

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 300
3303200

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| BETWEEN | TAMARA WHYTE Applicant |
| AND | NC HOSPITALITY LIMITED Respondent |

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| Member of Authority: | Claire English |
| Representatives: | Tamara Whyte in person Naveen Chhabra for the Respondent |
| Investigation Meeting: | 20 February 2025 in Tauranga |
| Submissions received: | Up to 5 March 2025 from Applicant Up to 18 March 2025 from Respondent |
| Determination: | 28 May 2025 |

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Ms Whyte, worked for NC Hospitality Limited (NC) from April 2023 to December 2023, as the manager of NC's hotel and bar in Waihi Beach. Ms Whyte worked long hours, and felt that this as well as her attempts to improve the business were ignored by NC's sole director and shareholder, Mr Chhabra. Ms Whyte was told by NC's landlord that he had heard Mr Chhabra was looking to sell the business. Ms Whyte felt that she should have been told this by Mr Chhabra and described this as the "final straw". She resigned and raises a claim of (unjustified) constructive dismissal, and unjustified disadvantages. She seeks compensation for hurt

and humiliation, four weeks' lost wages, and penalties for failing to provide rest and meal breaks and wage and time records.

[2] Mr Chhabra on behalf of NC, denies these claims. He says that Ms Whyte agreed to work the hours she did, and that this was all part and parcel of being the hotel manager. He says that the business was closed Mondays and Tuesdays, and he was present Fridays and Saturdays to help Ms Whyte manage her hours. He says no dismissal occurred as Ms Whyte resigned, and no remedies are properly owed.

The Authority's investigation

[3] For the Authority's investigation written witness statements were lodged from Ms Whyte, Ms Kalani Henderson (Ms Whyte's daughter), a colleague Ms Melissa Bishell, and Ms Whyte's partner Mr Keith Toko. The respondent company was represented by its sole director, Mr Chhabra. All witnesses answered questions under affirmation from me. The parties also gave oral and written submissions.

[4] 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

[5] The issues requiring investigation and determination were:

- (a) Was Ms Whyte constructively dismissed?
- (b) Did she suffer any unjustified disadvantage?
- (c) If NC's actions were not justified (in respect of dismissal and/or disadvantage), what remedies should be awarded, considering:
 - Lost wages (subject to evidence of reasonable endeavours to mitigate loss); and
 - Compensation under s123(1)(c)(i) of the Act;
- (d) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Ms Whyte that contributed to the situation giving rise to her grievance?

Background

[6] Ms Whyte had previous operational experience working in the security industry and was based in Auckland. In about January 2023, she was approached by a former colleague who asked her if she was interested in managing a hotel business in Waihi Beach. Ms Whyte was interested, as she was looking for a change of pace. She and her partner Mr Toko travelled to Waihi Beach to view the property, and the accommodation that came with it.

[7] Ms Whyte says that she understood that the property had not been well-run and it would need additional work from her particularly in initial cleaning and bringing the grounds up to a better standard, but she was not afraid of hard work, and was willing to put in the effort, with the understanding that once better processes and systems were in place, she would be able to work fewer hours.

[8] Ms Whyte was sent a draft employment agreement by Mr Chhabra on 26 January 2023, and they entered into negotiations by email, before reaching agreement on an annual salary, and other terms key to both parties, including that Ms Whyte would obtain her Duty Manager's licence prior to starting, she and Mr Toko would have accommodation on the premises, and they would be able to store their belongings such as furniture in a shipping container on the property.

[9] Ms Whyte commenced her employment on 6 April 2023. Mr Chhabra says that he told Ms Whyte in person in her first week of work that he was her employer and that her former colleague who had made the introductions was not. Ms Whyte denies knowing that until late August. She says that although her employment agreement was with NC, and she negotiated with Mr Chhabra on key terms, her former colleague was the one who met with her in person and because of this, she assumed her former colleague was her employer. She says that her former colleague told her Mr Chhabra was his friend, and this confused her as to who was running the business.

