

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2025] NZERA 603  
3319740

BETWEEN	JOSHUA MCCLUNG Applicant
AND	WAINUI HIGHLANDS TRUST Respondent

Member of Authority:	Sarah Kennedy-Martin
Representatives:	Joshua McClung in person Bradley Duncan for the Respondent
Investigation Meeting:	24 June 2025 in Tauranga and by AVL
Submissions:	14 July 2025 from Applicant 17 July 2025 from Respondent
Determination:	29 September 2025

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment Relationship Problem**

[1] Mr McClung was employed by Wainui Highlands Trust (WHT) for a fixed term to carry out a few weeks seasonal work at the end of the season in a kiwifruit orchard. He left the workplace after one and a half days work and did not return. Mr McClung says this was because he was bullied by another employee of WHT and although he raised this issue with WHT, this was mishandled. He raised a personal grievance for unjustified dismissal on the basis WHT asked for his resignation in writing requiring him to “self terminate” and a disadvantage claim about how WHT responded to his request for personal information.

[2] Mr McClung seeks compensation and lost wages. An additional claim he was discriminated against was withdrawn at the investigation meeting.

[3] Patrick and Dawn Torr gave evidence on behalf of WHT and say Mr McClung resigned and was not dismissed from his employment. He worked a full day on his first day (13 November 2023), advised Mr Torr he could not come to work on 14 and 15 November and although he attended work on 16 November he left at approximately 1.40pm after speaking to Mrs Torr at the house. Mrs Torr says he told her he resigned and she understood the reason was a dispute with another employee.

[4] WHT says because Mr McClung resigned its actions were justified and WHT through Mr and Mrs Torr acted as a fair and reasonable employer in those circumstances. This included following up with Mr McClung after he left the property suddenly on 16 November and conducting an investigation regarding his concerns despite the fact he resigned before he left. WHT denies Mr McClung was disadvantaged by how it dealt with Mr McClung's later complaint of bullying or with his request for information.

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

[5] For the Authority's investigation written witness statements were lodged from Mr McClung and on behalf of WHT from Mr and Mrs Torr. Mr McClung attended by AVL as did Mrs Torr. Mr Torr attended in person with Bradley Duncan, Mr and Mrs Torr's son in law, who represented WHT. All witnesses answered questions under oath or affirmation. Mr McClung and Mr Duncan provided written submissions after the investigation meeting.

[6] As permitted by s 174E of 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**

[7] The issues identified for investigation and determination are:

- (a) How did Mr McClung's employment come to an end?
- (b) If Mr McClung was dismissed was it unjustified?
- (c) Was Mr McClung bullied by another employee of WHT?
- (d) Was the bullying complaint handled in a fair and reasonable manner?
- (e) Was Mr McClung disadvantaged by how WHT responded to his request for information?

(f) If any of WHT's actions were unjustified, should remedies be awarded?

### **Background**

[8] Mr and Mrs Torr have owned and operated Wainui Highlands orchard since 1989. Mr Torr recalled receiving a call from Mr McClung asking about whether he could stay on the orchard with his partner and their new baby. He explained to Mr Torr he was out of work and was unable to continue staying at another orchard. Mr Torr said he could not live on site but there were a few weeks of end of season work available in the orchard if Mr McClung was interested.

[9] Mr McClung had previously worked in WHT's orchards but through a labour hire company. WHT entered into a seasonal fixed term agreement with Mr McClung. Employment commenced on 13 November 2023 and expired when the seasonal kiwifruit work ended. This was to be approximately three weeks work.

[10] On 9 November 2023, Mr McClung came to the orchard with his partner and their baby. Mr Torr introduced them to Mrs Torr and they completed the pre-employment documents. Mr McClung started work the following Monday which was 13 November 2023. On arrival Mr Torr discussed with him whether he would work through a contractor or WHT directly. After a phone call Mr McClung advised it would be directly with WHT. The employment paperwork was completed and Mr McClung worked in the orchard for the rest of that day and finished at 5.00pm.

