

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 20  
3362383

BETWEEN YASODHARA  
SCARBOROUGH  
Applicant

AND SUNRISE HEALTHCARE  
LIMITED  
Respondent

Member of Authority: Peter Fuiava

Representatives: Applicant in person  
Michael Witt and David Graham, counsel for the  
Respondent

Investigation Meeting: 30 September 2025 in Auckland

Submissions and other information received: Up to, and including, 18 October 2025 from the  
Applicant  
Up to, and including, 17 October 2025 from the  
Respondent

Determination: 14 January 2026

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**DETERMINATION OF THE AUTHORITY**

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**What is the employment relationship problem?**

[1] This employment relationship problem concerns an unjustified constructive dismissal grievance brought by Yasodhara (also known as Emma) Scarborough against her former employer Sunrise Healthcare Limited (SHL or the company). The company operates a number of rest care facilities in Auckland including West Harbour Gardens where Ms Scarborough worked as a caregiver.

**How has the Authority investigated?**

[2] For the Authority's investigation, written witness statements were received from Ms Scarborough who represented herself at the investigation meeting. For SHL, written witness statements from the facility manager of West Harbour Gardens, Mark

Young, and HR and operations manager, Napat Pawapootanon, were provided. The owners of SHL, David and Rosa Grainger, were also present at the investigation meeting as observers but were not otherwise involved in the hearing. Following the conclusion of the investigation meeting, the parties lodged written closing submissions which have been considered.

[3] 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?**

[4] The issues requiring investigation and determination were:

- (a) Was Ms Scarborough constructively dismissed by SHL and if so, was the dismissal unjustified?
- (b) If so, should she receive:
  - lost wages
  - (if confirmed) compensation for humiliation, loss of dignity and injury to feelings.
- (c) Should either party have to contribute to the other party's costs?

### **What are the relevant facts?**

[5] Ms Scarborough's employment with SHL commenced on 25 January 2023 and ended on 24 November 2024. Her individual employment agreement (IEA) required her to report to West Harbour Gardens clinical manager, Romina Ruadap. The IEA relevantly stated (emphasis added):

## **PART VIII: RULES FOR WHEN IT'S TIME TO LEAVE**

### **1 RESIGNATION**

You may terminate this agreement by giving to Sunrise Healthcare Ltd no less notice of resignation than that specified in Your Letters of Appointment. Any such notice of resignation is to be *in writing* ...

According to Ms Scarborough's Letter of Appointment at Appendix One to the IEA, the required notice period for either termination or resignation was three weeks.

[6] On 9 September 2024, Ms Ruadap emailed facility manager Mark Young, a formal complaint against Ms Scarborough regarding an alleged breach of SHL's standards of conduct and care. The complaint was referred to Mr Young because as the complainant, Ms Ruadap was not able to investigate her own complaint.

[7] By letter dated 18 September 2024, Mr Young invited Ms Scarborough to an investigation meeting on 20 September to discuss two matters of concern: an alleged failure to follow instructions from a registered nurse who asked Ms Scarborough to assist a resident during breakfast with a high risk of choking; and an allegation that Ms Scarborough was disrespectful to one of her colleagues when communicating in the team's WhatsApp group.

[8] On 19 September 2024, Ms Scarborough emailed Mr Young and Ms Ruadap, thanking them for approving her request for five weeks of annual leave from 9 October to 10 November 2024. Ms Scarborough stated that, as she did not intend to return to work after her holiday, if her leave request could be extended from five to seven weeks instead, with her leave ending Sunday 24 November 2024.

[9] Mr Young emailed Ms Scarborough later that same day to confirm that he had understood her email correctly that she was resigning after her holiday. If so, he asked if she could put her resignation in writing with her final date of work. In a subsequent email from Ms Scarborough to Mr Young and Ms Ruadap, Ms Scarborough stated the following (emphasis added):

Because of the time of the year – *that I am resigning – I thought I should let you know now.*

...

Sunday 6th October 2024 is my last day at work and *I will not return to work after the seven weeks off. I believe I've got enough annual leave accrued to last until Sunday 24th November.*

*I will put in my resignation letter or email on 1st November 2024.*

[10] Shortly after receiving her email, Mr Young emailed Ms Scarborough that she was making matters "quite complicated". He understood her to mean that her last day at work was her last day before going on annual leave (6 October 2024) and that 1 November 2024 would be her last day of employment at SHL. Mr Young requested that before going on leave, Ms Scarborough provide him with a letter that had the date

of her resignation so that he and Ms Ruadap could start the process of hiring a replacement.

