as her personal grievance claims for which remedies have already been awarded. Accordingly, I decline to make further awards in respect of these same actions.

[59] Ms Lien also claims a penalty for breaches of her employment agreement. There are several terms which Ms Lien says were breached including being required to work more than the maximum of 60 hours per week set out in her employment agreement (which is disputed) failure to pay the contractual wage rate, failure to pay wages when due and into a bank account, failure to provide rest and meal breaks (which is disputed), and requiring Ms Lien to carry out additional duties that she was not trained for.

[60] There is also considerable overlap between these breaches and the personal grievance claims. I consider there to be a distinction however, in that Ms Huynh offered employment to Ms Lien by way of both written terms on 13 February 2023 on the basis of which she moved to New Zealand. In the event, practically none of the key terms of either agreement were honoured, with Ms Huynh changing the rate of pay, type and frequency of payments, duties, and minimum and maximum hours of work to suit herself after Ms Lien had arrived in New Zealand. Ms Huynh's in-person evidence suggested that she never intended to honour the written terms she had provided, and instead she expected Ms Lien and others to accept very low rates of pay and long hours for the first 3 months while they were being trained.

[61] Although Ms Huynh says now that Ms Lien owes her money for accommodation, she is unable to point to any written agreement about this. The evidence of Ms Lien and others is that they expected to receive free or heavily subsidised accommodation for the first few weeks of their employment, which they would then be able to move out of once they started receiving

their full wages. On balance, I prefer their evidence, which is consistent with Ms Huynh's in-person evidence.

[62] Ms Huynh made explicit written commitments to Ms Lien through the employment agreement as to hours of work, rate of pay, and duties. Ms Huynh was in control of the terms and conditions she offered, and can expect to be bound by them. I consider a single penalty for breaching the terms of the employment agreement warranted in the circumstances.

[63] The law in respect to quantification is well established given the content of s 133A of the Act and cases such as *Borsboom (Labour Inspector) v Preet PVT Limited and Warrington Discount Tobacco Limited*,² *A Labour Inspector v Prabh*³ and *A Labour Inspector v Daleson Investment*.⁴ Section 133A requires I have regard to the object of the Act, the nature and extent of the breach(s), whether they were intentional or not, the nature and extent of any loss or damage, steps to mitigate effects of the breach, circumstances of the breach and any vulnerability and finally previous conduct.

[64] The Court has found a failure to provide minimum standards directly disadvantages employees, and often arises in circumstances involving a distinct power imbalance.⁵ That is the case here and suggests that a penalty should be awarded.

[65] The requirement of intention is not necessarily about whether the party was aware they were breaching the law. Instead, it is about whether they acted intentionally, in the sense of intending to do the act in question⁶, or failed to take reasonable steps to fulfil their legal obligations.⁷ Here the evidence leads to a conclusion the failure is deliberate given the non-compliance with the terms of the employment agreement was to Ms Huynh's financial benefit.

[66] The question as to quantum must be weighed carefully. I have considered evidence from Ms Huynh as to her financial situation, and the impact on her ability to pay.

[67] Having weighed these factors I conclude the respondent should be required to pay a penalty of \$2,500, which is half of that requested by the applicant. However, I direct that all

² *Borsboom v Preet PVT Limited and Warrington Discount Tobacco Limited* [2016] NZEmpC 143

³ *A Labour Inspector v Prabh Limited* [2018] NZEmpC 110

⁴ *A Labour Inspector v Daleson Investment Limited* [2019] NZEmpC 12

⁵ *A Labour Inspector v Daleson Investment Limited*, above n 3, at para [27].

⁶ *Parton v Fifita*, TT 1815/00 DC Auckland, quoted in *MBIE v Sumich*, Auckland TT 4088383

⁷ *El-Agez v Comprede Limited*, TT 4121553, at para 18

of this should be paid to the applicant, in recognition of the direct impact on her stemming from these breaches. Orders are made accordingly.

Contribution and other matters

[68] It is submitted for Ms Huynh that any remedies be reduced by 50%, due to Ms Lien's "conduct and poor performance". Ms Huynh attempted to suggest that Ms Lien was having an affair, however, there is no evidence of any conduct by Ms Lien in the course of her work which might have contributed to her dismissal or unjustified disadvantages. I also consider that there is no evidence of poor performance which might have resulted in her eventual dismissal. Allegations of poor performance were only raised after Ms Lien was dismissed rather than during her employment, and are fatally undermined by Ms Huynh's evidence about the commercial value Ms Lien brought to the business as a nail technician and how she did not want Ms Lien working for a competitor.

[69] In any event, these matters would not relieve the employer of its obligations to both comply with the employment agreement and follow a fair process when considering dismissal. No actions by Ms Lien contributed to the situation that led to her grievances. No deductions for contribution are made.

[70] In addition, Ms Huynh has raised by way of written submissions after the investigation meeting, that Ms Lien's claims are part of a "scheme" which has been "concocted" to "extort money from the respondent"⁸. It is stated that a third party has convinced the applicants that they would be able to obtain substantial compensation, and that the applicant's stories are "fabricated" and they have provided false documents⁹.

[71] I do not accept that there is any reliable evidence of this. Nor do I accept that Ms Lien seeking her employment rights amounts to a "scheme" even where other staff are doing the same. Nevertheless, I consider it appropriate to record that this determination and the remedies resulting focuses on matters where there was little to no factual dispute between the parties. I have not expressed conclusions on other matters mentioned by the parties which I was not required to determine.

⁸ Paragraph 26 of the respondent's submissions dated 7 November 2024.

⁹ Ibid, paragraphs 32 to 43 generally.

Orders

[72] Ms Thi Lien Nguyen has a personal grievance in that she was unjustifiably dismissed and unjustifiably disadvantaged in her employment.

[73] Ms Ngoc Tuyet Uyen Huynh is ordered to pay to Ms Thi Lien Nguyen within 28 days of the date of this determination:

- a. The sum of \$8,883.20 gross as compensation for eight week's lost remuneration;
- b. The sum of \$20,000 without deduction as compensation for hurt and humiliation; and
- c. The sum of \$2,500 without deduction as a penalty for breaching the employment agreement.

Costs

[74] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves, bearing in mind that the amount of time taken to hear Ms Lien's matter was approximately half a day.

[75] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the applicant¹⁰ 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, the respondent 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.

[76] 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.¹¹

Claire English
Member of the Employment Relations Authority

¹⁰ Where it is not clear who may be seeking costs use "the party who believes they are entitled to costs".

¹¹ For further information about the factors considered in assessing costs see:

www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1