[11] Mr McClung did not work again until Thursday 16 November. On 14 November he sent a text message to Mr Torr advising he would not be at work that day because he had to take his wife to a meeting with her immigration advisor. On 15 November, Mr McClung's text said he would not come to work because it looked like they would need to go to Auckland to see the immigration advisor. Mr Torr was expecting Mr McClung at work and responded with a text "not understanding Joshua". Mr McClung sent two longer text messages about migrant exploitation and reporting an employer for various wrong doings. Mr Torr simply replied "okay".

[12] On 16 November Mr McClung attended work. Mr Torr recalled Mr McClung continuing to talk about immigration issues at work in the morning and Mr Torr asked everyone to start working in response to the conversation because he said it was unproductive.

[13] Later that day Mrs Torr came to see him on the orchard and informed him Mr McClung had come to the house, resigned and left the orchard. Another employee (employee A) also came to see him and told him Mr McClung left the property after he asked Mr McClung to focus on his work. Mr Torr said he was disappointed Mr McClung had not come to see him before leaving but he assumed he had resigned and moved on given the short-term nature of work on offer and Mr McClung's texts and the conversation that morning about immigration issues and complaints about other growers.

[14] Mr McClung raised several personal grievance claims with WHT and lodged a statement of problem in the Authority on 27 August 2024.

### **Did Mr McClung resign or was he dismissed?**

[15] In order to assess Mr McClung's claim he was unjustifiably dismissed it first must be established he was dismissed. Mr McClung recorded in his written evidence that after an interaction with another WHT worker he was very unhappy because he was ordered to stop talking and concentrate on work and threatened with dismissal. This also forms the basis of the bullying complaint referred to below. He went to speak to Mr Torr but he was not around so he spoke to Mrs Torr at the house and explained he was unhappy working with employee A and made reference to politics and the local Member of Parliament. Mrs Torr asked for his written notice of resignation and he says he declined to do that because he wanted to talk to Mr Torr when he was available.

[16] His written statement recorded:

I was unhappy with the situation with employee A and Dawn was insisting that I provide a written resignation, I gathered from this that WHT didn't particularly care and obviously wanted and preferred that I leave. This dismissive attitude from WHT caused me to lose confidence in it as an employer and effectively ruining the employment relationship.

[17] When asked by the Authority if he told Mrs Torr he resigned, Mr McClung said he did not. Instead, he says he was surprised Mrs Torr was asking for his resignation. He expected Mrs Torr to confirm WHT would investigate his concerns about employee A immediately and said instead he was given the cold shoulder, no one sat down and talked to him as part of an investigation into bullying and WHT made it clear he was not wanted at the orchard.

[18] Mrs Torr's evidence was of Mr McClung arriving at the house while she was sitting at the dining room table. The ranch slider was open and Mr McClung appeared and stood on the edge of the patio and said "I resign". Mrs Torr said she paused and Mr McClung went on to say he could not work with employee A because of his political views and he was supportive of the National party and Todd Muller. He also talked about corruption and a number of people but she did not really understand what that was about.

[19] Mrs Torr said she was taken aback and said to him if he was resigning he would need to send a written resignation, a timesheet and bank account details. Mrs Torr needed this information to process a final payment and was aware Mr McClung had not provided a bank account number in the pre employment documents he returned earlier. She says Mr McClung did not say anything else and he turned and walked away and left the property.

[20] Mrs Torr went to speak to Mr Torr and told him Mr McClung had resigned and that he was upset with employee A. They decided to investigate the incident so when she came back to the house she printed out an incident forms for the other employees to fill in.

[21] The next day Mrs Torr started her own incident form. At the top she noted "My paper for notes by Dawn 17/11/23" and recorded the following about the interaction with Mr McClung:

Joshua McClung 16/11/23 1.40pm Resignation

Joshua came to me + said 'he resigned'

'he cannot work with employee A when he has a positive attitude to national /todd muller etc (high end people eg Zespri)

(I can't remember specifics)

He also mentioned Zespri hierarchy/corruption

Dawn asked him to send it in email with his timesheet and back details of his wages for work done.