[11] Later that evening of 19 September 2024, Ms Scarborough emailed the following to Mr Young:

It's all very clear to me:

My last date of work is on Sunday 6<sup>th</sup> October 2024.

I need to give the Employer three weeks' notice before I resign, which I'm going to do on 1<sup>st</sup> November.

I gave you my word, in writing, thus I'll do it. Have no fear!

I will not go back to West Harbour Gardens after the 24<sup>th</sup> November, because I'm leaving Auckland.

I'm going to leave first and then I'll resign, for I don't want any annual leave paid out to me, as I written down below.

You and [Ms Ruadap] should already have started hiring staff/carers, because you need to train them to do the job, and learning takes time.

[12] On 20 September 2024, Mr Young held his investigation meeting with Ms Scarborough. Present at the meeting was SHL's HR and operations manager, Napat Pawapootanon. Mr Young took handwritten notes of the meeting which he later had typed. His original handwritten notes were not kept. The minutes record that the offer was made to Ms Scarborough for the meeting to be rescheduled so that she could bring a support person but she declined and the meeting went ahead. The meeting minutes relevantly record the following:

Mr Young stated that Ms Scarborough had recently provided a resignation, Mr Young had asked if this resignation was related to the investigation. Ms Scarborough stated that it was. Mr Young asked for clarification as had been advised earlier no decision was made yet and that they are just following process. Ms Scarborough stated that they had felt that their time at West Harbour Gardens was coming to an end, this investigation just sped up their decision to leave the business. Mr Young asked for further clarification on what they meant by that it sped up their decision to leave the business.

Ms Scarborough stated that they had been a part of two investigations already at West Harbour Gardens and that they did not want to be a part of any more. Mr Pawapootanon stated the business was just following its process and it had to follow up on concerns raised. Ms Scarborough acknowledged this.

Mr Young asked if Ms Scarborough had any other comments they would like to make this on this. Ms Scarborough declined to make any further comments.

[13] On 21 September 2024, Ms Scarborough emailed Mr Young stating that she did not like to be called into the manager's office because it meant that she was in trouble.

Ms Scarborough went on to remark that she was glad her days as a caregiver at West Harbour Gardens were counted “because it’s time for me to move on.”

[14] Ms Scarborough stated that she met with Mr Young on 23 and 27 September 2024. However, Mr Young has no recollection of meeting with Ms Scarborough on either of these dates.

[15] On 25 September 2024, Mr Young advised Ms Scarborough in writing of the outcome of the investigation meeting which was that no disciplinary action would be taken but that there were workplace expectations on her going forward. Mr Young’s letter recorded the following:

During this meeting, we had also briefly discussed your recent communication regarding an intention to resign from the business. We had clarified [with] you the process in which you had wanted this to be carried out and confirmed with you this was because you would be leaving the Auckland region and could no longer work here due to that.

[16] Ms Scarborough emailed Mr Young on 25 September 2024 to thank him for his letter the contents of which were clear and that she agreed with her employer’s expectations of her going forward. With regard to her request to take annual leave and her intention to resign, Ms Scarborough stated (emphasis added):

With regard to my current seven weeks annual leave request, and my intention to resign from the business, I would like to discuss the matter with you again, as I made a decision in the heat of the moment, I suppose.

Would you consider a change to my annual leave request *and a delay to my resignation?*

[17] With respect to annual leave, Ms Scarborough (now) preferred to take two weeks’ leave from 9 to 22 October 2024 and would take the rest of her accrued annual leave after the Christmas and New Year holidays. She indicated in her email that her resignation would then follow after she returned from annual leave.

[18] On 26 September 2025, Mr Young emailed Ms Scarborough that, as he had said before, she was making her resignation “very complex” and that they needed to discuss it. In response, Ms Scarborough emailed Mr Young stating that because he had not asked her whether she wanted to change her decision (about resigning), she wished to know whether she could. Ms Scarborough further stated that she did not mean to make

her resignation very complex but that this was just how her life was. In a subsequent email to Mr Young later that same day, Ms Scarborough stated:

As I've told you, my time at the Care Facility is up, but the letter of complaint just upset me and I reacted without much thinking. My plan was to leave in the summer time, but then again, if you don't want me there anymore, I'll have to carry on with my decision and make it work.

I'll see you tomorrow.

