

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 845
3303100

BETWEEN JINGKAI WANG
 Applicant

AND ENVOCO LIMITED
 Respondent

Member of Authority: Matthew Piper

Representatives: Aimee Cai, advocate for the Applicant
 Ray Parmenter, counsel for the Respondent

Investigation Meeting: 19 September 2025 in Auckland

Submissions received: 29 September 2025 from the Applicant
 22 September 2025 from the Respondent

Determination: 23 December 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Jingkai Wang was employed as an ecologist by Envoco Limited (Envoco) between 19 March 2024 and 10 June 2024. Mr Wang claimed he was unjustifiably dismissed. Mr Wang further claimed that he was unjustifiably disadvantaged by Envoco’s inaction when he raised concerns he was being bullied and being treated unfairly, and by not being provided with a safe work environment when working with pesticide sprays.

[2] Envoco denied that Mr Wang was dismissed from his employment or that he was unjustifiably disadvantaged by the way it responded to concerns he raised regarding his treatment by colleagues. Envoco further denied it breached its duty to provide Mr Wang with a safe workplace.

The Authority's investigation

[3] For the Authority's investigation written witness statements were lodged from Mr Wang and a coworker of his, Yuxuan Wang. For the respondent, witness statements were lodged from Envoco's Managing Director Scott Lowry, and Ahbinav Ramlay. Mr Ramlay worked at Envoco alongside the applicant and had a supervisory role.

[4] All witnesses answered questions under oath or affirmation from me and the parties' representatives. The representatives lodged written submissions after the Authority's investigation meeting.

[5] At the commencement of the Authority's investigation meeting, Mr Wang clarified that his claim for holidays arrears was restricted to whether he should have received holiday pay in respect of his notice period. He further confirmed that the focus of his claim was on the events during the working relationship and relating to how it ended.

[6] 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

[7] The issues requiring investigation and determination were:

- (a) Was Mr Wang unjustifiably disadvantaged in his employment?
- (b) Was Mr Wang unjustifiably dismissed?
- (c) If Envoco's actions were not justified (by disadvantaging or dismissing Mr Wang), what remedies should be awarded, considering:
 - (i) Lost wages; and
 - (ii) Compensation under s 123(1)(c)(i) of the Act?
- (d) If any remedies are awarded, should they be reduced (under s 124 of the Act) for blameworthy conduct by Mr Wang that contributed to the situation giving rise to his grievance?
- (e) Should either party contribute to the costs of representation of the other party.

Background

[8] Mr Wang arrived in New Zealand in February 2023. He studied ecology at the University of Auckland and achieved a masters degree. The focus of his studies was on the relationship between greenhouse gas emissions and ecology.

[9] When he graduated, he sought a job at Envoco by emailing his CV to Mr Lowry.

[10] Mr Lowry is a highly experienced ecology/ horticulture professional who holds a Bachelor of Parks and Recreation and a Diploma of Horticulture. He also has Advanced Grow Safe and Handler qualifications and has significant knowledge of ecology generally and the safe use of sprays and pesticide substances and equipment. Envoco is an established business.

[11] Mr Wang understood the role to be partly about plants and partly about animals. He said that in the interview he was told the job would be physically demanding and that he would work on steep hills and difficult terrain. He considered that he would be able to perform such work.

[12] Mr Wang commenced with Envoco on 19 March 2024, but did not receive his employment agreement until the end of that month. On 1 April 2024 he signed and returned his employment agreement. Mr Lowry told the Authority that Mr Wang did not have an employment agreement at the start of his employment because of a misunderstanding regarding him undertaking an observation day.

[13] The employment agreement between the parties purported to contain a trial period provision, however both parties agree the trial period provision did not have legal effect. The fact the employment agreement contained an ineffectual trial period provision is relevant because it informed the parties behaviour around the time Mr Wang's employment ended in early June 2024.

[14] Mr Wang's work involved attending client sites and undertaking applied ecological technique, including noxious plant control. This meant identifying and removing certain plants. It was physical work that required knowledge of plant species.

