IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2026] NZERA 25
3326960

	BETWEEN	YING MA Applicant
	AND	NO.2 NOODLE NZ LIMITED Respondent

Member of Authority:	Simon Greening
Representatives:	May Moncur, advocate for the Applicant Ethan Liu for the Respondent
Investigation Meeting:	16 December 2025
Submissions received:	16 December 2025 from the Applicant 16 December 2025 and 5 January 2026 from the Respondent
Determination:	19 January 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Ying Ma commenced employment with No.2 Noodle NZ Limited (N2N) as a kitchenhand in its restaurant on 15 April 2024.

[2] N2N operates a number of restaurants. Although Ms Ma worked for a short period, Ma says she was employed on a permanent basis and was unjustifiably dismissed on 17 June 2024.

[3] The restaurant Ms Ma worked in, opened in April 2024. N2N says at the outset the restaurant was extremely busy. However, by June, business was slow, and they needed to reduce the hours of work for all employees to ensure the business was sustainable.

[4] There are three employment relationship problems that Ms Ma has brought to the Employment Relations Authority.

[5] The first, is the nature of the employment relationship. Ms Ma says she was a permanent employee. N2N says Ms Ma was employed on a casual basis.

[6] The second, is how her employment came to an end. Ms Ma says she was dismissed during a phone call with David Niu, the general manager, on 17 June 2024.

[7] N2N says Ms Ma was a casual employee who abandoned employment after a phone call on 17 June 2024. N2N processed Ms Ma's final pay on 27 June 2024.

[8] Further, N2N says that Ms Ma was a valued employee, and it was unfortunate Ms Ma incorrectly formed the view during the call on 17 June 2024 that she was being dismissed. N2N simply wanted to have a discussion with Ms Ma about her hours and the need to make the business sustainable moving forward.

[9] The third employment relationship problem is Ms Ma's concern she did not receive a written employment agreement. N2N accepts this was an oversight on its part.

[10] Ms Ma says she was employed on a permanent basis and unjustifiably dismissed on 17 June 2024. Ms Ma seeks compensation for humiliation and injury to feelings, remuneration lost as a result of the dismissal, and a penalty against N2N for not providing her with a written employment agreement.

The Authority's investigation

[11] For the Authority's investigation a written witness statement was lodged by Ms Ma and Mr Niu. All witnesses answered questions under oath or affirmation from me and the parties' representatives. The representatives also gave oral closing submissions.

[12] 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

[13] The issues requiring investigation and determination are:

(a) What was the nature of the employment relationship?
(b) How did the employment relationship come to an end?
(c) If Ms Ma was dismissed, was the dismissal unjustified?
(d) If so, is Ms Ma entitled to a consideration of remedies including:
    i. Compensation under section 123(1)(c)(i) of the Act; and
    ii. Reimbursement of lost wages under section 128 of the Act.
(e) Should any remedy awarded be reduced under section 124 of the Act for blameworthy conduct by Ms Ma which contributed to the circumstances which gave rise to the grievance?
(f) Should a penalty be issued against N2N for not providing Ms Ma with a written individual employment agreement in accordance with section 64 of the Act?
(g) Is either party entitled to an award of costs?

What was the nature of the employment relationship?

[14] In *Jinkinson v Oceana Gold (NZ) Limited* the Employment Court set out factors to consider when determining whether an employment relationship is casual or permanent in nature.[1] The factors are:

(a) The number of hours worked each week.
(b) Whether work is allocated in advance by a roster.
(c) Whether there is a regular pattern of work.
(d) Whether there is a mutual expectation of continuity of employment.
(e) Whether the employer requires notice before an employee is absent or on leave.
(f) Whether the employee works to consistent start and finishing times.

[15] It is well established that determining a person's employment status requires an assessment of the real nature of the employment relationship.[2] This assessment involves considering the nature of the obligations owed by each party.[3]

[1] *Jinkinson v Oceana Gold (NZ) Limited* [2009] NZEmpC 67 at [47].
[2] *Baker v St John Central Regional Trust Board* [2013] NZEmpC 34 at [20].
[3] Above n 2 at [23].

[16] An important factor to consider as part of this assessment is whether the employer is required to offer work and whether the employee is required to accept any offers of work. If the employment relationship is casual in nature, then at the conclusion of each period of work neither party can have any additional expectation that a further offer of work will be made, and if an offer is made, whether it will be accepted.[4]

The number of hours worked each week

[17] During Ms Ma's period of employment, she worked six days per week averaging approximately 55 hours per week. Mr Niu said the restaurant opened in early April 2024 and was very busy until the middle of June 2024.