[19] On 28 September 2024, Ms Scarborough and Mr Young met in his office to discuss her resignation. The meeting was a positive one. The parties disagree as to what was agreed to regarding Ms Scarborough's final day of work. Mr Young states that this was 24 November 2024 as originally agreed whereas Ms Scarborough claims that they had agreed to delay her resignation.

[20] Later that same afternoon, Ms Scarborough emailed Mr Young to thank him for their talk that morning and that she was feeling quite happy now and was looking to her next challenge rather than delaying it. She offered to buy Mr Young a drink before she left the Auckland region.

[21] On the morning of 30 September 2024, Ms Scarborough emailed Mr Young and Ms Ruadap to thank them for changing her annual leave request dates and to advise that she would be on annual leave for two weeks from 9 to 22 October 2024. Ms Scarborough further stated:

I will put my resignation letter in, soon, and my last day at work will be Sunday 24<sup>th</sup> November 2024.

[22] On 30 September 2024, Mr Young emailed Ms Scarborough that the 24<sup>th</sup> of November was fine and that he would speak to Ms Ruadap about amending her leave request (from seven to two weeks). In a separate email that same morning to Ms Scarborough, Mr Young said while leaving was scary, he was convinced that this would be good for her and that he was happy to provide Ms Scarborough with a reference if she were to apply for other work. Ms Scarborough's email in reply records that she was leaving as fast as she could and that she was sorry for any inconvenience that she may have caused.

[23] There was no further communications between Ms Scarborough and Mr Young or anyone else from SHL during the period of Ms Scarborough's annual leave from 9 to 22 October 2024.

[24] On 1 November 2024, Ms Scarborough emailed Mr Young, Ms Ruadap and her then union representative from E Tū, Petria Malloch, that she would not be resigning from her job as a caregiver and that there would be no letter of resignation from her that day. Ms Scarborough explained that during her two-week break from work, she had been able to rest and think about Mr Young's letter of complaint and what he had said to her when he gave it to her on a busy afternoon shift. Ms Scarborough said that he had encouraged her to resign from her job instead of encouraging her to take time off from work and think:

I do not have another job to go to and am not ready to resign from my job. It was only because of Mark's letter of complaint that I said I was going to resign. If Mark had not given me a letter of complaint, I wouldn't have mentioned my intention to resign. Mark's letter of complaint has created confusion and fear in my mind, and I made the wrong decision, which I regret.

[25] On 4 November 2024, Ms Scarborough emailed Mr Pawapootanon, the HR manager, that she did not resign on 1 November 2024 because Mr Young had not dealt with her in good faith when he provided her with the letter of complaint.

[26] When Mr Pawapootanon emailed Ms Scarborough to clarify what she meant by Mr Young not dealing with her in good faith, she alleged that he wanted her resignation which she gave in the heat of the moment. Ms Scarborough advised that she was waiting on her union representative, Ms Malloch, who was going to obtain advice from a lawyer.

[27] At some point Ms Malloch had a conversation with Mr Young. On 8 November 2024, she emailed Mr Young for confirmation of their conversation which he provided later that same day stating that he had not changed his mind about accepting Ms Scarborough's resignation on 24 November 2024 and that he had already hired someone to replace her.

[28] SHL's closing written submissions to the Authority record that, on 10 October 2024, Mr Young interviewed the replacement employee who accepted his offer of employment on 19 October 2024. During this period, Ms Scarborough was on annual

leave and was not at work. The successful candidate commenced employment on 25 November 2024, the day after Ms Scarborough's last day of employment at SHL.

[29] On 18 November 2024, Ms Scarborough emailed Mr Young, Mr Pawapootanon and the owners of SHL, David and Rosa Grainger, stating that she would like to keep her job as a caregiver. Ms Scarborough noted that although Mr Young had asked her a few times for a letter of resignation before she went on leave, she had not given him a letter of resignation.

[30] On 18 November 2024, Mr Pawapootanon emailed Ms Scarborough and confirmed that her email was passed to the owners of the business, Mr and Mrs Grainger. He further advised Ms Scarborough that while a letter of resignation had been requested from her, doing so was a formality as resignations were not required to be in the form of a letter but could be by email or given verbally as well.

[31] Mr Pawapootanon further stated that he was aware of multiple correspondence in which Ms Scarborough had stated that her final date of work with SHL was 24 November 2024. Consequently, this made it urgent for Mr Young to hire a replacement in time for the upcoming holiday period. Mr Pawapootanon acknowledged that while Ms Scarborough was within her rights to withdraw her resignation, it was at the employer's discretion whether or not to accept the withdrawal especially as it was made after a significant amount of time had passed. Mr Pawapootanon stated that Ms Scarborough's resignation "stood its ground" and that in SHL's discretion, it did not accept her withdrawal of her resignation.

