

**NOTE: This determination  
contains an order prohibiting  
publication of certain information**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2025] NZERA 535  
3290821

BETWEEN RMD  
Applicant  
AND LWQ  
Respondent

Member of Authority: Claire English  
Representatives: T W Katavich, advocate for the Applicant  
A R Shaw and N T U Thrupp, counsel for the Respondent  
Investigation Meeting: 17, 18, and 19 June 2025 in Nelson and by AVL  
Submissions received: Up to 24 June 2025 from Applicant  
Up to 23 June 2025 from Respondent  
Determination: 28 August 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] This matter is subject to permanent non-publication orders, prohibiting the publication of the names and any identifying details of the parties involved. I have made these orders for several reasons, including for the protection of the privacy of children related to the parties, the existence of on-going litigation in other jurisdictions, the protection of various commercial interests which have the potential to be adversely affected, and the nature of the family relationships between the parties. In addition, the Authority's file is not to be searched without

prior consent of the Authority. In accordance with these permanent non-publication orders, I have referred to the parties and various witnesses by randomly generated three-letter acronyms in writing this determination.

[2] The applicant RMD, provided social media and other technical support to her employer LWQ for five hours per week from September 2023. LWQ is a limited liability company, with a sole director and an 80% shareholder, JGN. JGN is also RMD's sister.

[3] The only other shareholder in LWQ is MPH. MPH is the mother of both the applicant RMD and JGN.

[4] In addition, JGN and MPH lived at relevant times in MPH's house. This house was on a section with a second house occupied by RMD and her former husband and children only a short space apart. RMD, her former husband, and MPH share ownership of that property.

[5] RMD's employment came to an end in the first part of 2024, around the time of a significant family disagreement between RMD and JGN. Both accept that they vociferously argued with each other in the presence of MPH. Despite there still being significant disagreement over the topics of this argument, it may be broadly stated that it covered disagreements between RMD and JGN as to parenting matters, and a concern by JGN and MPH that RMD was moving out, which had the potential to require the sale of the property and the potential homelessness of MPH given the shared ownership of that property with RMD's former husband and their marital separation.

[6] RMD says that at the conclusion of this argument, JGN told her "I am done with you" and ceased paying her wages as of the next pay run which was due the following day.

[7] On 14 March 2024, RMD received a text message from JGN addressed to her former husband by name (apparently sent by mistake) stating among other things "that's it, I wash my hands of her...". RMD says that it was then that she fully realised that the disagreement was not going to "blow over" and that her employment was truly at an end.

[8] RMD had her own company which sold specialist products. It was unconnected with LWQ, although JGN assisted with filing that company's GST returns. On 31 March 2024,

RMD emailed her business partner FEN, advising that she was suspending access to the company's online shopping portal and was about to change banks and ensure that only she had access to the company accounts. Shortly thereafter, FEN issued a statutory demand for the repayment of her shareholder account. When this demand was not met, that company was placed into liquidation and in due course removed from the Companies Register.

[9] RMD says that JGN was responsible for the liquidation, on the grounds that she believes JGN told FEN that RMD was wrongfully taking money from the company.

[10] RMD then filed a statement of problem in the Authority, claiming she had been unjustifiably dismissed, and seeking arrears of wages, holiday pay, and compensatory remedies accordingly, as well as other remedies connected with the liquidation of her company.

[11] Following the filing of her statement of problem, RMD made a complaint to the police raising concerns of serious criminal offending against JGN. These concerns were investigated by the police and another agency. Following this investigation, the police advised RMD that no action would be taken against JGN. RMD then attempted to raise these same concerns with a person who provided contracting services to LWQ, in what RMD says was a protected disclosure. She claims that LWQ failed to respond to this. These concerns were raised again in what RMD says was a second protected disclosure in January 2025. She claims LWQ is in breach because of a failure to respond.

[12] There are and remain multiple proceedings before the Family Court in relation to these matters, including one current Protection Order, and applications by both RMD and JGN for Protection Orders against each other. In addition, there are unresolved issues before the Family Court between RMD and her former husband relating to parenting, between RMD, her former husband, and MPH relating to the ownership of their shared property, and between RMD and MPH relating to the disposition of the estate of RMD's father/MPH's late husband filed only recently.