[22] Employee A and one other employee were asked to provide their written accounts about what happened with Mr McClung. Both accounts were consistent with each other. Mr McClung only worked one and a half days and both days Mr McClung continuously tried to engage the other two in conversations about corruption in the horticulture industry. On the second day employee A told Mr McClung he needed to stop talking and concentrate on work because they could lose their jobs due to a lack of

productivity. Mr McClung took exception to that and walked off the job and did not return.

*Mrs Torr's evidence is preferred*

[23] Mrs Torr recorded a written note the day after Mr McClung left the property that is consistent with her recollection. She also reported to Mr Torr directly after the incident that Mr McClung had resigned. The only part of her evidence that is different from Mr McClung's is whether or not Mr McClung told her he resigned. Mrs Torr accepts she asked for his resignation in writing with bank account details on the day. She also followed up seeking written confirmation of his resignation in emails but she was not trying to force a resignation. Mr Torr did the hiring and had engaged Mr McClung only a couple of days earlier and Mrs Torr was responding to what Mr McClung said to her, not trying to manoeuvre him out of the employment relationship.

[24] When Mr McClung did start responding to Mr and Mrs Torr his first email was to request a document from WHT he wanted for a different purpose. Mr McClung said it was a document that proved allegations of migrant exploitation against others in the horticulture industry.

[25] If there had been a misunderstanding as to whether or not he had resigned Mr McClung took no steps to resolve this. Instead, Mr McClung was express in his evidence and his communications with WHT at the time, that obtaining the document was all he was interested in. He even said he was not concerned about receiving wages because his focus was a document he wanted from WHT.

[26] On 22 November, Mr McClung emailed as follows:

The due wages owed by Wainui Highlands Trust @ 12.5 hrs are not a high priority for me at this stage.

As mentioned in my previous email to you, there is an historical issue of unpaid wages by Babu for work done at Wainui Highlands Trust Orchard nearly a year ago now, which amounts to some 40+ hours, that is a priority for me at this time.

...

Please confirm if you will honour my Privacy Act 2020 request to be given a copy of the timesheets signed by Maria and myself at Pat's request for the work we did at your orchard last season?

Alternatively, the request would then become part of a formal Labour Inspectorate investigation into the non payment of wages by Babu in breach of the Minimum Wage Act and Holidays Act.

[27] Mr and Mrs Torr responded:

Your two previous emails have been related to a situation between yourself and your employer last year, in 2022. As previously requested, please send through your bank account details which were not provided on your employment form so we can transfer your wages, as per the payslip 22/11/2023. You resigned from our employment on the 16<sup>th</sup> November 2023. We would like to complete this file, so please email your bank account details, for your wages transfer.

[28] On 30 November, Mr McClung responded raising four personal grievance claims against WHT and concluded his email in this way:

Given the conduct of Employee A towards myself, and the flawed/non response by Wainui Highlands Trust to this conduct by instructing me to immediately self terminate my own employment, it is clear that significant damage has been done to the employment relationship between myself and Wainui Highlands Trust has occurred.

...

Please advise if Wainui Highlands Trust is prepared to engage in MBIE mediation in respect of the four above outlined grievances, which had been raised within 90 days of their occurrence or, alternatively, if it would prefer to address the grievances formally in the Employment Relations Authority.

[29] Mr and Mrs Torr sought assistance from family members at that point. Mr McClung added two additional grievances. He alleged Mr Torr used racist language. Mr Torr was adamant he did not say those words and further says as a rule he did not discuss politics or business matters with staff so would not have engaged in the discussion alleged. That claim was withdrawn at the investigation meeting.

[30] Of note, Mr McClung said at the investigation meeting he had always had a good relationship with Mr Torr and considered him to be a good man. That statement is incongruent with how this allegation was recorded in Mr McClung's email raising it as personal grievance claim with WHT.