[15] Mr Lowry said that from the commencement of the employment relationship he harboured concerns regarding whether Mr Wang had the ability to handle the day-to-day physicality of the role. Mr Lowry also said that throughout Mr Wang's employment it became evident that he lacked the practical experience required to be successful in the role. Although Mr Lowry regarded Mr Wang as intelligent and academically capable, he felt increasingly concerned that Mr Wang was not engaged or committed to his work at Envoco.

[16] Mr Wang said that he was open with his colleagues about his sexual orientation, namely that he was gay. Mr Lowry and Mr Ramlay each gave evidence that they were indifferent on the subject. Their evidence in this regard was accepted by the Authority.

The 17 May 2024 interactions

[17] On 17 May 2024 Mr Wang was working outdoors with Mr Ramlay and a number of other Envoco workers. Mr Wang said that Mr Ramlay made an inappropriate comment containing a particular sexual word, at which others present laughed. Mr Wang said that he did not initially hear the comment clearly or perceive the comment as being directed at him, but after discussing it with others later he felt mad and offended. Mr Wang also told the Authority that he could not recall exactly what the comment was, but considered it to have involved an inappropriate inference regarding his sexual orientation.

[18] When asked by the authority whether he had responded to the comment at the time, Mr Wang said he didn't because he thought it was absurd. Mr Wang further said there were a range of similar comments made in the workplace.

[19] Mr Ramlay recalled the incident and said that while he made a comment that may have been inappropriate, it was made in jest to a group of workers and was not directed at Mr Wang. Mr Ramlay denied using the specific offensive word Mr Wang later complained about.

[20] Mr Wang said that later that day he spoke with Mr Lowry about his perception that he was not being treated fairly by Mr Ramlay. Mr Wang told the Authority that he did not tell Mr Lowry about the alleged inappropriate comment by Mr Ramlay.

[21] Mr Lowry could not recall a conversation with Mr Wang on 17 May 2024.

[22] Based on the evidence provided to the Authority, I find a conversation between Mr Wang and Mr Lowry on 17 May 2024 occurred, but was unlikely to have contained allegations of bullying or inappropriate actions toward Mr Wang by Mr Ramlay.

The events of 21 May 2024

[23] Mr Wang said that on 21 May 2024 he was approached by Mr Ramlay while they were working outside. He said that Mr Ramlay said “*Who is the man?*” to him, which Mr Wang interpreted as questioning his gender identity. Mr Wang said he felt strange about the conversation, so he checked with other colleagues whether it was a reasonable comment, and his concerns were not allayed.

[24] Mr Wang told the Authority that no other comments were made by Mr Ramlay doubting his gender identity, but he felt there was a double meaning in Mr Ramlay’s comment that day.

[25] Mr Ramlay said he could not recall whether he had used the phrase “*Who is the man?*” but strongly denied questioning Mr Wang about his gender identity.

[26] Later that day, Mr Ramlay asked Mr Wang how many plants he had cut. Mr Wang felt it was unreasonable for Mr Ramlay to have asked him about this. In particular, Mr Wang felt this question was unfair because neither his employment agreement nor job description specified the number of pest plants he was required to cut.

[27] Mr Ramlay accepted he had asked Mr Wang how much work he had done that day by referring to how many plants he had cut. He said he asked this question so he could gauge the volume of work that had been completed and that he had not intended to put pressure on Mr Wang. He said he merely needed to know how the job was going.

[28] These events were said by Mr Wang to amount to his being targeted by Mr Ramlay.

[29] Mr Ramlay told the Authority that he had sensed tension with Mr Wang and had attempted to address it with him by asking him about what was going on. Mr Wang’s allegations of inappropriate comments were not raised with Mr Ramlay, but Mr Ramlay’s question regarding how much gorse Mr Wang had cut was. Mr Ramlay said he apologised to Mr Wang for any misunderstanding and attempted to improve the working relationship by coaching and supporting him.

Conversations with Mr Lowry

[30] On the morning of 22 May 2024, Mr Wang approached Mr Lowry. He said his intent was to raise his concerns regarding the way he had been treated by Mr Ramlay.