[18] Ms Ma would often complete a double-shift in a day. The first shift normally commenced at 10am and finished at 3pm. The second shift commenced at 5pm and often finished between 10pm and 11pm.

[19] Mr Niu said Ms Ma's role was advertised as a part-time position. He expected Ms Ma to only work eight hours per day, but due to the busyness of the restaurant she averaged approximately 10 hours per day.

[20] The number of hours worked, and the regular pattern of hours each week, strongly support a finding that Ms Ma was a permanent employee.

Whether work is allocated in advance by a roster

[21] N2N provided the Authority with rosters and records of work attendance. In his evidence Mr Niu said hours of work were allocated to employees using a roster. The number of total hours allocated to staff was based on revenue received by the business in the previous week. The number of total hours available was then evenly allocated to front of house staff including Ms Ma.

[22] Mr Niu also considered Ms Ma's request for additional hours when he completed the roster each week.

[23] Although work hours were set by a roster, Ms Ma was working an average of 55 hours per week. The start and finish times each day were reasonably consistent.

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[4] *Muldoon v Nelson Marlborough District Health Board* [2011] NZEmpC 103 at [40].

Whether there is a mutual expectation of continuity of employment

[24] Ms Ma had a legitimate expectation of ongoing employment between shifts. The number of hours Ms Ma was required to work each week was consistent. Ms Ma's start and finish times each day were consistent. Most days Ms Ma would start at 10am. Ms Ma's finish time was variable at times, however she generally worked until at least 10pm each night.

[25] This is another factor in support of a finding that Ms Ma was employed on a permanent basis.

Summary – the nature of the employment relationship

[26] In summary, Ms Ma was a permanent employee. She worked very long hours, normally six days per week, often undertaking double-shifts. Ms Ma's hours were regular and consistent.

How did the employment relationship come to an end?

What are the agreed key facts?

[27] The agreed key facts are:

Sunday 16 June 2024

(a) Mr Niu advised staff at a meeting that due to a slow-down in customer demand there was a need to reduce the hours of work available for all employees.

Monday 17 June

(b) The restaurant was closed. Mr Niu called Ms Ma at 7.18pm. The length of the call was 36 minutes. Mr Niu called Ms Ma again at 8.53pm. She did not answer the call. Ms Ma sent a text message to Mr Niu: *"Sorry David, I was taking a shower. You can leave messages."* Mr Niu sent out the roster for the following week at 10.43pm. Ms Ma was not on the roster for the following week.

Wednesday 19 June

(c) Ms Ma's representative sent a personal grievance letter to N2N claiming that Ms Ma had been dismissed during the call on Monday 17 June.

Thursday 20 June

(d) Mr Niu called Ms Ma at 3.53pm and 4pm. There was no answer on both occasions. Mr Niu sent a WeChat message to Ms Ma:

> Hi Ms. Ma, I tried calling you this afternoon but couldn't reach you. I believe there might be a misunderstanding regarding the work arrangements. I have never said that you were being dismissed, nor was that ever my intention...everyone's working hours have been adjusted to some extent. Adjustment does not mean dismissal. If there was anything unclear or misunderstood during this adjustment, I believe it should be resolved through communication. Lastly, I truly hope you can come back to work and talk with me directly. That would be the most constructive attitude and the best way to resolve any misunderstanding. I will still try to contact you tomorrow, as I really hope we can talk.

Friday 21 June

(e) Mr Niu reinstated Ms Ma to the roster. Ms Ma's next rostered shift was Saturday 22 June 2024.

[28] There was no further direct communication between Mr Niu and Ms Ma following the phone call on 17 June.

[29] On Wednesday 26 June Mr Niu formed the view that Ms Ma was not coming back to work. On Thursday 27 June N2N processed her final pay.

Did Ms Ma abandon employment following the phone call with Mr Niu on 17 June, or was Ms Ma dismissed during this call?

[30] In *E N Ramsbottom v Chambers* the Court of Appeal noted:[5]

> Where the issue is whether the employee abandoned employment, the employer should be cautious in drawing that inference and must face a high threshold if contending that the employment ended on the employee's initiative in that way.

[5] *E N Ramsbottom Ltd v Chambers* [2000] NZCA 183 at [26].

[31] Whether particular words or actions on the part of an employer amount to dismissal, must be considered objectively in light of the particular circumstances that applied at the relevant time.[6]

[32] Mr Niu says he did not dismiss Ms Ma during the phone call on 17 June. According to Mr Niu the purpose of the phone call on 17 June was to discuss a proposal with Ms Ma to reduce her hours. Mr Niu says that Ms Ma became very upset during the phone call.