[32] Ms Scarborough's last day of employment at SHL was 24 November 2024 and she received her final pay including accrued annual leave three days later.

[33] With the assistance of another union delegate, Ms Scarborough raised a personal grievance with SHL on 29 January 2025. SHL responded to the personal grievance on 31 January 2025 by categorically rejecting it.

[34] On 31 January 2025, Ms Scarborough was served with trespass notices preventing her from entering any of SHL's residential care homes. Mr Napat issued

the trespass notices on SHL's behalf because of concerns about Mr Young's welfare due to the nature of Ms Scarborough's subsequent communications with him.

**Was Ms Scarborough constructively dismissed by SHL and if so, was the dismissal unjustifiable?**

[35] Before determining whether there was a constructive and unjustified dismissal, it is necessary to determine first of all whether there was a resignation. Ms Scarborough submits that when Mr Young gave her a letter of complaint she was so upset by it that in a state of fear and confusion, she said to him in writing and verbally that it was her intention to resign after a period of annual leave, but in the end, she did not resign.

[36] It is helpful to contextualise Mr Young and Ms Scarborough's emails with each other. The purpose of the letter of complaint that Ms Scarborough received from Mr Young on Wednesday 18 September 2024 was to invite her to an investigation meeting in order for Mr Young to hear her response to the two allegations made against her by Ms Ruadap, the clinical manager. The invitation letter made clear that the investigation was not a disciplinary action; that no decision had been made; that there would be a full investigation; and only after a decision was made would it be decided what further action would be taken (if any). The invitation letter also provided Ms Scarborough the opportunity to bring a support person with her to the meeting.

[37] The following day, Thursday 19 September 2024 (being Ms Scarborough's usual day off from work), Ms Scarborough sent the first of a series of emails to Mr Young (see [8] above) that, on its face, suggested that she potentially wanted to resign. I cannot discount the possibility that at this early stage, when Ms Scarborough emailed Mr Young at 1.16 pm, that her resignation may have been offered out of fear and confusion having had the time to fully consider his letter of complaint.

[38] Recent case law suggests that a "cooling-off" period may now no longer be required for "heat of the moment" resignations where an employee resigns out of distress, anger or frustration. The key question to be asked is whether the employee resigned, which is an objective assessment that is likely informed by the relevant circumstances.<sup>1</sup>

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

[39] As it was not clear from Ms Scarborough's first email that Thursday that she wished to resign, it was prudent of Mr Young to seek further clarification as to what was intended. In a subsequent email from Ms Scarborough later that same afternoon at 4.34 pm, she clarified with Mr Young that Sunday 6 October 2024 would be her last day at work and that she would not be returning to work after taking annual leave. Ms Scarborough further stated that she would be putting in her resignation, by letter or email, on 1 November 2024.

[40] As matters remained still unclear, Mr Young sought further confirmation from Ms Scarborough that her actual resignation date was 1 November 2024 which she confirmed was the case in her third and final email to Mr Young on 19 September 2024 at 8.48 pm. In that email, Ms Scarborough affirmed that her last day of work was Sunday 6 October 2024, that she would not be going back to West Harbour Gardens after the 24<sup>th</sup> of November 2024 because she was leaving Auckland, and that Mr Young and Ms Ruadap, should already have started hiring a replacement in order to train them to do the job as learning took time.

[41] Ms Scarborough submits that she has never given her employer a letter of resignation. However, a formal letter of resignation is not required by the Act and neither was it requirement of Ms Scarborough's IEA with SHL. The agreement merely requires the resignation to be evidenced in writing which would include emails and text messages.

[42] It is noted that Ms Scarborough's email above is well-reasoned in that her resignation complies with the three-week notice provision of her IEA (see [5] above). The email is also considered in that she has in mind the time it takes to recruit and train a replacement to do her job. Finally, the email is rational in that it explains Ms Scarborough's motivations behind her resignation, which in addition to wanting to leave Auckland, included a desire to work in an English speaking workplace and wanting more time to do the things that she always wanted to do.

