

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2025] NZERA 783  
3311300

BETWEEN	CHRIS NGARANOA Applicant
AND	BOULEVARD FLOORING LIMITED Respondent

Member of Authority:	Claire English
Representatives:	Tanya Waterhouse, advocate for the Applicant Doug Abraham, counsel for the Respondent
Investigation Meeting:	18 September 2025 in Napier
Submissions received:	18 September 2025 from Applicant 18 September 2025 from Respondent
Determination:	3 December 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The applicant, Mr Chris Ngaranoa, was employed by the respondent Boulevard Flooring Limited (Boulevard) as a concrete floor polisher from 9 August 2023 until 23 May 2024.

[2] Mr Ngaranoa took a considerable amount of leave during his employment, amounting to some 31 days in the first four months of the 2024 year. His manager, Mr Peter Cadwaller, texted and spoke with him in the first week of April 2024 saying that this was unacceptable. In the week following, Mr Ngaranoa took 2 further days of unscheduled leave, and another 6 days of leave in the remainder of the month of April. On 20 May 2024, Mr Ngaranoa arrived at work and was told by another co-worker that Mr Cadwaller had asked if Mr Ngaranoa's wife could provide some childcare so they

could both attend work. Mr Ngaranoa was very upset by this. He threw his tool crate onto the ground. Mr Cadwaller asked him what was wrong, and Mr Ngaranoa began shouting and swearing at Mr Cadwaller. He continued doing so for some time. Mr Cadwaller accepts he yelled back.

[3] Mr Cadwaller then attempted to move away from Mr Ngaranoa and retreat into his office. Mr Ngaranoa continued to follow him while yelling. Mr Ngaranoa then stood in the doorway of Mr Cadwaller's office preventing him from closing the door while continuing to yell at him. Mr Cadwaller's evidence was that he was unable to engage with Mr Ngaranoa, and was concerned that Mr Ngaranoa was about to hit him. This is confirmed by the evidence of the foreman Mr Nigel Edwards who was present at the time.

[4] Mr Cadwaller asked Mr Ngaranoa several times to step out of his office, and Mr Ngaranoa eventually did so, allowing Mr Cadwaller to close the office door. Mr Ngaranoa's partner arrived shortly thereafter, and she and Mr Ngaranoa were able to have a short discussion about what had occurred, before leaving. Mr Ngaranoa did not work that day.

[5] Mr Cadwaller spoke with the owner and director of Boulevard, Mr Shaun McPherson. Mr McPherson immediately sought legal advice. That same day, he drafted a letter to Mr Ngaranoa, asking him to come to a meeting. The topics for discussion were Mr Ngaranoa's attendance at work, and what was described as his "outburst" earlier that day. The letter advised that Boulevard considered matters were serious, could result in termination of employment, and that Mr Ngaranoa was entitled to have a support person or representative present at the meeting.

[6] Mr Ngaranoa attended the meeting 2 days later. Mr Cadwaller and Mr McPherson were present, and Mr Ngaranoa's representative attended by phone. The meeting was recorded and later transcribed.

[7] Mr Ngaranoa takes the position that all his leave was approved by Boulevard, and that if it had been unhappy with his leave taking, it should have told him this and he would have taken less leave. He also says that all his leave was for genuine reasons, including sickness of himself or his family, other commitments like a rental inspection, and that he was very stressed about not having enough money due to all the leave he was taking. The records show and there is no dispute, that during 2024, Mr Ngaranoa

took so much leave that he was never working more than 4 days per week, and sometimes only 3 days in a week.

[8] As for the altercation with Mr Cadwaller, Mr Ngaranoa says that he was very angry when another staff member told him Mr Cadwaller had suggested his partner assist with childcare, because this was effectively an insult to her. Mr Ngaranoa accepts that he yelled and swore at Mr Cadwaller for some considerable time, and that he stood in the doorway preventing Mr Cadwaller from closing the door and ending the interaction. Mr Ngaranoa says he should not have done this and apologises, but in the end, this was not relevant, he was dismissed for absenteeism, and in all the circumstances, he should not have been.

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

[9] For the Authority's investigation written witness statements were lodged from Mr Ngaranoa, Mr Cadwaller, Mr McPherson, and Mr Edwards. All witnesses answered questions under oath or affirmation from me and the parties' representatives. The representatives also gave oral closing submissions.