[31] Without telling Mr Lowry, Mr Wang recorded this conversation. He told the Authority he took this step because he felt could not trust Mr Lowry and he wanted to keep evidence to protect himself. Mr Wang said his difficulty trusting Mr Lowry stemmed from his view that Mr Lowry had not taken sufficient steps to deal with the matters he said he had attempted to raise on 17 May 2024 regarding his view Mr Ramlay was treating him unfairly. Mr Wang acknowledged under questioning that the conversation may have gone differently if Mr Lowry had known he was being recorded.

[32] A transcript of the recording was provided to the Authority. It did not capture the entirety of the conversation and Mr Lowry was not provided with a copy of the transcript or recording until after Mr Wang had lodged his statement of problem in the Authority. Mr Lowry therefore had no opportunity to verify the transcript close to the time of the conversation.

[33] From the transcript, it appears that Mr Wang expressed concerns regarding Mr Ramlay making fun of him and said he had been bullied. He referred to Mr Ramlay commenting “Who is the man?” and asking how much work he had done. Mr Wang said he was not feeling good about his mental health and he was worried he may be dismissed.

[34] In response, Mr Lowry, while appearing to have some difficulty understanding precisely what Mr Wang was referring to, attempted to empathise with Mr Wang and offer him advice for pushing back on co-workers where he is uncomfortable with their behaviour.

[35] The conversation ended relatively abruptly because someone else arrived in the space where the two were talking.

[36] Mr Lowry told the Authority he was not given information by Mr Wang that would have caused him to believe that Mr Ramlay was picking on him because he was gay. Mr Lowry’s view in this regard is consistent with the transcript. He further said that he was attempting to be supportive and fair to Mr Wang by providing him with advice regarding the topics that were raised with him.

[37] Mr Lowry said after his discussion with Mr Wang he spoke with Mr Ramlay about his relationship with Mr Wang. Mr Ramlay told Mr Lowry that he had been attempting to encourage Mr Wang to be more engaged with his work and the learning opportunities available to him, but had felt he had not received indications from Mr Wang that his feedback was being taken on board.

[38] Mr Lowry told the Authority he believed Mr Wang had “aired his feelings” in the conversation and when it was not pursued further by Mr Wang he assumed the matter was under control. Mr Lowry’s response and the steps he took were reasonable in all the circumstances.

The alleged 5 June 2025 incidents

[39] On 5 June 2025, Mr Wang, Yuxuan Wang and Mr Lowry undertook some spraying together.

[40] Mr Wang claimed Mr Lowry forced him to carry out toxic chemical spraying of pest plants without appropriate personal protective equipment or training, although he admitted he was wearing gloves, a long top, trousers and gumboots. Mr Wang further claimed he had not done spraying before and that the task was not included in his job description.

[41] Mr Wang’s job description referred to “*Horticultural work including: [...] noxious weed control and poisoning [...]*”. Mr Lowry said this included the use of pesticide sprays.

[42] Mr Wang told the Authority he was concerned that he did not know what was in the sprayer and whether it could harm him. He also said that Mr Lowry demonstrated how to do the spraying first, before handing the equipment over to Mr Wang.

[43] Mr Lowry told the Authority that Envoco has some of the best safety and filtration equipment available for purchase and that safety is taken very seriously. Mr Lowry reinforced this point by noting that he, himself, conducts the same work and uses the same equipment.

[44] Mr Lowry told the Authority that Mr Wang was not subjected to inappropriate exposure to pesticides. He also said that during the incident Mr Wang was masked, gloved, had long sleeves and his legs were covered.

[45] Mr Lowry said the spraying Mr Wang was asked to complete utilised a low-pressure pump sprayer containing a low toxicity herbicide, and was part of an approximately five-minute training session during which Mr Lowry was standing beside Mr Wang providing close instruction on the use and safe use of the pesticide. Mr Wang sprayed one gorse cluster at full arm's length under these conditions.

[46] Mr Wang claimed that after the spraying was completed, Mr Lowry pushed him down the slope, nearly causing him to roll down the hill. Mr Wang claimed Mr Lowry's actions in pushing him were serious, dangerous and were because Mr Lowry wanted him to move faster.