[10] Between the end of January and the beginning of April, Ms Whyte says she also agreed with her former colleague that her daughter Ms Tamara Henderson who was a barista, would also come to work for the business operating a café in the hotel with free accommodation for her and her partner. None of these discussions were recorded in writing.

[11] When Ms Henderson arrived at the hotel, on about 21 April 2023, Mr Chhabra was not expecting her. He had no plans to open a café, and no full-time position for her. His evidence was that unlike the situation with Ms Whyte where her former colleague had introduced them and he had then negotiated with Ms Whyte by email to agree on her terms and conditions of employment, the former colleague had never mentioned Ms Henderson. However, he took the view that Ms Henderson's employment was important to Ms Whyte. Accordingly, he negotiated and agreed terms of employment with Ms Henderson.

[12] Ms Whyte says that there was a lot of work to do, particularly cleaning, clearing out rubbish and old furniture, and arranging things like gardening. She says she worked long hours. In particular, she was the only Duty Manager, so she needed to be on site when the hotel was open in accordance with the liquor licence. On Wednesdays, Thursdays and Sundays, the hours were 11.00 am until 9.00 pm, and on Fridays and Saturdays, the hours were 11.00 am until 1.00 am.

[13] Mr Chhabra says that he was available on Fridays and Saturdays so that Ms Whyte did not have to stay until 1.00 am. Ms Whyte says that this was the original idea, but there was an incident late one evening after she had left Mr Chhabra in charge, where the police were involved. This led to a meeting with the council and Mr Chhabra and Ms Whyte were told that she was the Duty Manager, and had to be available at all times. Mr Chhabra reluctantly accepted that this was so.

[14] Ms Whyte says she found this difficult, as she had to be up reasonably early every morning to help clean the bar and the accommodation at the start of the day before opening for business at 11.00 am. There was a casual staff member whose job it was to clean the bar 5 days per week, but she would often fail to attend work without giving notice. Eventually, she left, and Ms Melissa Bishell was given those duties. Ms Whyte would also have to be available to clean the accommodations from time to time, as the part time staff member who had this job had health issues which meant she could not always work, although she would advise Ms Whyte when she was unable to work.

[15] Ms Whyte says that on Mondays and Tuesdays when the business was closed, she still worked some hours on those days as this was the time she used to take deliveries for the week, do the banking, and do tasks such as window cleaning and gardening which could not be done so easily with customers present. Ms Whyte says she was

happy to do this especially at the start as her view was that once things had been set up properly and good processes were in place, the business would become more efficient and profitable.

[16] As well as her concerns about the additional cleaning work, Ms Whyte raised particular concerns about the plumbing. She says that there were on-going problems with the plumbing, including the toilets. This resulted in her constantly having to unblock the overflowing toilets and clean up afterwards, and that it reached the point when she was unable to get the local plumbing company to come out, because Mr Chhabra did not pay the bills.

[17] Mr Chhabra accepted there were on-going problems with the plumbing and said that he had contacted the landlord about this, as the constant call-outs had alerted everyone to the fact that there was a larger problem with the building's plumbing as a whole, which was in the end fixed by the landlord. He said that he did pay the plumbing bills and did so before any formal notices needed to be sent out.

[18] Ms Whyte repeatedly reached out by email to her former colleague throughout her employment, whenever she did not receive answers and support she considered acceptable from Mr Chhabra. Mr Chhabra told her not to contact her former colleague about the business including disclosing financial and other business matters to him. Ms Whyte replies that she had to contact her former colleague, because she considered Mr Chhabra did not respond to her promptly enough, and did not share enough with her. This is illustrated by an email Ms Whyte sent to her former colleague as early as 24 May 2023, forwarding to him a number of suggestions about staffing, staff training, and how the business should be run. She stated: "I sent this to [Mr Chhabra] a few weeks ago¹. If you let me run the business as I see fit, we will...be in a better position". She went on to express the view that the local council and the Police "had no faith" in Mr Chhabra.

[19] Mr Chhabra remained perplexed as to why Ms Whyte would not accept that NC was her employer and he was the owner of the business.