[31] Mr McClung also added another grievance about a health and safety matter to do with an unsafe ladder. This was distressing for Mr and Mrs Torr and Mr Duncan responded on their behalf denying both allegations and continued to respond to Mr McClung's correspondence in good faith. WHT agreed to attend mediation but maintained its position, Mr McClung had resigned, and in time relied on the abandonment clause in the employment agreement.

[32] On 16 January 2024, after mediation Mr McClung sent the following email:

Had Pat agreed to attend an interview with Nick Trubridge for Newshub or Ripu Bhatia for Stuff.co.nz to address the issue of illegal migrants working at Wainui Highlands Trust Orchard last season, I would have been prepared to sign the ROS without any financial settlement involved.

...

The next step for me is to file the WHT and KHML Statements of Matter with the ERA, I already have a commitment from various journalists to attend the Investigation Meeting with Wainui Highlands trust as the lead into the more important case with Kiwi cultural horticulture Management Ltd, had I signed the ROS today, the media would be unable to report this important aspect of the KHML case.

Potential costs for me are not an issue.

In 2019, I lost a case at the ERA with Garcia Contracting Services Ltd after a three-day Investigation Meeting. Lawyer Shima Grice for Garcia submitted an application for costs as their defence had run to 30k+.

Authority Member Robin Arthur determined that for various reasons, Garcia was only entitled to around 11k reimbursement for costs, as displayed on the website.

Four years later, I have not paid one cent of this ERA cost order to Garcia and don't intend to, furthermore, I have been invited in late November, 2023, to rejoin employment with Garcia Contracting Services Ltd, who has learnt a lot since it was publicly exposed in the undercover media investigation by stuff.co.nz for various wrongdoings when I was an employee in 2019.

I now expect this to also be the learning process for Wainui Highlands Trust and Kiwi Horticulture Management Ltd.

I will be self representing in the Wainui Highlands Trust case, so the cost to me is a \$71.55 filing fee and the distinct advantage is that no facts regarding WHT involvement with KHML are suppressed from the general public by the section 149 confidentiality requirements.

I look forward to addressing the matters with WHT and KHML in the ERA and media throughout the course of this year and I hope to have two determinations issued before year's end.

[33] Ultimately Mr McClung's communications with WHT and his evidence in the Authority show he wanted a document from WHT and for Mr Torr to do an interview with the media to expose alleged migrant exploitation that primarily related to a different employer and had no relevance to the claims against WHT.

[34] Mrs Torr's evidence is preferred regarding the resignation. It is more likely Mrs Torr was responding to what Mr McClung said to her. There would have been no need to ask for a written resignation if Mr McClung had not spoken about a resignation first. She was a careful witness and the documentation she recorded close in time to the incident, before there was any suggestion a grievance would be raised, is consistent with her statement and Mr McClung having resigned. This is also what she reported to Mr Torr immediately after Mr McClung left the property.

*Mr McClung resigned*

[35] Even if Mrs Torr's evidence about what Mr McClung said on 16 November was not preferred, Mr McClung's own actions point to a resignation. Resignation is a unilateral act. It does not involve the employer's agreement or disagreement and it is also well-established the test is an objective one.<sup>1</sup> Mr McClung's behaviour was consistent with resigning in that he left the property and did not return and despite saying he wanted to talk to Mr Torr about the interaction with employee A, he did not attempt to do so. There were eight days between Mr McClung walking off the job and his next communication with Mr and Mrs Torr. That time frame does not support Mr McClung's assertion he wished to resolve an employment problem with Mr Torr or that he still considered himself to be employed.

[36] On 22 November, having not heard from Mr McClung, Mrs Torr emailed asking for his bank account details and a written resignation. Mr Torr attempted to call Mr McClung three times the next day and sent him a text asking him to call. On 24 November, Mr McClung sent a text message saying he had been at a farm in Katikati and could meet Mr Torr in the afternoon. Mr Torr called him back because he was not able to meet that afternoon. Mr Torr says he reiterated on the call they still needed his resignation in writing, timesheet and bank account details to process his wages. Mr Torr said Mr McClung did not mention any concern about being dismissed.