[33] On 17 June, later in the evening, Mr Niu sent out the roster for the following week. Ms Ma was not on the roster. Mr Niu says Ms Ma was not on the roster because she seemed very upset during the phone call and he thought it would not be prudent for Ms Ma to attend work.

[34] Mr Niu reinstated Ms Ma to the roster on 21 June. Mr Niu said he reinstated Ms Ma to the roster because he believed she would have had ample opportunity to emotionally reset following the phone call on 17 June.

[35] After the phone call on 17 June, Mr Niu said he called Ms Ma again later that evening, and then he called Ms Ma twice on Thursday 20 June. However, Ms Ma and Mr Niu did not speak again after the call on 17 June.

[36] Mr Niu says he called Ms Ma because he wanted to check in with her and see how she was feeling following the call. Mr Niu wanted to also clarify any misunderstanding arising from the phone call because the conversation between the two of them had become quite heated.

[37] Mr Niu says the phone call on 17 June resulted in a misunderstanding. In his opinion, Ms Ma was not dismissed during the call.

[38] Mr Niu says that Ms Ma was rostered on for the weekend 22 and 23 June because the weekends were normally busy. Although the company received a personal grievance letter on 19 June, recording Ms Ma's view that she had been dismissed on 17 June, Mr Niu says he was not aware of this letter.

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[6] *Surplus Brokers Limited v John Neil Armstrong* [2020] NZEmpC 131 at [13].

[39] Ideally, Mr Niu said he would have liked Ms Ma to agree to reduce her hours to approximately 40 per week.

Ms Ma was dismissed on 17 June 2024

[40] Although Mr Niu says that he did not tell Ms Ma she had been dismissed during the call on 17 June, an express statement to that effect is not necessary.[7]

[41] An objective assessment is required. Was it reasonable for somebody in Ms Ma's position to have considered that her employment had been terminated during the call on 17 June?[8]

[42] It was reasonable for Ms Ma to conclude she had been dismissed by N2N on 17 June. The reasons for this conclusion follow:

(a) Ms Ma was not on the roster when it was sent by Mr Niu to the staff team on 17 June after the phone call with Ms Ma.

(b) Mr Niu sent a WeChat message to Ms Ma, noting she had not been dismissed. This WeChat message was sent to Ms Ma after N2N had received a personal grievance letter claiming Ms Ma had been dismissed.

(c) Ms Ma was reinstated to the roster after the company received the personal grievance letter.

(d) Mr Niu agrees that on 16 June he had discussed with Ms Ma in person a proposal to reduce her hours, and Ms Ma was supportive of this proposal.

(e) Ms Ma's evidence is that instead of a further discussion on 17 June to discuss the proposal to reduce her hours, she was told her position was no longer required.

(f) On 18 June, the day following the call which led to the dismissal, Ms Ma sought work at another restaurant and secured an offer.

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[7] Above n 6 at [13].
[8] *Cornish Truck & Van Limited v Gildenhuys* [2019] NZEmpC 6 at [45].

(g) Mr Niu says that Ms Ma became upset during the phone call. However, the day before when reduction of hours was discussed, Ms Ma was broadly supportive of the idea.

(h) N2N did not provide any form of written proposal to Ms Ma regarding the proposal to reduce her hours.

Ms Ma was unjustifiably dismissed

[43] I have carefully considered Mr Liu's submissions on behalf of N2N.

[44] Mr Liu says the phone call on 17 June resulted in a misunderstanding between N2N and Ms Ma. N2N very much wanted Ms Ma to continue her employment, albeit on reduced hours.

[45] Mr Liu said the company proactively tried to resolve matters with Ms Ma following the phone call on 17 June. Mr Liu said Ms Ma was a hard worker and they did not want to lose her.

[46] I have also considered the contemporaneous evidence. In particular, following the phone call on 17 June, Ms Ma was not put back on the roster. Previous to the phone call Ms Ma was working six days per week, averaging ten hours per day. The decision to not reinstate Ms Ma to the roster following this phone call amounted to a sending away.[9]

[47] It follows that Ms Ma was unjustifiably dismissed when her employment with N2N concluded abruptly on 17 June. A fair and reasonable employer could not terminate an employment agreement during a phone call on the basis the employee's position is no longer required.[10]

What remedies is Ms Ma entitled to?

[48] Ms Ma has established a personal grievance for unjustified dismissal. She is entitled to a consideration of the remedies sought.

