

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2025] NZERA 545
3354543

BETWEEN FEVIN RIMSON
Applicant

AND KIRAN WILSON
Respondent

Member of Authority: Peter Fuiava

Representatives: Applicant in person
Respondent in person

Investigation Meeting: 29 August 2025 in Auckland and by audio-visual link

Submissions and information received: 24 June 2025 from the Applicant
No submission from the Respondent

Determination: 2 September 2025

DETERMINATION OF THE AUTHORITY

What is the employment relationship problem?

[1] This is a claim of alleged wage arrears brought by Fevin Rimson, a citizen of India and student visa holder, against Kiran Wilson who operated a Downlow Burger franchise in Grafton Auckland. Mr Rimson says that he is owed three days' wages for working for Mr Wilson from 27 to 29 November 2024.

[2] Mr Wilson, who is also a citizen of India, accuses Mr Rimson of lying about having worked for him for 16 hours over the above three-day period. According to Mr Wilson, Mr Rimson worked for him on a trial basis for only two hours on Friday 29 November 2024 but was found wanting after allegedly harassing a female member of staff. Mr Rimson denies any wrongdoing and says that after Mr Wilson verbally abused him in front of other staff for no apparent reason, he resigned.

[3] The employment problem turns on what I consider most probably happened.

How has the Authority investigated?

[4] Both Mr Rimson and Mr Wilson took part in a case management conference on 28 April 2025. During the teleconference, Mr Wilson agreed to provide instore CCTV footage covering the 16-hour period Mr Rimson claimed to have worked for him from 27 to 29 November 2024. However, on 1 May 2025, Mr Wilson emailed the Authority that he was not able to obtain the footage as video was stored for a maximum period of two months before being overwritten when the device was full.

[5] Mr Rimson provided the Authority with a written statement which was supplemented with supporting documents that included his movements using AT (Auckland Transport) buses from 27 to 29 November 2024.

[6] At the case management conference, Mr Wilson indicated that he would engage a lawyer to represent him, but in the end he attended the investigation meeting representing himself. While he was also given the opportunity to file a witness statement in response to Mr Rimson's statement of evidence, he did not do so.

[7] Mr Rimson attended the investigation meeting with the support of his brother Kevin. To assist with interpretation, arrangements were made for a Malayalam interpreter to be present and he attended the meeting via audio-visual link.

[8] All witnesses answered questions under oath or affirmation from me and the parties' representatives. 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.

What were the issues?

[9] The issues requiring investigation and determination were:

- (a) Is Mr Rimson owed wages for working for Mr Wilson for three days from 27 to 29 November 2024?
- (b) Was he unjustifiably dismissed?
- (c) Was Mr Rimson unjustifiably disadvantaged by not having a written employment agreement and how did not having one affect him?

- (d) Mr Rimson seeks wage arrears, compensation for hurt and humiliation, and a penalty for not been provided with an employment agreement. What remedies should be awarded?
- (e) If any remedies are awarded, should this be reduced (under s 124 of the Act) for blameworthy conduct by the applicant that contributed to his own grievance?
- (f) Should either party contribute to the costs of representation of the other party?

What are the relevant facts?

[10] At the material time, Mr Rimson was studying full-time towards a post-graduate qualification from a New Zealand tertiary education provider in the North Shore. He was also living with his brother Kevin at his home in Kelson, West Auckland.

[11] According to Mr Rimson, he had heard from one of his brother's friends of a potential job vacancy at Mr Wilson's Downlow Burger store in Grafton, Central Auckland. The friend provided Mr Rimson with the mobile number of Mr Wilson, whom he telephoned on 26 November 2024 and spoke to very briefly. A screenshot of Mr Rimson's mobile phone shows their conversation lasted only 22 seconds.

[12] It is understood that Mr Rimson had asked Mr Wilson for a job and was told to be at the store at 11 am the next day, being Wednesday 27 November 2024. Mr Rimson travelled to the store by bus and worked for Mr Wilson for four-and-a-half hours. He was told by Mr Wilson to return the following day, Thursday 28 November 2024, which he did, and he worked from approximately 5 pm to 11 pm.

[13] Mr Rimson claims that during his second day of work, Mr Wilson was verbally abusive and angry towards him for no apparent reason. However, Mr Wilson apologised for being angry and drove Mr Rimson home to his brother's house in Kelston (some 14 kms across town) because there were no buses operating at this time. Mr Rimson recalls being told to come back to Downlow Burgers the following day (Friday 29 November 2024) and to wear something black as it was Black Friday. This was when retailers offered customers significant discounts being the start of the holiday shopping season.