[13] RMD also claimed as part of these Authority proceedings that JGN should pay her for the value of her own shareholder's account in her now liquidated company, however this claim was withdrawn after the second day of the investigation meeting. I record my view that this

concession was properly made given the lack of any apparent link between this claim and the employment relationship.

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

[14] For the Authority's investigation written witness statements were lodged from RMD, JGN, MPH, TCB who is MPH's third daughter and the sister of RMD and JGN, and FEN, RMD's former business partner. In addition, a consultant CGH was called by RMD to give evidence about a report he provided to JGN about phone account connectivity in April or May 2024. At the end of the second day of the investigation meeting, it was accepted that CGH and FEN's witness statements would be taken "as read" and they would not need to be called as witnesses. All other witnesses answered questions under affirmation from me and the parties' representatives. The representatives also gave closing submissions.

[15] 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**

[16] The issues requiring investigation and determination were:

- (a) Was RMD unjustifiably dismissed from her employment at LWQ?
- (b) If so, what remedies should be awarded, considering:
  - Lost remuneration (subject to evidence of reasonable endeavours to mitigate loss); and
  - Compensation under s123(1)(c)(i) of the Act; and
  - Holiday pay owing on the termination of her employment?
- (c) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by RMD that contributed to the situation giving rise to her grievance?
- (d) Did LWQ breach obligations it owed to RMD under the Protected Disclosures (Protection of Whistleblowers) Act 2022?
- (e) Should either party contribute to the costs of representation of the other party?

[17] For avoidance of doubt, I record that this determination will not decide any matters which I understand are now before the Family Court, except to describe relevant facts as they form general context for the employment relationship problems as outlined above. This includes all allegations of potential criminal conduct made by RMD about JGN, which in any case occurred some time after the ending of RMD's employment with LWQ.

### **RMD's Employment Relationship with LWQ and the ending of her employment**

[18] RMD began work for LWQ on or shortly before 11 September 2023. She was employed to provide social media and marketing support, and some IT support within her area of knowledge (other IT support such as matters regarding servers was provided by others).

[19] RMD agreed with JGN that she would work 5 hours per week and would be paid at the rate of \$30 per hour gross, that is, a flat rate of \$150 each week. Both parties valued the predictability of a fixed rate arrangement. RMD in particular needed to report her earnings to MSD in advance weekly, as she was at the time in receipt of a sole parent's benefit following the ending of her relationship with her former husband.

[20] By all accounts, this arrangement worked well for both RMD and LWQ. It is notable that before RMD's employment with LWQ and up to its ending, JGN similarly provided services to RMD's company by assisting with GST returns, although there is no suggestion she was paid for these. A close, amicable, and productive family relationship existed including with MPH and (at least for some time) RMD's former husband.

[21] RMD was paid each fortnight as agreed. No performance concerns or any particular performance measures were raised in the lead up to the ending of employment.

[22] On 4 March 2024, JGN texted RMD, asking if she was planning on moving out. RMD did not respond. Later that day, MPH came to RMD's house asking that RMD come speak to her and JGN that afternoon. RMD finished her tasks and went over to MPH's house accordingly. She says that JGN was immediately loud and argumentative towards her, and criticised some parenting decisions she had made. JGN accepts she yelled at RMD. She says this was out of frustration that RMD had accepted financial and practical help particularly from their mother and was now planning on moving out of the house she had previously occupied

with her former husband that had been built for her on her mother's property. She was anxious that this might effectively force MPH to sell the property which was her home. I find RMD also raised her voice in return.

[23] It was during this conversation that RMD says JGN told her "I am done with you". JGN says that she might have said this but cannot recall exactly. She denies having made a further statement to the effect that she would no longer pay RMD.

[24] The following day was the usual fortnightly pay run. RMD says she was not surprised when she did not receive any pay. She said that she assumed that matters would "blow over" and accordingly, she did not raise any particular concerns with her sister, but continued to work on some matters to do with LWQ email accounts and setting up a meeting with an IT support company. She says she had expected to continue work and that JGN would make up her lost pay in due course.