[47] Mr Lowry denied pushing Mr Wang. He said that he had suggested a different path back to the vehicles and that he walked past Mr Wang and "*steered him in the right direction and walked out in front of him*". Mr Lowry accepted that he touched Mr Wang's shoulders but said this was not out of the ordinary for their relationship given Mr Wang had hugged him on a previous occasion. Mr Lowry's evidence that he did not intend to harm Mr Wang when he touched his shoulders was accepted by the Authority.

The 6 June 2024 conversation

[48] On Thursday 6 June 2024 Mr Wang initiated and surreptitiously recorded a further conversation with Mr Lowry. As with the recording of the 22 May 2024 conversation, a copy of the recording and transcript were not provided to Mr Lowry until after the commencement of proceedings in the Authority.

[49] The 6 June 2024 conversation involved Mr Lowry explaining his views on the role pesticide spraying had in the work performed by Envoco and in Mr Wang's development as an ecologist, and how it was safe to perform. He also described his frustration at resistance he had experienced from a number of the company's other employees to engaging in spraying work.

[50] Mr Wang then indicated to Mr Lowry that he felt he needed additional training and certification to undertake spraying work. Mr Lowry responded by explaining his view that the certification was not necessary and that he was qualified to teach the various techniques and methodologies involved with safe and effective spraying.

[51] The exchange became tense when Mr Lowry sensed resistance from Mr Wang to being trained by him. Mr Lowry then said in strong language that he wanted to train people to be good at what they did, and he was looking to employ and work with highly competent people. He emphasised his willingness to train Mr Wang and the other employees, and that his expectation was that they put in effort in return.

[52] Mr Lowry's intensity in the conversation was informed by his view that other employees' resistance to doing certain types of work meant he felt customers and the business were being unreasonably impacted.

[53] During the conversation Mr Lowry chose to emphasise his commitment to work and career development by saying in strong terms to Mr Wang that if he did not want to work hard and learn, he could leave. In this regard, and as recorded in the transcript, Mr Lowry said:

[...] This is how its going to be. I'm going to teach you guys to be good. If you don't want to be good, see the gate, it's eight metres wide, fuck off. That's what it's going to come down to. We want to be able to send you, we want to be able to send you to the North Shore to do a job at Long Bay and we want you to able to go up there competently and look at it and go, "fuck I need a weed eater, I need this, I need this, I need that" boom into it, get sorted and come back, and, and start the job. And if you don't want to learn how to do that well I cant, what do you want to do, what do you want with your career? What do you want to do with your ecology, you just spent four years doing it haven't you? How long were you at uni for? [...]

[54] After these remarks and as the conversation was drawing to a conclusion, Mr Lowry asked Mr Wang about his asthma, because Mr Wang had discussed it with another employee earlier that day. Mr Lowry said the asthma was a serious matter he had not previously been made aware of and that the correct safety precautions must be taken to manage the risk of an asthma attack. Mr Lowry's comments in this context presumed Mr Wang would continue working for Envoco because they related to how future work would be performed.

[55] The conversation concluded with Mr Lowry providing further comments regarding wanting people to be good at what they do and Mr Wang saying he would think about what had been discussed. Mr Wang then said he would see Mr Lowry the following day.

[56] Mr Lowry told the Authority that in delivering a strong message to Mr Wang he hoped Mr Wang would decide to engage more fully with the work and that they would discuss this the following day. He said he felt there had been significant investment in Mr Wang's training already that he did not want going to waste.

[57] At around 8:00PM that day Mr Wang sent Mr Lowry a text message saying “*Hey Scott, you said “if u don’t wanna train by me, fuck leave this gate!” at 17:27 on 6 June. I’m sending this message to confirm you if you be serious.*”[sic]

[58] Then, at around 9:38PM Mr Wang sent Mr Lowry a further text message saying he would not be coming in the next day, being the Friday, because he felt unwell “*after spray*”, a reference to the spraying work that had been undertaken the day prior. No medical evidence was provided to the Authority that Mr Wang’s illness was caused by the spray activity.

[59] Mr Lowry did not reply to either text message but said he was surprised by Mr Wang’s framing of the conversation and felt that Mr Wang was “*choosing a narrative*”. He told the Authority he often did not reply to messages and preferred to speak on the phone or face to face with employees. He also said he wanted to reflect on the situation and did not want to get into a “war” via text or email.

