

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2026] NZERA 84  
3336480

BETWEEN	KENT THOMSON Applicant
AND	QUALITY NZ HOMES LIMITED Respondent

Member of Authority:	Alyn Higgins
Representatives:	Applicant in person Stuart Adams for the Respondent
Investigation Meeting:	16 December 2025 in Wellington
Submissions and further information received:	At the investigation meeting and from both parties following the investigation meeting
Determination:	18 February 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Mr Kent Thomson was employed by Quality NZ Homes Limited (QNZHL) first as an apprentice builder before moving into an office / client manager role in early 2022. The job was full time and was in support of QNZHL's business as a developer of higher end residential homes in the Greater Wellington region. During his employment with QNZHL Mr Thomson became a qualified builder. QNZHL also engaged

subcontractors and had a small team of staff including Mr Thomson and QNZHL's sole director and shareholder, Mr Stuart Adams.

[2] Mr Thomson claims that as a result of a combination of financial pressures including expenses not being paid and pressure from clients and subcontractors that he no longer felt safe working for QNZHL and resigned. Mr Thomson claims compensation for distress for being coerced to resign along with unpaid wages and holiday pay with interest.

[3] In addition to unpaid holiday pay Mr Thomson is also seeking the sum of \$4,900 for 54,803 kms of road user charges and \$175 in vehicle registration for a period of using his personal vehicle for work purposes. Mr Thomson would also like the balance of a series of personal loan payments totalling \$58,000 he made to QNZHL in 2023 repaid.

[4] Mr Adams does not dispute the personal loan but says that the holiday pay owed to Mr Thomson was paid in a series of payments made to Mr Thomson between Mr Thomson's final pay date of 8 August 2024 and 30 July 2025 and that Mr Thomson resigned of his own accord and reasons. Mr Adams disputes that Mr Thomson had to use his own vehicle and that QNZHL never agreed to the road user charges and vehicle registration expenses.

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

[5] A case management conference call was held on 28 July 2025 at which timetable directions were issued for the lodgement of written witness statements and the convening of an investigation meeting. Neither Mr Adams nor any other representative for QNZHL attended the case management call. The notice of investigation meeting was subsequently sent to an email address for the respondent company listed on the companies register.

[6] For the Authority's investigation a written witness statement was received from Mr Thomson. Mr Thomson attended the investigation meeting via AVL and answered questions under affirmation. For QNZHL Mr Adams advised the Authority of his attendance at the investigation meeting by email on 15 December 2025 and attended the investigation meeting in person along with Ms Michelle Henry. Mr Adams and Ms Henry gave oral evidence and answered questions under oath. I also sought further

information from Mr Adams and sought comment on the same from Mr Thomson following the investigation meeting.

[7] As permitted by s 174E of the Act this determination states findings of fact and law, expresses conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received but all information provided in the course of the investigation has been considered.

### **The issues**

[8] The issues requiring investigation and determination were:

- (a) Was Mr Thomson unjustifiably (constructively) dismissed?
- (b) If QNZHL's actions were not justified, what remedies should be awarded, considering:
  - (i) Lost wages (subject to evidence of reasonable endeavours by Mr Thomson to mitigate loss); and
  - (ii) Compensation under s123(1)(c)(i) of the Act?
- (c) If any remedies are awarded, should they be reduced (under s124 of the Act) for any blameworthy conduct by Mr Thomson that contributed to the situation giving rise to his grievance?
- (d) Is Mr Thomson owed any outstanding annual holiday payments?
- (e) Are there any other monies owed to Mr Thomson by QNZHL arising out of Mr Thomson's employment (vehicle registration, road user charges and outstanding loans) that should be awarded to be repaid by the Authority?
- (f) Should either party contribute to the costs of representation of the other party?

### **Relevant background**

[9] Mr Thomson had known Mr Adams through family connections for some time prior to working for QNZHL. Mr Thomson reached out to Mr Adams for possible employment. The terms of Mr Thomson's employment included the use of a company vehicle that was used to travel between worksites. Some personal use of the vehicle by Mr Thomson was permitted. Mr Thomson had a written employment agreement that was signed by both parties.

[10] The employment started amicably and continued for some years but from around 2023 QNZHL's business performance became more strained. Around this time QNZHL was also involved in some Court litigation by the Greater Wellington Regional Council over a subdivision that QNZHL was involved in developing. But despite QNZHL being successful in defending this action QNZHL has not recovered from the financial impact.

[11] In March 2023 Mr Thomson was on the receiving end of some anger and frustration from a client over construction delays and general stress over a build. This anger and frustration were such that the client threatened Mr Thomson with a piece of timber saying words to the effect that the wood would be wrapped around Mr Thomson's ankles over the ongoing delays.