[25] On 14 March 2024, RMD and JGN had a discussion via text message. It was not related to LWQ. JGN then sent a message to RMD beginning "Honestly [husband's name] that's it I wash my hands of her. Do you know what I wanted to talk to her about? I actually felt some compassion for her and wondered if she still wanted to do my marketing as I thought \$150 a week might be a big help if she's out paying rent..."

[26] This message was clearly not intended for RMD, as it was explicitly a complaint about her addressed to her former husband using his first name. I have no hesitation in concluding this was sent to RMD by mistake. RMD was upset and offended by this message. She describes it as controlling, says it shows JGN wanted her to beg for her job back, and was interfering in her separation and relationship property disputes by remaining in touch with her former husband. RMD says this text coupled with the non-payment of her wages made it clear to her that her employment with LWQ was over.

[27] RMD says she stopped working for LWQ at this point, by telling JGN she would not attend a planned meeting with an IT company and doing no other work.

[28] JGN's account of the ending of RMD's employment is different. JGN says that the employment came to an end by mutual agreement on 16 February 2024 which was the date of

RMD's last pay run. She says that she spoke with RMD about how she was not doing much work for LWQ, even less than the agreed 5 hours per week. By way of example, JGN says that the contractor previously hired for social media marketing would post 2 to 4 times each week, whereas RMD only made 9 posts in the 22 weeks of her employment. JGN says that RMD agreed that she was not doing much work, and that the employment should come to an end. JGN characterises this as a mutual agreement, and/or RMD's resignation.

[29] JGN says it was always intended that RMD's last pay would be in the pay run made on 20 February 2024 covering the fortnight ending 16 February 2024, and by the disagreement of 4 March and the next pay run on 5 March RMD's employment had already ended.

[30] There is no record of the date on which RMD's employment ended. JGN accepts that she did not note or record this in any form, whether that be by way of a written or texted confirmation to RMD, or in the payroll system.

[31] There is no explanation as to why RMD's 20 February 2024 payslip was not described as a final pay, or why her accrued holiday pay was not paid out (it remains outstanding). JGN accepts that she overlooked this. Accordingly, there is no dispute that RMD is owed the sum of \$265.50 in outstanding holiday pay.

### **Was RMD Unjustifiably Dismissed?**

[32] I turn now to consider whether RMD was unjustifiably dismissed, or whether her employment came to an end by way of mutual agreement as claimed for LWQ.

[33] RMD says that her employment with LWQ came to an end on 14 March, when she received the text from JGN and realised that their disagreement was not going to "blow over" and their relationship was effectively at an end. Prior to this, although she had stopped doing work for LWQ and had not received any pay, she thought that things would go back to the way they were, and she did not raise any concerns.

[34] I find this account unpersuasive. Although RMD says she never spoke with JGN about the amount of work she was actually doing, or the ending of her employment with LWQ, both MPH and TCB recall this topic being mentioned in mid-February 2024. Both were unshaken in their views on this under questioning from RMD herself. TCB's evidence was that shortly

thereafter, JGN had spoken to her about whether she would like to take over the social media marketing in RMD's absence from that role. TCB dated this second conversation to 23 February 2024, as she kept a stringent diary as she worked a changeable roster, and after consulting her diary, TCB was of the firm opinion that she had heard about the ending of RMD's employment with LWQ prior to this date. I accept her evidence.

[35] I also consider that other evidence points towards RMD's employment having ended by way of mutual agreement in mid-February 2024. First is RMD's own admissions that she never followed up with JGN about the lack of pay from 20 February onwards. By her own account, RMD made no inquiries of any sort about the fact her pay had stopped, and did not raise a personal grievance about this or any other matter, prior to the filing of her statement of problem on 14 April 2024. Her lack of concern about her pay and employment status contradicts her other evidence that, as she was then receiving a benefit from MSD, the money she received from her employment was very important to her.