[20] In September, Ms Whyte and another staff member began planning for the summer season, including planning various events and bands to appear at the hotel and

¹ The email string showed that she had last emailed Mr Chhabra 10 days prior.

generate business. Ms Whyte instituted weekly meetings with Mr Chhabra to obtain his approval for event planning, staff hiring, and associated expenditure. She accepted that Mr Chhabra participated in these meetings and gave necessary approvals, but was critical of his views that expenses should be kept controlled, and that staff should be hired on a casual basis for planned events only, to help control wages bills.

[21] In October, Mr Chhabra took a planned trip overseas to visit family for a month. On 1 November, the chef for the business retired. This was a planned retirement, that both Mr Chhabra and Ms Whyte were aware of. Mr Chhabra advertised for a replacement and even offered a job to two different candidates, but neither had accepted. Mr Chhabra asked Ms Henderson to perform extra hours of work in the kitchen in the short term while he found a new chef. Ms Henderson agreed to do this but found the additional hours stressful, and Ms Whyte was concerned about this.

[22] During this time, Mr Chhabra was also not available on Fridays and Saturdays to support Ms Whyte during those busy times. Ms Whyte found this tiring, and described herself as feeling exhausted.

[23] Mr Chhabra returned from India, and hired a new chef. This resulted in him reducing Ms Henderson's hours. This caused her some distress, which she communicated to Ms Whyte, who was again concerned by this.

[24] Ms Whyte remained frustrated by Mr Chhabra's decision to only hire casual staff for specific events, and other matters including a delay in wages payment on one occasion, and the plumbing issues. When she did not receive responses from Mr Chhabra that she considered satisfactory, she reached out to her former colleague, to another former colleague of hers, and to the landlord to discuss the running of the business.

[25] In early December, the landlord contacted her to let her know that the business had been advertised for sale. Ms Whyte emailed her former colleague and Mr Chhabra expressing distress that she had not been told this sooner. Mr Chhabra replied asking her to stop contacting her former colleague, who she knew was not involved in the business, and expressing his view that this was a breach of confidentiality.

[26] Ms Whyte was upset by this. She was concerned any sale of the business would bring her job to an end, she felt that she was overworked, and she felt that Mr Chhabra

was not communicating with her in the way that she wanted and that he was trying to stop her from talking to her former colleague who was a person she trusted. She described herself as feeling mentally and physically exhausted, with no end in sight.

[27] Ms Whyte resigned her employment. She describes how she lost confidence in herself, and how her sense of trust in employers had been damaged. She said that she had to accept help from older family members which she found humiliating at her stage in life, and referred to the adverse financial impacts of having to pay for relocation.

Analysis

[28] I will consider the claims raised in the statement of problem in turn:

- a. A claim of unjustified (constructive) dismissal;
- b. A claim of unjustified disadvantage on the basis that Ms Whyte was not informed of a proposal to sell the business, in circumstances where she had been told the business would not be sold in her first year of employment;
- c. A claim of unjustified disadvantage that Ms Whyte was expected to cover the cleaning duties at the hotel in addition to her managerial duties;
- d. A claim of unjustified disadvantage that she worked excessive hours without sufficient breaks causing her stress and exhaustion, and that she generally did not have sufficient support;
- e. A claim of unjustified disadvantage that she was locked out of the email system during her notice period and thus was unable to perform her job during that period.

[29] As a result of these actions as well as what she says was her unjustified constructive dismissal, Ms Whyte seeks compensation for hurt and humiliation, lost wages, and a penalty for breach of minimum employment standards, being a failure to provide rest and meal breaks.

[30] I will first consider Ms Whyte's claim of constructive dismissal. The essential questions to be addressed in a constructive dismissal claim have been described as²:

- a. What were the terms of the contract?

² In *Wellington etc Clerical etc IUOW v Greenwich (t/a Greenwich and Associates Employment Agency and Complete Fitness Centre)* (1983) ERNZ Sel Cas 95 (AC) at 112–113.