[12] Mr Thomson raised this incident with Mr Adams who promptly told the client that this behaviour was not acceptable and then put in place regular meetings with the client. Mr Thomson was not involved in these meetings and although the relationship with that client was then distant following the incident, Mr Thomson continued to work on the client's site. No other threats to Mr Thomson while employed by QNZHL were put forward.

[13] Mr Thomson says that a combination of financial pressure including expenses not being paid and concerns about QNZHL's financial fitness and pressure from clients meant that Mr Thomson says that he no longer felt safe working for QNZHL and resigned by email to Mr Adams dated 7 October 2024.

[14] In August 2025 after struggling to find alternative work Mr Thomson relocated to Brisbane to find work where he did successfully find work.

### **Was Mr Thomson constructively dismissed?**

[15] The law on constructive dismissal is well established. Specifically, when an employee resigns but the resignation was in fact the result of something the employer did that effectively caused the employee to resign this may be considered a constructive dismissal.<sup>1</sup>

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<sup>1</sup> *Auckland Electric Power Board v. Auckland Provincial District Local Authorities Officers IUOW Inc* [1994] 2 NZLR 415 (CA)

[16] There are three situations where a constructive dismissal can occur:

- Where the employee is given a choice of resignation or dismissal; or
- Where the employer has followed a course of conduct with the deliberate and dominant purpose of coercing an employee to resign; or
- Where a breach of duty by the employer leads a worker to resign.<sup>2</sup>

[17] The Court of Appeal has also said that to find a constructive dismissal it is also necessary to find that any breach of duty be serious enough that a substantial risk of resignation was reasonably foreseeable to the employer<sup>3</sup>.

[18] Mr Thomson essentially says that he experienced escalating pressure and direct threats from subcontractors and suppliers due to unpaid accounts and no longer felt safe or able to continue working for QNZHL and resigned.

[19] The only direct threat recounted to me, which was accepted by both Mr Thomson and Mr Adams, was the incident involving the timber to ankles threat. This occurred in March 2023, some 18 months prior to Mr Thomson resigning. This incident was addressed by the employer at the time and interventions were put in place in an attempt to prevent reoccurrence and Mr Thomson continued to undertake work for that client with no further incidents. In such circumstances I do not consider that this was a breach of duty by the employer and that Mr Adams' response to the incident was appropriate and no further issues were raised.

[20] In Mr Thomson's resignation email he also offered to contract back to QNZHL on an invoice basis and to assist with completion of the houses in progress for QNZHL's clients. After his resignation Mr Thomson told me that he also briefly visited some of QNZHL's worksites to check on progress out of loyalty.

[21] In conclusion I do not consider that visiting QNZHL's worksites or offering to essentially continue working for QNZHL, albeit on an alternative (invoice) basis, is conduct that is consistent with a claim that Mr Thomson could not keep working for QNZHL because he did not feel safe doing so and was essentially forced into resigning.

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<sup>2</sup> See Cooke J in *Auckland Shop Employees Union v Woolworths (New Zealand) Limited* (1985) 2 NZLR372 (CA) at 374

<sup>3</sup> Above n2

[22] As a result, I am not persuaded that Mr Thomson was constructively dismissed or that QNZHL coerced Mr Thomson's resignation.

**Is Mr Thomson owed any wages in arrears including any outstanding annual holiday payments?**

[23] Mr Thomson claims that he is owed a gross amount of approximately \$26,000 in unpaid annual holiday payments.

[24] In documentation supplied Mr Thomson provided me with a copy of a payslip dated 8 August 2024. This shows that Mr Thomson has a balance of 520 hours of annual holidays. Both parties rely on this payslip for the starting point as to Mr Thomson's accrued annual holidays.

[25] After Mr Thomson resigned Mr Adams acknowledged Mr Thomson's resignation in an email to him dated 14 October 2024. This email stated

“We fully acknowledge the outstanding debt, wages, and holiday pay owed to you.”

[26] QNZHL's position is that QNZHL paid Mr Thomson all of his outstanding annual holiday pay and more than what was owed for holiday pay such that the further amounts paid should be remitted against the outstanding personal loan.

[27] At the investigation meeting Mr Adams told me that all PAYE obligations had been met in respect of Mr Thomson's annual holiday pay and that QNZHL's accountants could provide confirmation of this. I accordingly requested such confirmation, which was provided in the form a letter from Pocock Tong Trass chartered accountants dated 18 December 2025 along with other documents. I also requested Mr Thomson's holiday and leave records but none were provided.