The end of Mr Wang’s employment

[60] On Sunday 9 June 2024 Mr Wang emailed an administrator at Envoco to “*formally detail some concerns regarding my employment situation and inquire about my notice period*”. Mr Wang went on to complain that he had been “*forced to do chemical spraying without any protective measures or prior training*” and that this had led to physical discomfort and vomiting.

[61] Mr Wang also said that Mr Lowry had subjected him to insulting language and that he had been told “*fuck off*” and that he understood this was a dismissal. Mr Wang’s email also referred to an incident where he said Mr Lowry “*pushed me down a slope*” which he claimed was “*both dangerous and unacceptable*”.

[62] Mr Wang’s 9 June 2024 email correctly observed that the trial period provision in his employment agreement was invalid because he had received it after he started work and that he was, therefore, entitled to receive four weeks’ pay in lieu of notice and all accrued holiday pay.

[63] At 6:30AM on Monday 10 June 2024 Mr Wang emailed Mr Lowry expressing his gratitude for the time he had spent working for Envoco and everything he had learned. He went

on to say, however, that he considered the spraying he had undertaken had violated safety protocols and caused him physical discomfort.

[64] Mr Wang again repeated the reference to Mr Lowry saying “*fuck off*” and that he understood he had been dismissed and would therefore not be returning to work. Mr Wang then wished Mr Lowry and the company all the best for the future.

[65] Mr Lowry did not respond to this email and merely observed that Mr Wang no longer came to work.

Was Mr Wang unjustifiably disadvantaged in his employment?

[66] The Act provides that an employee may have a personal grievance if their employment was affected to their disadvantage by some unjustifiable action by the employer.¹ Whether an action was unjustified is to be objectively assessed by considering whether the employer’s actions were what a fair and reasonable employer could have done in all the circumstances.²

Did Mr Wang raise bullying concerns with Envoco?

[67] Although Mr Wang spoke to Mr Lowry about his relationship with Mr Ramlay on 17 May 2024 and 22 May 2024 the thrust of the concerns he raised did not present to Mr Lowry as being serious. Rather, they seemed to be more about whether everyone was getting on well day to day. For example, Mr Wang did not raise his concerns regarding whether Mr Ramlay had made an inappropriate comment toward him that related to his sexual orientation.

[68] Although in the conversation of 22 May 2024 Mr Wang referred to “bullying” and referred to his mental health these concepts were not discussed in a way which would have reflected substantive concerns. It is more likely that these words were used by Mr Wang for the benefit of the eventual transcript of Mr Wang’s secret recording. Mr Lowry reasonably perceived the issues as reflecting friction in the working relationship between Mr Ramlay and Mr Wang. This tension clearly existed, although each had their own reasons for it.

[69] Mr Wang’s decision to secretly record his conversations with Mr Lowry do not support his bona fides in the raising of the concerns. Although he gave evidence he recorded the

¹ Section 103(1)(b) of the Employment Relations Act 2000.

² Section 103A(2) of the Employment Relations Act 2000.

conversations to protect himself and his position, an adverse inference can be reasonably drawn from this approach in relation to both his willingness to engage and resolve matters with Mr Lowry and Mr Ramlay and whether the conversations represented a sincere effort to address the issues being discussed. This is particularly the case when consideration is given to the limited extent of his efforts to raise issues by the time he started covertly recording conversations with Mr Lowry.

Were the steps taken by Envoco what a fair and reasonable employer could have done in the circumstances?

[70] Mr Lowry took steps to respond to the concerns that Mr Wang had raised by him. These included talking to Mr Ramlay about the relationship after the 22 May 2024 conversation and trying to coach Mr Wang regarding how to get on with others. He also shared his own experiences at work to try and encourage Mr Wang.

[71] In all the circumstances, these were reasonable responses to what presented as relatively minor and modestly stated concerns. Mr Lowry attempted to hear Mr Wang out and did what he could with the information he had, including by asking Mr Ramlay to see if he could improve things.