[43] Despite Ms Scarborough saying she only ever intended to resign, when her multiple emails from 19 September 2024 to Mr Young are cumulatively and objectively considered, I come to the conclusion that Ms Scarborough did in fact tender her resignation by email. That decision was endorsed in a subsequent email from Ms

Scarborough to Mr Young on 21 September in which she stated that she was glad her days as a caregiver were counted and that it was time for her to move on. While it may be that part of this statement stemmed from the loss of a resident with whom Ms Scarborough was close, the consistent theme across all of Ms Scarborough's correspondence with Mr Young was that she was leaving SHL.

[44] After receiving Mr Young's investigation outcome letter that there would be no disciplinary action taken against her, Ms Scarborough emailed Mr Young on 25 September 2025 and sought to withdraw her resignation which she claimed was made in the heat of the moment and if Mr Young could consider delaying her resignation. In my view, this email makes clear that Ms Scarborough understood that she had already resigned because if she had only ever communicated an intention to resign, there would have been no need for Mr Young to consider delaying her resignation.

[45] A subsequent meeting was held between Mr Young and Ms Scarborough on 28 September 2024. This was fair and reasonable as Mr Young needed to ascertain whether Ms Scarborough was now wanting to withdraw her resignation. While what occurred at this meeting is disputed, Ms Scarborough emailed Mr Young on Saturday 28 September 2024 at 1.26 pm, after she had returned home, to thank Mr Young for their talk that morning and that she was quite happy and was looking forward to her next challenge, rather than delay it.

[46] The tenor of this email leads me to prefer Mr Young's evidence as to what occurred at the meeting which was that Ms Scarborough had verbally confirmed with him that her time at West Harbour Gardens was finished, that her final date of employment was 24 November 2024 as originally agreed, and that Ms Scarborough had not withdrawn her resignation. It makes no sense for Ms Scarborough to state in her email that she was looking forward to her next challenge rather than delaying it, if she were not leaving SHL.

[47] Ms Scarborough's meeting with Mr Young on 28 September 2024 would have been the perfect moment for her to have sought to withdraw her resignation. However, there was no such withdrawal because neither Ms Scarborough's email of 28 September

2024 nor her subsequent email exchange with Mr Young on 30 September 2024, make mention of a resignation withdrawal being discussed.

[48] The first communication in which Ms Scarborough says that she is not wanting to resign is an email dated 1 November 2024 but even that communication makes the fact of Ms Scarborough's resignation clear because she alleges that Mr Young had encouraged her to resign. One cannot intend to resign if they have already resigned. The only option left to Ms Scarborough was to withdraw her resignation but that is a matter of discretion for her employer

[49] Unfortunately for Ms Scarborough, by the time she communicated her desire to withdraw her resignation, a replacement employee had already been found during the period that she was away on leave. It was therefore no longer possible for SHL to keep both the new hire and Ms Scarborough on as employees as doing so would have resulted in an added cost to the company.

[50] Having found that Ms Scarborough resigned from her role as caregiver at SHL, I turn to consider whether she was unjustifiably and constructively dismissed. The information and evidence to support such a finding is not present in this case. Ms Scarborough's multiple emails to Mr Young gave reasons why she was leaving which included leaving the Auckland region. While in one email she stated that she did not like being called into the manager's office, a formal complaint against Ms Scarborough had been received from her clinical manager and it was appropriate for Mr Young as facility manager to investigate the complaint to ensure impartiality and a fair process.

[51] The two previous investigations that Ms Scarborough was involved in had not resulted in any disciplinary action against her and the matters that Mr Young was investigating did not result in any disciplinary action either. That investigation was done in a timely and procedurally fair manner. Cumulatively considered, I find no evidence of a course of conduct by SHL with the deliberate and dominant purpose of coercing Ms Scarborough to resign or a breach of duty by the company that would make it reasonably foreseeable that she would resign.

## **Conclusion**

[52] As I have found that Ms Scarborough's employment ended by resignation which was not a forced upon her to constitute an unjustified constructive dismissal, the claim is unsuccessful and is declined. There were other matters that Ms Scarborough wished me to investigate such as Mr Young's qualifications and trespass notices that Mr Pawapootanon issued against her on SHL's and Mr Young's behalf. However, these matters are not directly relevant to the issues for investigation and would not, in my view, effectually dispose of the employment problem before me. As a result, they are taken no further.

## **What about costs?**

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

[54] If the parties are unable to resolve costs, and an Authority determination on costs is needed, SHL may lodge, and then should serve, a memorandum on costs within 21 days of the date of this determination. From the date of service of that memorandum, Ms Scarborough 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.

[55] 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>2</sup>

Peter Fuiava  
Member of the Employment Relations Authority

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<sup>2</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).