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[9] *Kang v Saena Company Limited* [2022] NZEmpC 151 at [15].
[10] Employment Relations Act 2000, s 103A(3).

Compensation for humiliation, loss of dignity and injury to feelings

[49] An award of compensation is for the impact on the employee of the personal grievance and not intended as a punitive action to signal disapproval of the employer's conduct.[11]

[50] In considering an award of compensation, the assessment required is the nature and extent of harm caused to the employee by the employer's conduct.[12]

[51] As part of this assessment, the type of loss needs to be firstly identified, then the extent of the loss is considered. Assessing the quantum will not only depend on the facts of this particular case, but also other comparable cases.

[52] At the investigation meeting Ms Ma provided compelling evidence regarding the impact of the dismissal on her. Mr Niu said that Ms Ma was a hard worker. Ms Ma worked very long hours for N2N.

[53] Ms Ma's sudden loss of job and income deeply affected her. She described in her witness statement how the company's decision made her feel unappreciated and disrespected.

[54] In assessing Ms Ma's loss, I have considered the impact of the conversation on 17 June 2024 which, from Ms Ma's perspective, "blind-sided" her. Ms Ma was agreeable to having her hours reduced, as indicated to Mr Niu the previous day. She became upset when she discovered that her role was no longer required.

[55] The Authority considers the appropriate compensation amount to address the emotional injury caused by N2N is $9,500.

[56] N2N is ordered to pay Ms Ma the sum of $9,500 pursuant to section 123(1)(c)(i) of the Act.

Reimbursement of lost wages

[57] The Authority must order the employer to pay the lesser of a sum equal to that lost remuneration or to three months' ordinary time remuneration, subject to

[11] *Paykel Ltd v Ahlfield* [1993] 1 ERNZ 344 at [342].
[12] *Pyne v Invacare New Zealand Limited* [2023] NZEmpC 179 at [41].

contribution and the discretionary power in s 128(3) of the Act to order an employer to pay a greater sum.

[58] Ms Ma commenced employment with a new restaurant on 22 June 2024, five days after the dismissal.

[59] N2N is ordered to pay Ms Ma the net sum equivalent to one weeks' wages based on a 40-hour working week. This calculation is on the basis that Ms Ma accepted in her evidence that she would have been agreeable to a 40-hour working week.

Contribution

[60] The Authority must consider whether there ought to be a reduction in the remedies that would otherwise have been awarded to the employee.[13] This in turn requires an assessment of the extent to which the actions of the employee contributed towards the situation that gave rise to the personal grievance and whether those actions require a reduction in remedies.[14]

[61] There must be a causal connection between the employee's conduct and the situation which gave rise to the dismissal.[15]

[62] Ms Ma did not contribute to the situation that gave rise to her personal grievance. Therefore, no reduction from the remedies awarded to Ms Ma is required.

Did N2N breach s 64 of the Act by failing to provide an employment agreement to Ms Ma, and if so, should a penalty be ordered?

[63] At the investigation meeting, Mr Liu rightly accepted that N2N should have provided Ms Ma with a written individual employment agreement.

[64] In exercising my discretion to order a penalty in this case, I have considered the vulnerability of Ms Ma, the dispute in respect of the nature of Ms Ma's engagement with N2N, the fundamental nature of the obligation to provide an employee with a written agreement, and N2N being a seasoned employer.

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[13] Employment Relations Act 2000, s 124.
[14] Above n 7 at [39].
[15] *Salt v Fell* [2008] NZCA 128 at [78].

[65] In determining an appropriate quantum for the penalty, I have considered section 133A of the Act and the factors discussed in *Borsboom v Preet PVT Ltd.*[16] I have taken into account Mr Liu's submission that their normal business practice is to provide written individual employment agreements to their employees and that the situation with Ms Ma was an oversight.

[66] I have also considered comparable cases and consider a penalty of $500 to be appropriate in the circumstances.

[67] N2N is ordered to pay a penalty of $500 to the Crown. The penalty is to be paid within 21 days of the date of this determination.

Orders

[68] Within 21 days of the date of this determination I order:

(a) N2N pays Ms Ma the sum of $9,500 pursuant to section 123(1)(c)(i) of the Act.

(b) N2N pays Ms Ma the net sum equivalent to one weeks' wages based on a 40-hour working week.

(c) N2N is ordered to pay a penalty of $500 to the Crown.

Costs

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

[70] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Ms Ma 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, N2N 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.

[16] *Borsboom v Preet PVT* [2016] NZEmpC 143 at [141]-[148].

[71] 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.[17]

Simon Greening
Member of the Employment Relations Authority

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