[28] In an email to the Authority dated 27 November 2024 Mr Adams stated that Mr Thomson's holiday pay was a complicated issue because Mr Thomson did not follow the prescribed steps for documenting his leave and bypassed the protocol by failing to log his leave in Xero. Mr Adams also stated that on several occasions, Mr Thomson also instructed another manager (Ian) not to record his vacation time and during the Christmas break, when QNZHL closed for three weeks, Mr Thomson was specifically instructed to log his leave, but he did not follow through with these instructions. This other manager did not appear at the investigation meeting and no evidence of the alleged

interactions or actions taken with Mr Thomson over any failure to record holidays were provided. The obligation to record holidays taken by employees is also (ultimately) an obligation of the employer.<sup>4</sup>

[29] The letter from Pocock Tong Trass dated 18 December 2025 states:

The total hours of annual leave owed to Mr Thomson as per his final payslip dated 8 August 2024 was 520 hours. A further reduction of 2 full weeks (80 hours) has been allowed for in relation to Christmas shutdown leave that had previously been unaccounted for, thus reducing the balance to 440 hours.

Based on Mr Thomson's ordinary hourly pay rate of \$48.076923, this equates to a total leave amount owed of \$21,153.85.

Separate to the leave balance, QNZH also owed Mr Thomson a balance of a loan that initially amounted to \$56,000. QNZH has since made repayments totalling \$9,000 that were specifically directed towards this loan.

I can further confirm that, since that final pay date of 8 August 2024, QNZH has paid Mr Thomson a total of \$24,350. This amount is \$3,196.15 more than the balance of leave owed to Mr Thomson, so it would be expected that this amount would then be deducted from the loan balance, bringing the balance of that loan, to the best of my knowledge, down to \$43,803.85.

Finally, I have reviewed the IRD records of QNZH and can confirm that, as at the date of this letter, all of the company's PAYE obligations have been paid in full and there are currently no payroll deductions outstanding whatsoever.

[30] On receiving this I requested follow up answers to a number of questions including copies of the supporting records for the statement that the IRD records of QNZHL had been reviewed and that as of 18 December 2025 all of QNZHL's PAYE obligations had been paid in full. No supporting IRD records were provided.

[31] In his comments on the information provided by QNZHL's accountants, Mr Thomson does not accept that the payments detailed by QNZHL represent payment of the outstanding holiday pay but does accept a reduction in the total number of annual holiday hours owed to 480 hours. Mr Thomson also said that 5 public holidays have not been accounted for during this time but did not say which public holidays and neither does the final payslip indicate any outstanding public holiday payments or alternative holidays. Pursuant to the Holidays Act 2003 if Mr Thomson did not work a public holiday but continued to receive his ordinary salary where a public holiday fell

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<sup>4</sup> s 81 (2) Holidays Act 2003

then he would have received payment for any public holidays through receiving his ordinary salary during the relevant times.

[32] In the absence of any holiday and leave records, I am charged with assessing a fair and reasonable approach to the arrears claimed. I also refer to s 83 of the Holidays Act 2003.

[33] If, as the letter from Pocock Tong Trass states, Mr Thomson's outstanding annual holiday pay is (or was) \$21,153.85 then, based on Mr Thomson's payslip information this is a gross amount. Further, if QNZHL has paid Mr Thomson since 8 August 2024 a total of \$24,350 and that this amount is \$3,196.15 more than the balance of leave owed the PAYE component ought to be clearly set out and certainly not paid to Mr Thomson, but to IRD and there should be supporting transaction records.

[34] In response to the further information I requested QNZHL provided me with a schedule of payment amounts made on a range of dates between 4 May 2024 and 30 July 2025 ranging between one payment of \$850 to a payment of \$15,000 made on 30 July 2025. Most of the payments were for amounts of \$1,000 and \$2,000. It is QNZHL's position that these payments were towards Mr Thomson's outstanding annual holiday pay but there is no information or correspondence from QNZHL to Mr Thomson at the time of the payments that the payments were for this purpose.

[35] In answer to the follow up questions Ms Michelle Henry said that:

“Since the bulk of the payments were made from personal accounts, the bank used was not linked to Xero and PAYE records. When we tried to sort it out, Xero would not let us do this retrospectively.”

[36] Xero recording may well be one thing but the actual payment trail of the PAYE component to IRD should still be able to be tracked as transactions to IRD. I also note the reference that the bulk of the payments were made from personal accounts.

[37] Two observations flow from this information. First, if QNZHL's position is correct then Mr Thomson appears to have been paid a series of payments in gross for holiday pay, which is not the required means for payments of outstanding holiday pay since PAYE is required to be deducted and remitted to IRD. Secondly, if QNZHL's

financial position was constrained as claimed then paying outstanding holiday pay in gross to a former employee is also difficult to comprehend. There was also no explanation why the alleged payments were made from personal accounts and when Mr Thomson was employed by QNZHL, a company still registered.