[37] Mr McClung's next communication was the email making a request under the Privacy Act for a previous employer's timesheets. He said these were held by WHT. On 28 November, the Torrs emailed him a summary of his hours worked, attached a payslip and advised he could collect his wages in cash at the property if he would prefer. They were concerned about paying his wages and confused when Mr McClung emailed the next day stating his wages were not a high priority for him. The next day the Torrs sent one further email in an attempt to finalise the wage payment to him. He responded on 30 November with the personal grievance claim alleging discrimination, threatening and bullying conduct, that WHT had mishandled the grievance and unjustified dismissal.

[38] In assessing whether or not the evidence shows on the balance of probabilities Mr McClung was dismissed, the issue is whether it was reasonable for somebody in Mr

---

<sup>1</sup> *Mikes Transport Warehouse v Vermuelen* [2021] NZEmpC 197 at [37].

McClung's position to have considered that his employment had been terminated at the instigation of the employer.

[39] The sequence of events does not support Mr McClung's assertion he was dismissed. Aside from the conflict in the evidence between Mrs Torr and Mr McClung, the main issue is Mr McClung left work, did not return and made no effort to communicate with WHT about his employment or the issues he later raised as grievances.

[40] The individual employment agreement between the parties was not a casual agreement. Without speaking to Mr Torr, his absence was incompatible with his statement he had an expectation of ongoing employment but was instead forced to send in his written resignation and "self terminate" his employment. Furthermore, he had an opportunity to talk to Mr Torr on the phone but still did not raise any concerns about his employment being terminated.

[41] Of note, Mr McClung's first communication informing WHT he believed he had been dismissed was after WHT informed him it did not hold the information he requested.

[42] Mr McClung's actions do not support his assertion he was dismissed and Mrs Torr's evidence Mr McClung told her he had resigned is preferred. I have found in favour of WHT in that Mr McClung resigned and accordingly his unjustified dismissal grievance claim is unsuccessful.

### **Bullying**

[43] Mr McClung says the interaction with employee A constitutes bullying. He described what occurred in his written evidence:

On the second day of employment I was chatting with WHT [employee B] whom I had worked with under a different employer back in 2019. I was also chatting with WHT employee and tenant [employee A].

While I was talking to employee B, employee A suddenly took exception to the topic of conversation, which involved criticism of National party MP's, whom he claimed to have gone to school with, and whom he implied were friends.

Employee A breached my right to freedom of speech and discriminated against me by suddenly ordering me to stop talking and concentrate on the work we were doing, he further threatened me with dismissal in a bullying manner.

[44] WorkSafe defines bullying as follows:<sup>2</sup>

Workplace bullying is: repeated and unreasonable behaviour directed towards a worker or a group of workers that can lead to physical or psychological harm.

...

Workplace bullying is not: one-off or occasional instances of forgetfulness, rudeness or tactlessness.

...

[45] WorkSafe also recommends employers should deal with all undesirable work behaviours including one-off incidents regardless of whether the behaviour falls under its definition because such behaviours can escalate and should not be ignored.

[46] The first problem Mr McClung has with portraying the interaction with employee A as bullying is that it was a single interaction and generally one-off interactions will not meet the definition of bullying.

[47] The second problem Mr McClung has is the information from all involved including both employees who were part of the conversation and who worked with Mr McClung at the orchard is available. It is clear employee A's contributions were either reasonable or within the realm of what could be considered reasonable. The topic was politics. Mr McClung took exception to others indicating their views did not align with his but politics by its very nature is not a topic individuals in a workplace could expect there to be agreement about.