[36] I also note that there was some discussion at the investigation meeting about RMD's obligations to report her income to MSD on a weekly basis, and how important this was to her. RMD provided a copy of her notification to MSD of the first week of her weekly earnings at the very start of her employment with LWQ in September 2023. She also provided a copy of a notification to MSD on about 14 March 2024, which she said supported her contention that she had continued to make these weekly notifications throughout February as she believed she was still employed and only stopped making them after the 14 March text message. It was submitted on behalf of the respondent that copies of these documents had not been provided, and in their absence, an adverse inference could be drawn that they did not in fact exist.

[37] I asked RMD to provide me with copies of the weekly notifications made to MSD throughout February and March 2024. She said she would do so, and time was allowed for these documents to be provided after the investigation meeting. RMD then wrote to the Authority following the investigation meeting, and said that she would not provide copies of these documents after all. In their absence, I conclude it is more likely than not that RMD does not in fact have any contemporaneous evidential support that would suggest she truly believed her employment with LWQ continued after her last wages payment on 20 February 2024.

[38] There is no evidence of RMD having any work-related correspondence with JGN following this date, even though RMD was copied into a small number of emails. I am also satisfied that she did not perform any work after this time. Based on the totality of the evidence, I am satisfied that RMD was not dismissed, but that her employment came to an end by way of mutual agreement on or about 16 February 2024, with her last pay being made on 20 February 2024.

[39] As I have found that no unjustified dismissal occurred, it follows that no remedies will be awarded. However, as there is no dispute as to the amount of outstanding holiday pay owed to RMD of being \$265.50 gross, orders are made for the payment of this sum to RMD.

### **The Protected Disclosure Claims**

[40] I have also been asked to determine if LWQ breached any obligations owed to RMD arising as a result of what RMD says were two protected disclosure claims she made, in May 2024 and January 2025. RMD says that she had concerns that her sister JGN committed certain actions in her personal capacity which required RMD to make a protected disclosure to LWQ. RMD's view is that LWQ did not reply, or did not reply adequately, to her raising of protected disclosure claims, and that LWQ has retaliated against her because JGN applied for a protection order against her in the family Court. RMD says that therefore LWQ is in breach of its obligations to her under the Protected Disclosures (Protection of Whistleblowers) Act 2022 (Protected Disclosures Act).

[41] In April 2025, RMD made a complaint to the police about what she said were certain actions taken by JGN. The allegations were that JGN had committed serious criminal offending. The police took RMD's complaint seriously. They investigated, and I understand from in-person evidence that a relevant government agency was also involved, and it carried out an investigation also.

[42] I record these accusations had a significant adverse effect on JGN, who gave evidence that she suffered from suicidal thoughts as a result.

[43] Following their investigation, the police and the government agency found that no action was justified, and closed their file. The police advised RMD of this decision and that no action would be taken.

[44] A few days after this decision was made and communicated to RMD, RMD made what she describes as a “protected disclosure”. She repeated the same allegations made to the police in a written document which she emailed to JGN in her capacity as a director of LWQ and to a contractor who performed compliance work for LWQ. Due to RMD mis-typing the contractor’s email address, the allegations were only received by JGN.

[45] It is accepted that LWQ took no specific steps in response to these allegations. I understand that JGN applied to the Family Court for a protection order against RMD, citing these allegations as one of the reasons.

[46] Nothing further occurred until January 2025. In January 2025, RMD sent the allegations to JGN via her and LQW’s counsel a second time. Counsel replied, expressing the view that no further action was required as the disclosure was made in bad faith. It remains LQW’s position that the allegations made by RMD were not protected disclosures as they do not fit the definition of a protected disclosure set out in the Protected Disclosures Act, and that they were made in bad faith. Accordingly, LWQ maintains that it did not breach any obligations owed to RDM under the Protected Disclosures Act.

[47] I have considered the allegations in light of the requirements of the Protected Disclosures Act. As a former employee of LWQ, RDM was a potential discloser as defined at s 8 of the Protected Disclosures Act. Section 9 sets out that a disclosure of information is a protected disclosure if the discloser:

- a. Believes on reasonable grounds that there is, or has been, serious wrongdoing in or by the discloser’s organisation; and
- b. The disclosure is made in accordance with the Protected Disclosures Act itself; and
- c. The disclosure is not made in bad faith.