[38] In conclusion, I am not persuaded that the payments made to Mr Thomson in the period 8 August 2024 to 30 July 2025 were for outstanding holiday pay. The records that have been provided show that 480 hours of annual holidays are owing to Mr Thomson. In the absence of complete holiday and leave records I accept Mr Thomson's claim that he has not been paid his outstanding holiday pay.

[39] Accordingly, I find that Mr Thomson is owed 480 hours of outstanding annual holiday. Based on the information in the submitted payslip this is a gross sum of \$23,076.92 and is payable to Mr Thomson.

[40] Mr Thomson also claims interest on the unpaid holiday pay. The Authority has the power to award interest in recovery of holiday pay actions pursuant to s 84 of the Holidays Act 2003. I accept that the payment of interest by QNZHL on this sum is appropriate. Interest is calculated in accordance with the Interest on Money Claims Act 2016 and is calculated according to the civil interest debt calculator.<sup>5</sup>

**Are there any other monies owed arising out of Mr Thomson's employment (vehicle registration, road user charges and outstanding loans) that should be awarded to be repaid by the Authority?**

[41] In addition to unpaid holiday pay Mr Thomson is seeking the sum of \$4,900 for 54,803 kms of road user charges and \$175 in vehicle registration for use of his personal vehicle. Mr Thomson says that these costs arose out of use of Mr Thomson's personal vehicle after the company vehicle he had been using could no longer be maintained. Mr Adams accepted that Mr Thomson needed a work vehicle but says that there were two other vehicles available for Mr Thomson's use. Despite this, Mr Thomson did not want to use either and Mr Adams did not force the issue but did allow Mr Thomson to continue to use a company fuel card to cover fuel costs but there was no agreement that QNZHL would pay for vehicle registration or road user charges.

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<sup>5</sup> [www.justice.govt.nz/fines/civil-debt-interest-calculator](http://www.justice.govt.nz/fines/civil-debt-interest-calculator)

[42] During the investigation meeting Mr Thomson accepted that other company vehicles were available, but I was not referred to any evidence that any such company vehicles could not be used or why. Mr Thomson also explained that he did not actually acquire either vehicle registration or road user charges for the time his personal vehicle was used in support of his claims. This meant that the law was breached in that registration and road user charges were not paid for despite the vehicle being used and despite Mr Thomson claiming that he should now be paid those expenses.

[43] Having reviewed the material before the Authority, I am not satisfied that Mr Thomson's claims for vehicle registration or road user charges have been made out and I decline to make any orders in relation to those claims.

[44] Mr Thomson would also like the balance of a series of personal loan payments he made to QNZHL in 2023 repaid. Mr Thomson offered to lend QNZHL money to assist the company with meeting its expenses while QNZHL was experiencing difficult trading and in the hope of getting this loan repaid on the successful court action by the Greater Wellington Regional Council and a costs award in favour of QNZHL. Mr Thomson offered the loan of his own volition and lent a total of \$30,000, \$16,000 and \$10,000 as well as \$7,000 payments to Soa and SF Plumbing. This totals \$63,000 but \$5000 was repaid to Mr Thomson by QNZHL leaving \$58,000 remaining. This is detailed in the email from Mr Adams to Mr Thomson dated 14 October 2024. Mr Adams does not dispute the outstanding loan or QNZHL's obligations to repay Mr Thomson.

[45] The personal loan from Mr Thomson to QNZHL was not made as a condition or term of Mr Thomson's employment and neither was Mr Thomson under any obligation to make such a loan or asked to do so. As a result, the personal loan is not something that the Authority has jurisdiction to investigate further or enforce the repayment of. However, all of the evidence on the balance of probabilities indicates that the payments made to Mr Thomson between 2024 to 30 July 2025 were towards the personal loan and not the outstanding holiday pay.

## **Outcome**

[46] Mr Thomson has not established a personal grievance in respect of the ending of his employment but has established an entitlement to unpaid annual holiday payments.

[47] Quality NZ Homes Limited is ordered to pay Kent Thomson within 28 days from the date of this determination unpaid annual holiday entitlements of \$23,076.92 gross together with interest. QNZHL should remit the PAYE on the unpaid holiday pay amount to the IRD. The interest is payable directly to Mr Thomson.

## **Costs**

[48] Neither Mr Thomson nor QNZHL were represented by a paid agent or lawyer and there is no basis for any award of costs relating to representation.

[49] While I accept that Mr Thomson took time off from his employment to attend the investigation meeting the costs of personal representation and one's own time in preparing and attending an Authority investigation are not costs able to be awarded by the Authority.<sup>6</sup>

[50] There is accordingly no order for costs.

Alyn Higgins  
Member of the Employment Relations Authority

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<sup>6</sup> See [Awarding remedies and costs | Employment Relations Authority](#)