[10] 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**

[11] The issues requiring investigation and determination were:

- (a) Was Mr Ngaranoa unjustifiably dismissed?
- (b) In the alternative, did he suffer an unjustified disadvantage resulting from a lack of fair process?
- (c) If Boulevard'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 by Mr Ngaranoa that contributed to the situation giving rise to his grievance?

- (e) Should either party contribute to the costs of representation of the other party?

### **Background**

[12] There was very little dispute between the parties as to the facts of the matter. Mr Ngaranoa's case was focused on his view that he had been (wrongly) dismissed for taking authorised leave. He says that he was never told by Boulevard that it considered his leave taking to be excessive in any way, and that if he had been told this, he would have stopped taking leave.

[13] He says that he apologised to Mr Cadwaller for his outburst, and this was the end of that matter. He submits that his actions were not significant, as he had apologised. He says that his actions in this respect did not therefore lead to or contribute to his dismissal.

[14] Mr Cadwaller gave evidence about Mr Ngaranoa's leave. He says that Mr Ngaranoa would text him to advise that he would not be attending work, either late at night prior to the advised absence, or in the morning of the day of absence. Mr Cadwaller also noted several occasions when Mr Ngaranoa simply did not turn up to work. Mr Cadwaller explained that this was not a situation where Mr Ngaranoa was applying for leave in advance and having it authorised before it was taken. Rather, he was advising Mr Cadwaller of his absence, with minimal to no notice.

[15] Mr Cadwaller says that Mr Ngaranoa took frequent leave, and relatively quickly exhausted his paid leave entitlements. However, this did not stop him taking leave at very short notice or no notice at all. Mr Ngaranoa himself says that he was experiencing stress as his earnings were less than expected due to all the leave he was taking.

[16] Mr Cadwaller says he became concerned when during 2024, Mr Ngaranoa began taking even more leave than previously. Mr Ngaranoa was absent from work for 3 days at the beginning of April 2024. Mr Cadwaller texted him, stating it was unacceptable for him not to come to work. He also spoke briefly to Mr Ngaranoa about his absences at around this time, and Mr Ngaranoa described this as Mr Cadwaller "being unsupportive".

[17] Two days after Mr Cadwaller texted Mr Ngaranoa about his leave and told him that he needed to attend work, Mr Ngaranoa took more unplanned leave. In fact, in the

month after this, Mr Ngaranoa took 8 more days of leave, meaning that for a month, he was working only 3 days per week on an unplanned basis.

[18] Mr Ngaranoa does not dispute this. He says that his partner was experiencing a high-risk pregnancy and he had to stay at home to care for her. He also says that he had to take his other children for medical treatment and school meetings, as well as attend to tenancy matters, he was in a car accident, and he was detained by police.

[19] It was in this context that the dispute of 20 May occurred. Mr Ngaranoa arrived at work. He says he was told by a co-worker that Mr Cadwaller had suggested Mr Ngaranoa's partner assist with childcare for his children. Mr Cadwaller freely admits making a general comment to this effect. He says that he understood they were relatives, and both had childcare difficulties, so he wondered if they could help each other with childcare. He says that this was a comment that went no further than a single inquiry by him.

[20] It is fair to say that Mr Ngaranoa became enraged. He threw his tool bin on the ground, which bounced off the asphalt and into a work vehicle. He began yelling and swearing at Mr Cadwaller. He also yelled and swore at other staff, who retreated so as to better avoid him. Mr Cadwaller at first made an attempt to defend himself, and by telling Mr Ngaranoa he had a right to try to keep the workplace running smoothly. When Mr Ngaranoa continued yelling and swearing, he retreated to his office. Mr Ngaranoa followed, and then stood in the doorway continuing to verbally abuse Mr Cadwaller while preventing him from closing the door.

[21] Eventually, Mr Ngaranoa stepped back and Mr Cadwaller was able to close and lock the door. Even then, Mr Ngaranoa remained outside the door and continued yelling.

[22] Mr Ngaranoa's partner then arrived. A short conversation was held between all three, but Mr Ngaranoa began to get agitated again. Mr Cadwaller terminated the meeting as he had said he would, and Mr Ngaranoa left the site and did not return to work for the remainder of the day.

[23] Mr Ngaranoa accepts Mr Cadwaller's account, although he says that Mr Cadwaller also raised his voice in return. The difference between the parties is that Mr

Ngaranoa says that this incident was not of particular significance, and he firmly denies that it contributed to his dismissal.