[72] The relevant legal standard is whether Mr Lowry's actions reflected what a fair and reasonable employer could have done in all the circumstances. I find this standard was met in response to the concerns as raised with Mr Lowry by Mr Wang.

Did Envoco breach its obligation to provide Mr Wang with a safe workplace?

[73] All employment agreements contain an implied term that the employer will maintain a safe workplace.³

[74] The evidence does not support the conclusion that Envoco failed to provide Mr Wang with a safe workplace. It is clear that Mr Lowry has expertise in safely administering sprays and that he closely supervised Mr Wang's work in this context. I am also satisfied that Mr

³ *Attorney-General v Gilbert* [2002] 2 NZLR 342

Lowry responded genuinely to Mr Wang's concerns regarding whether further training or qualification was required for further use of pesticides.

[75] I find that Mr Lowry did make physical contact with Mr Wang by touching him on the shoulders and directing his path back to the work vehicles on 5 June 2024. However, in all the circumstances this physical interaction was neither unreasonable nor dangerous. Mr Wang had previously initiated physical touch by hugging Mr Lowry and Mr Lowry had no intention to hurt Mr Wang in the interaction. Mr Wang was, in fact, not hurt or endangered by Mr Lowry.

[76] Accordingly, Mr Wang's claim that Envoco failed to comply with its duty to provide him with a safe workplace has not been established.

Was Mr Wang unjustifiably dismissed?

[77] This case requires the Authority to objectively assess whether Mr Wang was dismissed, as he claimed, or whether he resigned, as was claimed by Envoco. This assessment is critical to whether an obligation existed for Envoco to justify the termination of Mr Wang's employment.

[78] The Employment Court held in *Mikes Transport Warehouse Limited v Vermuelen*⁴ that whether an employee has resigned from their employment is to be objectively assessed, taking into account the relevant circumstances. Resignation was said by the court to be a unilateral act that does not involve the employer's agreement or disagreement.

[79] Mr Lowry's evidence was that he did not dismiss Mr Wang. He said the heated discussion on 6 June 2024 was intended to be a "*wind of god*" conversation to bring Mr Wang to his senses so he might engage properly with his work and career. Mr Lowry's evidence in this regard was consistent with the content of the conversation (to the extent it was set out in the transcript), how it ended and the parties' immediate subsequent actions.

[80] Mr Wang's actions after the conversation include that in his text to Mr Lowry at 8:00PM on 6 June 2024, Mr Wang correctly noted that Mr Lowry's comments regarding the figurative eight-meter-wide gate were conditional. In other words, Mr Wang was aware when

⁴ [2021] NZEmpC 197

he sent the text that Mr Lowry's comments earlier in the day were premised with an "*if you don't want to be trained by me*". This was not Mr Lowry ending the employment relationship. It was an attempt at a call to action for Mr Wang to be more engaged as a worker and for the sake of his own career in ecology.

[81] Mr Wang's subsequent text at 9:38PM on 6 June 2024 that he would be away sick the following day was also inconsistent with him being under the impression he had been dismissed earlier that day. Mr Wang did in fact take sick leave the following day, and he confirmed his understanding that this had been approved in his email to the administrator on 9 June 2024. His seeking and having sick leave approved by Envoco was not consistent with him having been dismissed, or him believing he had been dismissed, by Mr Lowry during their conversation on 6 June 2024.

[82] When Mr Wang emailed Mr Lowry on 10 June 2024, he said that he had concerns about whether he was being provided with a safe workplace and said "*Secondly, as my probation was coming to an end, you told me to "fuck off", which I understand as a sign of dismissal. Under these circumstances, I will not be returning to work. I will find a time to return all the workwears provided to me*"[sic]. The thrust of Mr Wang's email was that he would not be returning because he regarded Mr Lowry's comments on 6 June 2024 as "*a sign of dismissal*".

[83] Although Mr Lowry's approach and use of coarse language in the 6 June 2024 conversation stretched what may be properly regarded as professional behaviour, it was not (for the reasons set out above) a dismissal, nor was it treated by either party as such. Despite the robust approach Mr Lowry adopted, he had clearly left the door open to Mr Wang to respond positively and continue in his role.