[48] The third problem for Mr McClung is that employee A accepts he conveyed his concern they needed to stop talking and get some work done. That is the point at which Mr McClung reached his level of tolerance and left the orchard. Even if the reminder to get back to work could be considered to have been blunt or rude in its delivery, it was not unreasonable for a worker such as employee A to verbalise his concern about the need for them all to focus on the task in hand and that which they were being paid to complete.

[49] And finally in the context of a very short period of employment the conduct complained of could not reach the threshold for bullying. This conversation took place on the morning of the second day of Mr McClung's employment with WHT and he never returned. Although Mr McClung had worked on WHT's orchard a year earlier

---

<sup>2</sup> [www.worksafe.govt.nz/topic-and-industry/bullying/good-practice-guidelines-preventing-and-responding-to-bullying-at-work/](http://www.worksafe.govt.nz/topic-and-industry/bullying/good-practice-guidelines-preventing-and-responding-to-bullying-at-work/)

during the previous season, there was no suggestion there had been any issues with either of the WHT employees before. This was a one off and isolated interaction.

[50] Even if WHT had an obligation to investigate the bullying complaint, the conduct complained of did not meet the test for bullying. It was a one off incident and could not result in Mr McClung being bullied because it was reasonable to communicate an expectation to work instead of talking. After that Mr McClung left the worksite and never returned and took no steps to raise the matter with Mr Torr.

[51] The claim Mr McClung was disadvantaged in the workplace by bullying is not successful.

### **Was the bullying complaint handled in a fair and reasonable manner?**

[52] Even though the conduct itself has not been found to have reached the threshold for bullying, the way in which it was handled was also raised by Mr McClung. The initial obligation on an employer when there is a complaint from one employee against another, is to investigate the complaint and if there are any further steps a fair and reasonable employer could take, to take those steps. The focus is on providing a safe work place.

[53] In this case, Mr and Mrs Torr carried out an investigation. They requested the employees involved in the incident complete written records of what they saw and heard. Mrs Torr recorded her own written notes setting out what Mr McClung said to her and recorded a time line.

[54] After reviewing the information Mrs Torr found the reports to be entirely consistent about the circumstances of the conversation that led to Mr McClung leaving the property. Mr Torr's information confirmed the other two employee's statements in that Mr McClung talked continuously about corruption and politics in the short time he was there. Mr Torr recalled on the final day he let Mr McClung talk about these issues for approximately 15 minutes but then said it was time for work. Mr Torr was elsewhere when employee A told Mr McClung to stop talking and focus on the work.

[55] Mr and Mrs Torr reached the conclusion Mr McClung did not like being told by employee A to focus on work and that led to his resignation and departure. Against the backdrop of Mr McClung working 1.5 days out of what would have been a total of

approximately three weeks work, this was a conclusion a fair and reasonable employer could reach in the circumstances.

[56] At that stage the complaint of bullying had not been made so the conclusion was simply that no further steps were required. Mr McClung was not responding to their communications and did not make a complaint of bullying until 30 November and after Mr McClung had resigned. The employment relationship had ended by that stage so there was no obligation on WHT to investigate that complaint. Nonetheless WHT still responded to the allegation in the emails Mr Duncan sent on behalf of WHT and it attended mediation in good faith.

[57] Mr McClung was not disadvantaged by how WHT handled his bullying complaint.

**Was Mr McClung disadvantaged by how WHT responded to his request for information?**

[58] On 27 November 2023, Mr McClung made a written request under the Privacy Act 2020 for copies of all timesheets signed by Mr McClung and his wife in 2022:

Under the Privacy Act 2020, my wife Maria and myself are requesting a copy of all timesheets signed by us and witnessed by Pat when we were working at the Wainui Highlands Trust Orchard last season.

[59] That email also set out the basis on which Mr McClung believed his employer in the previous year (2022) had been non-compliant with minimum employment standards, including non-payment of wages and issuing false wage payments to cover up migrant exploitation.

[60] The emails between the parties show WHT responded to that request. Ultimately it was confirmed within 10 working days WHT did not hold the information and it took steps to transfer the request to Mr McClung's previous employer because although he and his wife worked at WHT's orchards the previous year, they were not employed by WHT.