[24] Mr Cadwaller was shaken by the incident. He contacted Mr McPherson, and a formal letter was sent to Mr Ngaranoa inviting him to a disciplinary meeting to discuss both his on-going absences from work and his “outburst” and behaviour of 20 May. The letter also advised that termination of his employment could result.

[25] The letter further stated that this was not the first time that Mr Ngaranoa had been spoken to about “managing [his] temper in the workplace”, and referenced a specific incident in December when Mr Ngaranoa had kicked the door of a truck and knocked over tins of sealant because he was unhappy with where a work truck was parked. Again, Mr Ngaranoa does not deny this incident, or that he was spoken to about it at the time.

[26] A disciplinary meeting was held with Mr Ngaranoa, Mr McPherson, and Mr Cadwaller being present in person, and Mr Ngaranoa’s representative at that time attending via phone.

[27] Mr Ngaranoa’s absences were discussed. Mr Ngaranoa was asked if he “was able to commit to full time employment”? He said “yes, if my family’s health doesn’t affect it”. He then said “if my family’s health is at risk, then I have to be there”.

[28] The discussion then moved on to discuss the 20 May matter, with Mr Ngaranoa apologising for his reaction, and accepting that this was “totally overboard”.

[29] The meeting was in the morning, and Mr Ngaranoa was dismissed at the end of the day, by way of letter.

[30] He says that he struggled after his dismissal, and found it hard to afford food, and weekly car payments. Mr Ngaranoa says that he applied for up to 15 jobs but was unsuccessful. In his in-person evidence at the investigation meeting, he said that he had become the stay-at-home parent for his and his partner’s new baby and was not currently in the job market.

[31] I must now consider Mr Ngaranoa’s claim that his dismissal was unjustified.

## **Analysis**

[32] The test of justification is set out in s 103A of the Act, and is whether the employer's actions were what a fair and reasonable employer could have done in all the circumstances at the time. In applying this test, I must consider whether Boulevard:

- a. sufficiently investigated the allegations against Mr Ngaranoa;
- b. raised the concerns it had with Mr Ngaranoa;
- c. gave Mr Ngaranoa a reasonable opportunity to respond to its concerns;  
and
- d. genuinely considered Mr Ngaranoa's explanation before deciding to dismiss him.

[33] I find that Boulevard sufficiently investigated the allegations against Mr Ngaranoa before taking action. There were only two issues of concern that were mentioned in the formal disciplinary letter and these were Mr Ngaranoa's absences supported by a list of dates, and Mr Ngaranoa's behaviour towards Mr Cadwaller. Both issues were fresh in the minds of the participants. These two issues were not complex, and were briefly but clearly described in the disciplinary letter. Given the apparent seriousness of Mr Ngaranoa's behaviour towards Mr Cadwaller, as well as his consistent and repeated absences even after being spoken to by Mr Cadwaller, the reasons for Boulevard's concerns were clear.

[34] Boulevard raised those concerns with Mr Ngaranoa in a fulsome way in the meeting on 23 May. The transcript shows, consistent with the evidence of the parties, that there was little if any dispute over what had happened. Once this had been established, the parties spent some time talking about root causes. Mr Ngaranoa spoke about what he says were genuine reasons for his absences, going into more detail about his family life than I have chosen to record publicly here, and telling Mr McPherson when asked that he would continue to prioritise his family's health over attendance at work. There was also a discussion about his reaction to Mr Cadwaller on 20 May, how he had felt upset and insulted, and Mr Cadwaller explaining why he had thought a childcare option might have been possible. The transcript shows that the parties engaged respectfully with each other, in a manner consistent with the evidence before the Authority.

[35] I find that Mr Ngaranoa was given a reasonable opportunity to respond to Boulevard's concerns. The meeting was relatively lengthy, and Mr Ngaranoa actively expressed his views and was supported by his representative.

[36] The evidence is that Boulevard genuinely considered Mr Ngaranoa's views before deciding to dismiss him. I find that Mr Ngaranoa apologised to Mr Cadwaller, but overall was dismissive of the seriousness of his actions on 20 May. All indications are that he took the view, as he did before the Authority, that his apology was sufficient to bring the matter to a close, and that Mr Cadwaller should simply accept that behaviour from him, despite acknowledging he had previously been spoken to about his anger and his expression of it in the workplace only 6 months prior.