[14] Mr Wilson denies driving Mr Rimson home that night and is adamant that Mr Rimson has only ever worked for him for two hours on Friday, 29 November 2024.

[15] Mr Rimson says that he worked for Mr Wilson for five-and-a-half hours on Black Friday but finished early because Mr Wilson had once more verbally abused him, accusing him on this occasion of behaving inappropriately with a female member of staff who had purportedly complained to Mr Wilson about his harassment of her.

[16] Although Mr Rimson accepts talking to the staff member, this was unavoidable as the kitchen in which they worked was small. In any case, Mr Rimson says that he was conversing and working at the same time and denies being rude or offensive towards the staff member and believes that the CCTV footage would clear him of any wrongdoing. However, Mr Wilson, maintains the harassment did take place but he is no longer able to demonstrate this as the relevant CCTV footage has since been recorded over.

Whether Mr Rimson is owed wages?

[17] This matter falls to be determined on who I find credible. In making a credibility assessment, one must carefully evaluate all the evidence, looking for inconsistencies as between witnesses and between statements made on an earlier occasion. Other factors to consider in determining credibility include the plausibility of what has been said and how that makes the evidence more (or less) probable, the existence of contemporary materials or other verifying sources of information, testimony from other third-party witnesses, how the evidence hangs with other information before the decision maker, acknowledging the limits of memory, and that while there may be good reason for a witness to invent or fabricate their evidence, there are occasions where the witness is simply mistaken.

[18] All this is to say that assessing credibility is a multi-faceted process that requires the decision maker to sift through all the evidence in a robust and commonsense way and to render a decision having regard to the particular jurisdiction and applicable standard of proof which in this case is the balance of probabilities.

[19] Despite being denied the opportunity of having recourse to CCTV footage, Mr Rimson provided me with his AT Hop Card transaction history for the period in

question which shows him traveling from his brother's house in Kelston to Grafton by bus. The time he arrived in Grafton coincide with Mr Rimson having started work at 11 am on Wednesday 27 November, 5 pm Thursday 28 November, and 9 am Friday 29 November 2024.

[20] Mr Wilson contends that the AT travel history information could be manipulated to show travel. While that may be so, Mr Rimson had no other reason to be in Grafton during this period as his tertiary education provider is on the other side of town in the North Shore. None of his courses are based in Grafton. A screen shot of Mr Rimson's mobile phone shows that he did speak with Mr Wilson on Tuesday 26 November 2024. While the conversation was short, Mr Wilson confirmed that the number captured by the screen shot was his. Mr Wilson also acknowledged that he often received calls from people asking him for work. It is plausible that Mr Rimson telephoned Mr Wilson looking for work and was told to attend his store the next day at 11 am. The AT travel records and the screenshot is reliable evidence to make such an inference.

[21] It was Mr Rimson's evidence that he sliced the onions, cut the burger buns in half which he then stacked in a box, cooked the burger patties, refilled the vegetable bins with produce, made the burgers, toasted the burger buns using a machine, fried the fries, served customers behind the till and opened the store using the combination code to the padlock. Mr Wilson says that Mr Rimson's replies show that he did not work for him because the burger buns were already cut in half. To this, Mr Rimson acknowledged that he may have been mistaken. While Mr Rimson appears to have been mistaken on this particular point, his description of what he did is consistent with working in a fast food establishment which is not skilled employment having regard to immigration instructions.

[22] Mr Wilson took issue with Mr Rimson working behind the till, cooking the burger patties and opening the store. As to the last of these, Mr Wilson did acknowledge that there was a padlock to his store which has a passcode. This would not be something that Mr Rimson would know unless he had worked for Mr Wilson. As to the cooking activities at the store, while Mr Wilson says that he would never let a new worker work behind the stove unless they were trained, food preparation and cooking did not require a high level of skill and Mr Rimson did not work alone but had other staff members to

show him how to do things. Although not professionally trained himself, Mr Rimson has cooked for himself and his family and was proficient in cutting and slicing vegetables. I find Mr Rimson's account of the work he did plausible.

[23] Mr Wilson denied taking Mr Rimson home on the evening of Thursday 28 November 2024 sometime after the store closed at 11 pm. When I asked Mr Rimson's brother, Kevin, whether he recalled seeing him being dropped off to his place that night, Kevin candidly stated that he would not have been able to see the lights of a vehicle outside his house given the layout of his unit. I appreciate Kevin's candour in answering my question when answering differently could have corroborated events for his brother. Even so, I accept that given the late hour Mr Rimson finished work that evening (after 11 pm), catching a bus was no longer an option for him. It is possible that Mr Wilson may have driven Mr Rimson home that evening but ultimately this is not determinative of credibility.