[61] Mr McClung was also provided with the Privacy Commissioner's contact details if he wished to make a complaint about how his request was handled.

[62] Mr McClung's requests were responded to in a timely manner. WHT explained it did not hold the documents he had requested and continued to discuss and respond to

Mr McClung's correspondence. Mr McClung raised his personal grievance on 30 November and a breach of Principle 6 of the Privacy Act 2020 was recorded as an unjustified action by WHT. Once it was established the documents Mr McClung was actually seeking were WHT sign in sheets, referred by WHT as a "WHT Health and Safety document", and not another employer's timesheet, WHT agreed to provide it. Written authorisation from Mr McClung's wife was requested given he was making a request on her behalf. No written authorisation was received.

[63] WHT was still waiting for written authorisation at the point in time when the Authority directed a document be provided to Mr McClung for the purposes of this proceeding on the basis Mr McClung alleged at the case management call WHT was involved in corruption along with his former employer. It has transpired there was no evidence provided to the Authority at the investigation meeting of WHT's involvement in any corrupt practices.

[64] WHT's actions in dealing with this request for information were steps a fair and reasonable employer could take in the circumstances. It responded to the request and explained it could not have provided the timesheets from another employer. It was also reasonable to seek written authorisation in relation to a request for personal information made on behalf of another. WHT continued to be active and responsive to Mr McClung in relation to his request and given information about how to make a complaint if he was unhappy with WHT's decision.

[65] In addition, it was not clear what the relevance of the documents requested were to Mr McClung's claims against WHT so once the statement of problem was lodged in the Authority it was reasonable to expect the Authority to consider Mr McClung's request for information in the course of investigating and resolving the employment relationship problems.

#### *Tikanga Māori*

[66] Mr McClung also says consideration should be given to Tikanga Māori in relation to WHT's refusal to provide him with the sign in sheet. His statement of problem recorded that the Authority was required to consider his individual circumstances in the context of Tikanga Māori in this way:

For the purposes of dispute resolution where the employment related personal grievances are concerned, my main focus is on the central Tikanga concept of Utu (justice/vengeance).

[67] Mr McClung relied on the case of *Ellis v R* [2022] NZSC 114 to support his claim and connect Tikanga Māori to Authority's consideration of WHT's refusal to provide the sign in sheet. The alleged injustice, Mr McClung says was preventing him accessing the sign in sheet because in his view it was evidence of the use of illegal migrant labour. No additional submissions or evidence were provided about Tikanga by Mr McClung at the investigation meeting.

[68] It has been established Mr McClung made a request for a different document. It was not a document held by WHT. There can be no obligation on an employer to provide a document it does not hold. Once the matter was lodged in the Authority, and the document request was clarified, it was provided to Mr McClung.

[69] WHT acted as a fair and reasonable employer in those circumstances. However, it has also become clear after hearing the evidence that the sign in sheet has no relevance to these proceedings against WHT. It is a document Mr McClung was seeking for a different purpose.

[70] Mr McClung also had the option of making a complaint to the Privacy Commissioner if he had concerns about his personal information being withheld. WHT also informed him of that.

[71] The reference to Tikanga Māori does not take Mr McClung's dispute with WHT about the document any further because no wrongdoing has been established on the part of WHT in relation to the document.

[72] Mr McClung was not disadvantaged in his employment by WHT's decisions and actions in relation to his requests for personal information.

### **Outcome**

[73] Mr McClung has been unsuccessful with all his claims against Wainui Highlands Trust and accordingly he is not entitled to an assessment of remedies.

### **Costs**

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

[75] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Wainui Highland Trust 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 Joshua McClung 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.<sup>3</sup>

Sarah Kennedy-Martin  
Member of the Employment Relations Authority

---

<sup>3</sup> [www.era.govt.nz/determinations/awarding-costs-remedies](http://www.era.govt.nz/determinations/awarding-costs-remedies)