- b. Was there a breach of those terms by the employer that was serious enough to warrant the employee leaving?

[31] Ms Whyte's in person evidence was direct. She explained to me that there were three things that had together culminated in her resignation, being the long hours she was working, that Mr Chhabra advertised the business for sale and had not told her about this, and that he had not been sufficiently communicative with her including telling her to stop contacting her former colleague.

[32] Mr Chhabra did not agree that Ms Whyte had been required to work excessive hours. His view was that her core hours of work were when the bar was open. This was from 11.00 am to 9pm, Wednesdays, Thursdays and Sundays (or maybe a little less as closing might happen slightly earlier on very slow nights), and on Fridays and Saturdays, from 11.00 am opening to about 10 or 11.00 pm at night, given that on Fridays and Saturdays he was present to ensure that Ms Whyte could leave at a reasonable time in the evening and he would close up at the end of the evening. Overall, Mr Chhabra took the view that Ms Whyte was not required to work significantly outside the operating hours of the bar.

[33] Mr Chhabra accepted that Ms Whyte was the only person with a Duty Manager's license, and that he was not in a position to permanently hire a second person with such a license, as he could not afford to do so. Mr Chhabra explained that his original plan was that he and his family were to live at the premises, but that this did not come to fruition for unrelated personal reasons. This meant that he lived in Auckland for most of the week, but drove down to Waihi to work with Ms Whyte each Friday and Saturday, being the busiest nights.

[34] Mr Chhabra accepted that Ms Whyte occasionally had to do some cleaning work when the cleaning lady could not attend, and she did have to attend to some plumbing emergencies, and do extra cleaning and sorting when she first arrived. He took the view that these matters were historical and not on-going, pointing out that the initial clean-out did not need to be re-done, there had been a staff change which meant that a more reliable person was hired to assist with the cleaning (Ms Bishell) and that although there had been repeat issues with the plumbing, these were fixed once the underlying problem had been found.

[35] I have carefully considered the matter, including in particular, Ms Whyte's claim about the additional and excessive hours she was required to work. On balance, I do not accept that Ms Whyte's hours of work, such as are made out, were sufficient to amount to a breach of duty of such seriousness that it compelled Ms Whyte to resign.

[36] In respect of the additional clean-up required at the commencement of employment, Ms Whyte's own evidence was that she was aware of this as a particular task which would need to be undertaken at the start of her employment, and she was willing to put in the extra as part of bringing the premises up to a good state and helping ensure future success. There is no suggestion that this was on-going work. Ms Whyte accepted and agreed to perform this work.

[37] In regards to the cleaning duties, Mr Chhabra accepted that Ms Whyte did have to perform these duties on occasion, but says that he took steps to hire a reliable person to perform this work going forwards. Ms Whyte does not dispute this occurred. In other words, she was required to perform additional cleaning work, raised this with Mr Chhabra, who took her concerns seriously and hired additional help. Mr Chhabra was responsive, communicative, and provided a practical solution in due course. This is not a breach of duty by him, let alone one that was sufficiently serious it would justify the ending of the employment relationship.

[38] In respect of the plumbing issues, it is fair to say that Ms Whyte was frustrated by the scale and on-going nature of this problem, but again, Mr Chhabra provided plumbers and then escalated to the landlord until the problem was fixed. I acknowledge Ms Whyte's frustration in having to repeatedly deal with blocked toilets until this was resolved, but this was not something that Mr Chhabra ignored, or required her to fix on her own. Again, there was no breach of duty by Mr Chhabra in how he responded to the problem.

[39] In regard to Ms Whyte's evidence that she was required to work late on Friday and Saturday nights, Mr Chhabra was usually present with the explicit understanding that she did not have to work until 1.00 am. There may have been an exception during the time Mr Chhabra went overseas, but this was for a limited time, and the evidence was that another staff member was hired temporarily to help with this. Ms Whyte also stated that she was required to work on her days off, being Mondays and Tuesdays when the bar was closed, however, Mr Chhabra did not explicitly require this of her

and believed that these were her “weekend” days off. The evidence does not establish that Mr Chhabra required this extra work of Ms Whyte. The evidence does show that Ms Whyte discussed and agreed with Mr Chhabra that she would work 60 hours a week in exchange for her salary and accommodations.