[37] I find that Boulevard considered Mr Ngaranoa's explanations as to his absences. Mr Ngaranoa took the view that he was entitled to be absent from work as long as he had what he thought was good reason. He was repeatedly questioned by Mr McPherson about his commitment and willingness to attend work full time in the future, and not only did he decline to give any assurances that he would work full-time, he told Mr McPherson that he intended to take more leave on the same basis if he judged his family needed him.

[38] Boulevard considered and understood Mr Ngaranoa's explanations. It then reached the conclusion that dismissal was appropriate in all the circumstances. I find that this was a decision that was reached following a fair process, and was one that was within the range of actions open to Boulevard acting as a fair and reasonable employer in all the circumstances at the time.

[39] I must also consider Mr Ngaranoa's submission and his in-person evidence before the Authority that he was dismissed only because of his absences, and this was inherently unfair because all those absences were authorised by Boulevard.

[40] I find that it overstates the facts to say that all of Mr Ngaranoa's absences were authorised by Boulevard. As I have set out above, this was not a situation where Mr Ngaranoa applied for leave in advance, and was approved to take it. It was a situation where Mr Ngaranoa was informing his manager of his absences with little and sometimes no notice, with Mr Cadwaller identifying several instances where Mr Ngaranoa did not provide any notification and simply did not turn up for work.

[41] In his in-person evidence, Mr Ngaranoa also accepted after questioning from me that Mr Cadwaller had mentioned the amount of leave he was taking and had texted him saying that his level of absence was unacceptable. When asked by me why he had responded to this by promptly taking even more unscheduled leave, Mr Ngaranoa explained that he had chosen to prioritise his family.

[42] While this may be understandable, Mr Ngaranoa's own evidence does not support his submission that his leave was "authorised", or that he was never warned by Boulevard that it was unhappy with the amount of leave he was taking. In addition, Mr Ngaranoa has stated that if only he had been told that Boulevard was concerned by the amount of leave he was taking, he would have stopped or reduced his leave taking. Not only is this not what occurred in practice, but Mr Ngaranoa told Mr McPherson when asked that he was not willing to commit to working on a full time basis and would continue to give priority to his family over his work commitments. This continued to be his in-person evidence at the investigation meeting.

[43] I find that Mr Ngaranoa's concerns about the way Boulevard approached his leave-taking are not made out on the evidence.

[44] I now need to consider Mr Ngaranoa's position, which he continued to maintain at the investigation meeting, that he had been dismissed solely because of his absenteeism. When asked why he believed that to be so, he said it was because most if not all of the meeting on 23 May was concerned with his absences, and because he had apologised to Mr Cadwaller for his behaviour on 20 May. Mr McPherson's evidence was that the meeting on 23 May was relatively evenly split between discussing both issues. The transcript of this meeting supports his view rather than Mr Ngaranoa's.

[45] Mr McPherson's evidence was that both matters contributed towards Mr Ngaranoa's dismissal, however, he was particularly concerned about Mr Ngaranoa's behaviour on 20 May, including because Mr Ngaranoa had been spoken to about a similar incident in December where he had lost his temper at work because he was upset with how another colleague had parked a work vehicle in the yard.

[46] Mr Ngaranoa's account of events considerably downplays his behaviour, particularly as he followed Mr Cadwaller to his office, and spent some minutes yelling and swearing at him while refusing to leave or to allow him to close his office door. Mr Cadwaller said he was concerned that Mr Ngaranoa was going to hit him. He was also

concerned for other staff, who all physically retreated from Mr Ngaranoa while he followed Mr Cadwaller when Mr Cadwaller attempted to retreat into his office. I find Mr Ngaranoa's behaviour was distressing, concerning, and inappropriate. This is particularly the case as he had been spoken to about his anger in the workplace relatively recently.

[47] I find that Boulevard had an entirely reasonable expectation that Mr Ngaranoa would not shout at or abuse his manager in the workplace, and it had expressed its expectations of behaviour to Mr Ngaranoa before. Mr Ngaranoa cannot therefore reasonably have expected that there would be no consequences for his actions simply because he apologised after the fact. Overall, I find that Mr Ngaranoa's behaviour was sufficient to justify his dismissal. As I have already found that the process followed by Boulevard was fair, it follows that I find Mr Ngaranoa's personal grievance claims are not made out. Accordingly, no remedies are awarded and no orders are made.

### **Costs**

[48] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves, noting that the investigation meeting needed to be convened twice on two separate dates as Mr Ngaranoa did not attend on the first date set, with no notice given.

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

[50] 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>1</sup>

Claire English  
Member of the Employment Relations Authority

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