[48] In addition to these requirements, serious wrongdoing is defined in s 10 of the Protected Disclosure Act, as including “any act, omission, or course of conduct in (or by) any organisation [including] an offence”.

[49] When considering the allegations made against JGN by RMD, I find that they fall short of the requirements of the Protected Disclosures Act in two respects. First, I do not accept that RMD believed on reasonable grounds that an offence had been committed by JGN. RMD had raised these same concerns with the police, and was aware that these matters had been investigated by the police and a relevant government agency. She had been told by the police that the matter had been closed, and no action would be taken only a matter of days prior. In these circumstances, she was not able to explain why she believed that JGN’s actions amounted to an offence, when the police and others had investigated and had taken a different view of matters. Second, I find that the allegations overall were not allegations of serious wrongdoing within the discloser’s organisation, e.g within LWQ. There is no doubt that the allegations were made against JGN, about a certain action taken by JGN in her personal capacity in her personal time, that RDM was only aware of in her capacity as JGN’s sister. There was no allegation of actions taken by or on behalf of LWQ. Given JGN’s role in relation to LWQ was that of a non-managing director, and that JGN did not work in the business, all of which was known to RDM, it is clear to me that the allegations did not fall within the meaning of a protected disclosure as defined in s 9 of the Protected Disclosure Act, or within the meaning of serious wrongdoing in or by any organisation as defined in s 10 of the Protected Disclosures Act. I find that no protected disclosure was properly made, and it was open to LWQ to take the view that the disclosures were made in bad faith.

[50] I also note that RDM raises a concern that she has been retaliated against in breach of the Protected Disclosures Act. Sections 20 and 21 of the Act provide that employers must not retaliate against a discloser who is an employee, and this is defined in s 21 as including dismissal, less favourable treatment, and detriment or disadvantage in the discloser’s employment. For avoidance of doubt, RMD was not an employee of LWQ at the time of either disclosure. Her employment had ended some time prior. No retaliation as defined in s 21 of the Protected Disclosure Act occurred, as there was no underlying employment relationship at that relevant time. In addition, no action was taken by LWQ that might have approached the actions defined in s 21 of the Protected Disclosure Act.

[51] For completeness, I have considered whether RMD has suffered retaliation in terms of s 23 of the Protected Disclosures Act, which states that a discloser is not liable to any civil, criminal, or disciplinary proceedings because of making the disclosure. RMD referred to JGN applying for a protection order against her as being in breach of this protection.

[52] As I have found that no protected disclosure occurred, it follows that s 23 of the Protected Disclosures Act does not apply. More fundamentally, I find that an application for a protection order by JGN against RMD is a personal matter. As will be apparent, these proceedings and the allegations against JGN have occurred in circumstances where a significant family breakdown occurred. This breakdown involved not only RDM and JGN, but also their mother and other sister, RDM's two children, her former husband, and eventually their late father's estate. It has resulted in RDM making repeated allegations of serious criminal offending against JGN which resulted in JGN experiencing ongoing suicidal ideation amid police investigation. An application by JGN personally for a protection order especially in these circumstances is not an action which might render RDM "liable" as defined in s 23 of the Protected Disclosures Act nor is it an action taken against RDM by RDM's former employer LWQ. In addition, that matter has yet to be determined by the appropriate court. I am not persuaded that the Protected Disclosures Act has been breached by LWQ in these circumstances. No claim is made out and no orders are made.

## **Orders**

[53] LWQ is ordered to pay to RMD within 28 days of the date of this determination the sum of \$265.50 gross in respect of holiday pay.

[54] As discussed at the investigation meeting, I also direct that a copy of this determination is to be provided to the Family Court by the Authority Officer for the following matters:

- a. FAM-2024-006-000140.
- b. FAM-2024-042-000410.
- c. FAM-2024-042-000263.

## Costs

[55] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. I note that the investigation meeting took three days.

[56] 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.

[57] 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)