[40] On balance, for the reasons set out above, I do not accept that Ms Whyte’s hours of work were such that they amounted to a breach of the terms of her agreement by Mr Chhabra, or that any breach that existed was serious enough to warrant her leaving her employment. I find that Ms Whyte’s claim of constructive (unjustified) dismissal was not made out.

[41] I now come to consider Ms Whyte’s claims of unjustified disadvantage. Unjustified disadvantage is defined in s 103 of the Act, and requires that: a term or condition of the employee’s employment was affected to the employee’s disadvantage, and that this was caused by some unjustifiable action of the employer.

[42] First, there is a claim of unjustified disadvantage on the basis that Ms Whyte was not informed of a proposal to sell the business, in circumstances where she had been told the business would not be sold in her first year of employment.

[43] I do not accept that it was a term or condition of Ms Whyte’s employment that the business would not be sold in the first year of her employment. The evidence falls short of demonstrating that Mr Chhabra on behalf of NC had made a specific promise to Ms Whyte that the business would not be sold in the first year of her employment. For avoidance of doubt, even if I were to accept that it was a term of Ms Whyte’s employment that the business not be sold within 1 year, no sale occurred within such a timeframe. Ms Whyte’s own evidence is that she was told by the landlord that Mr Chhabra was planning on selling the business. Mr Chhabra’s evidence is that this was something he was investigating, but that he did not feel he needed to (or should) raise this with Ms Whyte until he had something concrete to tell her. I find this is correct, especially in circumstances where Ms Whyte was actively reaching out to third parties to discuss aspects of NC’s business with them without Mr Chhabra’s knowledge or consent, whenever she felt that answers received from Mr Chhabra were not to her liking.

[44] NC's and Mr Chhabra's actions in advertising the business for sale without involving Ms Whyte in this decision were not in breach of any obligations owed to Ms Whyte. In addition, there was no impact (disadvantageous or otherwise) on her terms and conditions of employment, as the business was not sold and no other changes occurred. No unjustified disadvantage claim is made out.

[45] The second unjustified disadvantage claim is a claim that Ms Whyte was expected to cover the cleaning duties at the hotel in addition to her managerial duties. I have already touched on this above, but will briefly consider whether this could amount to an unjustified disadvantage in the terms and conditions of her employment.

[46] The evidence was that Ms Whyte was not permanently required to cover cleaning duties in addition to her managerial duties. The need for Ms Whyte to perform cleaning duties occurred as a result of NC being let down by existing staff, and was within the general remit of her broader duties as manager³. She was not expected to permanently expand her duties, and other staff were hired to assist. Accordingly, I find that no term of Ms Whyte's employment was altered to her disadvantage. In addition, I have set out above my reasons for concluding that there was no unjustified action or breach of obligation by NC or Mr Chhabra. Ms Whyte cannot complain that her concerns were not taken seriously, or that they remained unresolved. This may leave a residual complaint that NC did not act swiftly enough, but this then becomes a disagreement between her Mr Chhabra as to how Mr Chhabra ran the business.

[47] The third unjustified disadvantage claim is that Ms Whyte was required to work excessive hours without sufficient breaks causing her stress and exhaustion, and that she generally did not have sufficient support. I have set out above my conclusions that Ms Whyte was not required by NC or Mr Chhabra to work excessive hours, however, I will consider the slightly different claims that she was not provided with sufficient breaks, and that she did not have sufficient support.