[24] Strong allegations require strong evidence and while Mr Rimson has provided evidence to substantiate his claim of working for Mr Wilson for 16 hours from 27 to 29 November 2024, Mr Wilson has provided no evidence of the alleged harassment by Mr Rimson towards a female member of staff.

[25] There was ample opportunity for Mr Wilson to store the CCTV footage. When asked about this at the investigation meeting, I found Mr Wilson's answers difficult to fathom. It became clear that he had not watched the footage at all because if he had, and if it did indeed record what he alleges Mr Rimson to have done, a reasonable employer in Mr Wilson's position would have stored that footage rather than do nothing and allow the effluxion of time to overwrite evidence that would have been determinative of this employment problem.

[26] Having regard to all the available information and evidence I have before me, I find that Mr Rimson did work for Mr Wilson for 16 hours from 27 to 29 November 2024 and is owed wages at the applicable minimum wage rate of \$23.15 per hour.

[27] Temporary visa holders have the same minimum employment rights as New Zealand workers. Although Mr Rimson was said to be training, the training minimum wage only applies if the employee is 20 years or over and their employment

agreement states that they are required to do at least 60 credits a year as part of an industry training programme. As there was no employment agreement, it cannot be said that Mr Rimson was required to undertake training as part of a training programme.

Conclusion on wage arrears

[28] For the reasons given above, the Authority orders Kiran Wilson to pay Fevin Rimson \$370.40 (gross) in wage arrears by 30 September 2025. Given the modest amount of this order, I have not awarded interest.

Whether Mr Rimson was unjustifiably dismissed or unjustifiably disadvantaged?

[29] Mr Rimson's statement of problem was lodged with the Authority on 30 January 2025 and while he neither pleaded unjustified dismissal nor unjustified disadvantage, he does refer to being humiliated and harassed in front of other staff by Mr Wilson who then threatened to lodge a complaint with the Police to spoil his future.

[30] Under s 160(3) of the Act, the Authority is not bound by the way matters have been pleaded especially when the statutory framework is focussed at resolving employment relationship problems based on their substance rather than their form. Mr Rimson is not only a lay litigant, but he is also an international student who cannot reasonably be expected to be across all relevant Employment law in New Zealand.

[31] I do not consider Mr Rimson as having been unjustifiably dismissed but find that of his own accord he decided to resign. Owing to the short period of his employment, it cannot be said that he was disadvantaged by not having an employment agreement.

[32] However, I do find that he was unjustifiably disadvantaged by Mr Wilson's treatment of him which was demeaning, unnecessary and amounted to bullying because the abuse and hostility were not 'one-off' but occurred on the second and third days of his employment. These are not the actions of a fair and reasonable employer could have done in all the circumstances.¹

¹ The Act, s 103A.

[33] I accept Kevin's evidence regarding the emotional impact the grievance has had on Mr Rimson. This was his first job in New Zealand. Being verbally abused and threatened by his employer has caused him unnecessary stress and anxiety.

[34] The evidence of emotional harm when considered with other similar cases of a like nature falls within the first category of compensation. Given that the employment relationship lasted for 16 hours over three days, compensation for hurt and humiliation would need to be significantly reduced for it to proportionate. I conclude an appropriate award with no deduction for contribution under s 124 of the Act is \$2,000.

[35] In the absence of CCTV footage demonstrating the alleged harassing behaviour of another co-worker, it has not been shown that Mr Rimson has contributed to his own personal grievance. There is to be no deduction to the compensation award above.

Filing fee

[36] Given the outcome of this investigation in which Mr Rimson has been successful, it is appropriate that he be reimbursed the filing fee of \$71.55 that he paid to lodge his statement of problem with the Authority.

Summary of orders

[37] The Authority orders Kiran Wilson to pay the following sums to Fevin Rimson no later than 30 September 2025:

- (i) gross wages of \$370.40;
- (ii) the sum of \$2,000 without deduction being compensation under s 123(1)(c)(i) of the Act; and
- (iii) reimbursement of the filing fee of \$71.55.

Costs

[38] As the parties have represented themselves and there being no evidence of any legal costs having been incurred by either side, costs shall lie where they fall.

Peter Fuiava
Member of the Employment Relations Authority