[84] The fact that Mr Wang's email referred to his understanding that Mr Lowry's comments were a "*sign of dismissal*" is relevant to the objective assessment of whether he resigned. However, Mr Wang's actions immediately after the conversation (of identifying Mr Lowry's comments as having been conditional on whether he wanted to be trained by him then taking approved sick leave the following day) and his pattern of reinterpreting conversations and events after the fact in a manner unfavourable to his employer is also relevant. For example, in his evidence Mr Wang told the Authority that Mr Lowry had tried to kill him when he placed his hands on his shoulders on 5 June 2024. Mr Wang was given the opportunity to clarify his comments given the seriousness of what he was suggesting and maintained this view. Mr

Wang's position in this regard was not credible. His actions toward the end of his employment, including his email of 10 June 2024 are viewed by the Authority in a similar vein.

[85] Mr Wang's suggestion that the content of the 6 June 2024 conversation included "*signs of dismissal*" was, more likely than not, a continuation of a pattern Mr Wang behaving in a less than forthright manner in his dealings with Envoco. Although contemporaneous communications will usually be given weight by the Authority when forming a view on what took place between parties, in this case Mr Wang's communication to Mr Lowry should be read to reflect only that he was resigning from his employment. It is unlikely that he genuinely thought he had been dismissed.

[86] Accordingly, when the facts are considered objectively and in their full context, I find Envoco did not dismiss Mr Wang. Rather, Mr Wang took the unilateral step of resigning on 10 June 2024.

[87] However, it would be artificial to say that Envoco had no obligation to Mr Wang upon receipt of the 10 June 2024 email. Mr Wang's email involved him raising concerns and saying he would not be returning to work. It was sent at the start of a workday and Mr Wang likely remained employed for the balance of that day. Even if he was accepting of Mr Wang's resignation, in order to be responsive and communicative Mr Lowry was obliged to respond to the safety concerns noted in the email and the suggestion that he had been dismissed.⁵

[88] I find Mr Lowry's failure to respond in this context caused an unjustified disadvantage to Mr Wang, because these concerns were not responded to.⁶

[89] The disadvantage suffered by Mr Wang was relatively limited and justifies only a low compensatory award under s 123(1)(c)(i) of the Act. Having taken into account the relevant law and comparable cases, an award of \$2,000.00 is appropriate. In assessing the emotional harm suffered by Mr Wang I have taken into account only the evidence he gave of his experience during the day of 10 June 2024 and the injury to his feelings in that context.

⁵ As is required by s 4(1A)(b) of the Employment Relations Act 2000.

⁶ Although this Mr Wang's claim in this context was that he had been unjustifiably dismissed, I find pursuant to s 122 of the Employment Relations Act 2000 it should be characterised as an unjustified disadvantage.

[90] Given the Authority is making an award in Mr Wang's favour it must then consider the extent to which his actions contributed to the situation giving rise to the grievance and, if appropriate, reduce the remedies that would have otherwise been awarded.⁷

[91] In this context the Authority must consider whether there was blameworthy conduct by Mr Wang which contributed to the circumstances giving rise to his personal grievance.⁸ Undoubtedly there was. Mr Wang's approach was not to attempt to genuinely engage with Mr Lowry to improve or resolve matters. It was better characterised by positionality and disengagement and was not consistent with his good faith obligations under the Act.

[92] Accordingly, I apply a reduction of 25% to the remedy awarded to Mr Wang, making the compensatory amount owing to him \$1,500.00.

Orders

[93] For the reasons set out above, Envoco is ordered to pay Mr Wang \$1,500.00 within 28 days of the date of this determination.

[94] None of the other remedies sought by Mr Wang are awarded to him.

Costs

[95] Costs are reserved. The parties have each had some degree of success and are encouraged to resolve any issue of costs between themselves on that basis.

[96] If they are not able to do so and an Authority determination on costs is needed Mr Wang may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Envoco would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

⁷ Section 124 of the Act.

⁸ *Lei Yang v Te Whatu Ora – Health New Zealand* [2025] NZEmpC 278

[97] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.⁹

Matthew Piper
Member of the Employment Relations Authority

⁹ See www.era.govt.nz/determinations/awarding-costs-remedies.