[48] NC's response to this claim is two-fold. First, that Ms Whyte was responsible for managing her own breaks, and that the business was not so busy that Ms Whyte was prevented from taking rest and meal breaks during her time on duty. In particular, Mr Chhabra points out that Friday and Saturday nights were the busiest time, however, this

³ Ms Whyte's employment agreement sets out her "Job Responsibilities" including "All other reasonable duties as required by the employer to carry out the business operation smoothly".

was when he himself was working together with Ms Whyte to ensure that she could take breaks. Mr Chhabra says in relation to the allegation that he and/or NC did not provide sufficient support, that he did provide support. He said that he was contactable by text and email when he was not present, and he was physically present for two days most weeks, with occasional exceptions including a planned holiday to visit family overseas. Mr Chhabra's view is that Ms Whyte was unhappy with email and text contact, and preferred face-to-face discussions.

[49] Ms Whyte accepts this and goes so far as to say that Mr Chhabra didn't "act like an employer" because of his reliance on email correspondence rather than in-person discussions. It was also apparent after hearing both sides' in person evidence that Ms Whyte wanted Mr Chhabra to hire more permanent staff, and was disappointed during the summer event planning process with his decision that staff should be hired on a casual basis for particular events or busy periods, for reasons of cost. This disconnect manifest itself in Ms Whyte's reluctance to accept Mr Chhabra's decision-making, and her persistence in seeking interventions from her former colleague and even the landlord instead of accepting Mr Chhabra's responses.

[50] In all these circumstances, I find that I am not persuaded that Ms Whyte suffered an unjustified disadvantage in her employment stemming from an unreasonable or permanent lack of breaks or lack of support. Ms Whyte presented as a capable, fast-moving, and driven employee, who was ambitious and impatient to bring the business to fruition, and was frustrated at some of the practical difficulties she encountered. This included the practical difficulties experienced by Mr Chhabra being limits on his time and finances. These practical difficulties however do not amount to an unjustified disadvantage in Ms Whyte's terms and conditions of employment, and nor do they amount to any unjustified action on the part of NC and/or Mr Chhabra.

[51] Ms Whyte's fourth unjustified disadvantage claim is a claim that she was locked out of the email system during her notice period and thus was unable to perform her job during that period even though she was required by Mr Chhabra to do so.

[52] I was advised at the investigation meeting that Ms Whyte had given proper notice but had then unfortunately suffered both sickness and an accident which resulted in her needing to take the remainder of her notice as sick leave. This was not a matter of dispute. In those circumstances, I am not persuaded that it is accurate to suggest that

Mr Chhabra required her to work out her notice period in full while improperly removing her email access and thus preventing her from doing so. Ms Whyte was not available to work for the entirety of her notice period. Matters were overtaken by her accident, which was not something that either party had planned for. I do not understand that Ms Whyte suffered any financial loss as a result, or that NC took any adverse action against her. In all the circumstances, I decline to find any unjustified disadvantage occurred.

[53] For the reasons set out above, Ms Whyte's personal grievance claim of unjustified dismissal is not made out. No orders are made.

[54] For the reasons set out above, Ms Whyte's personal grievance claims of unjustified disadvantage are not made out. No orders are made.

Penalties for breaches of statute

[55] Ms Whyte claims that penalties should be awarded for breaches of statute, namely a failure to provide rest and meal breaks as required by s 69ZD of the Act, and a failure to provide wage and time records as required by s 130 of the Act.

[56] For the reasons set out above, I have found that Ms Whyte's claim that she was permanently and systemically denied breaks is not made out. Accordingly, there is no breach of statute that would support a penalty claim. No orders are made.

[57] In terms of the failure to provide wage and time records, Mr Chhabra was able to provide handwritten timesheets for Ms Whyte, but was not able to provide the associated payslips, as NC's payroll account had been closed. He stated that payslips had been emailed to Ms Whyte, and that she should have a record of them via her email address.

[58] I am satisfied that Mr Chhabra provided what records he had retained, once he understood that he was obliged to do so. It is also relevant that Ms Whyte did not take issue with the timesheets that were provided. In other words, the timesheets themselves, and the pay received, were not the subject of dispute between the parties.

[59] In these circumstances, I decline to find a breach of s 130 of the Act sufficient to support a penalty claim. No orders are made.

[60] As both parties were self-represented, there is no issue as to costs.

Claire English
Member of the Employment Relations Authority