

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 536
3340120

	BETWEEN	KELLY WILKINS Applicant
	AND	DD GROUP HOLDINGS LIMITED Respondent
Member of Authority:	Eleanor Robinson	
Representatives:	Hayley Johnson, advocate for the Applicant Murdoch Razmi and Ash Razmi for the Respondent	
Investigation Meeting:	19 August 2025 in Manukau	
Submissions and/or further evidence	19 August 2025 from the Applicant and from the Respondent	
Determination:	28 August 2025	

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Kelly Wilkins, claims that she was unjustifiably dismissed by the Respondent, DD Group Holdings Limited (DDGH).

[2] DDGH denies that Ms Wilkins was unjustifiably dismissed and claims she was justifiably dismissed in accordance with a valid trial period provision pursuant to s 67A of the Employment Relations Act 2000 (the Act)

The Authority's investigation

[3] The Authority received written and, under oath or affirmation, oral evidence from the Applicant, Ms Wilkins.

[4] The Authority received written and, under oath or affirmation, oral evidence from the Respondent witnesses: Directors Ash Razmi and Murdoch Razmi.

[5] Oral and written submissions were received from Ms Johnson for the Applicant and oral submissions from Murdoch Razmi for the Respondent. Whilst I have not referred to all the submissions made by the parties, I have fully considered them.

[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.

Issues

[7] The issues requiring investigation are whether or not Ms Wilkins was unjustifiably dismissed by DDGH.

Background

[8] DDGH is a small business which at the time Ms Wilkins was interviewed had two retail stores and three directors. Currently it has approximately seven employees, no retail outlets and engages sub-contract assistance when required.

[9] On or about April 2024 Ms Wilkins saw an advertisement placed by DDGH on the Seek website for a Sales Representative. She was not employed at the time and said she was busy recovering from a divorce and managing a house repair project.

[10] Ms Wilkins said the Sales Representative role was not as responsible as the last employment role she held, but she applied for it because she considered that she preferred wanted a less stressful role.

[11] On 19 April 2024 Ms Wilkins said she received a telephone call from Murdoch Razmi during which they discussed her being interviewed for the position of Store Manager which DDGH considered her skills more applicable. She accepted the invitation to an interview and met with Murdoch and Ash Razmi on 22 April 2024.

[12] The interview went well and that evening Ms Wilkins received an email from Murdoch Razmi informing her that she would be receiving a job offer for a position as a Key Account Manager the following day.

[13] On 30 April 2024 Ms Wilkins said she text messaged Murdoch Razmi to enquire about the employment agreement. He said he would send it to her shortly.

[14] That same day Ms Wilkins said Murdoch Razmi invited her to attend a three day training course DDHG were holding for new employees. He told her it was not mandatory that she attend, but if she did so it would be an opportunity to familiarise herself with the product. He also said that if she attended, she would be paid.

[15] On 2 May 2024 Murdoch Razmi emailed Ms Wilkins attaching an employment agreement and job description. In the email he stated:

Dear Kelly,

I am pleased to offer you the position of Key Account Manager at DD Group Holdings Limited, T/A Decking Direct New Zealand, stating on 04/06/2024. Attached is an employment agreement setting out the proposed terms and conditions.

You can discuss this offer and seek advice on the agreement with your family, a union, a lawyer, or someone else you trust...

If you are happy with the proposed terms and wish to accept this offer, please sign the attached agreement and return it to me by 09/05/2024. If I have not heard from you by that date, this offer will no longer be valid.

[16] The terms of employment contained in the employment agreement provided for a 42.5 hour working week and a salary of \$100,000.00. It also contained a clause headed 'Trial Period' which stated: "The first 90 days of employment will be a trial period, starting from the first day of work."

[17] Ms Wilkins responded that same evening:

I will have this back to you signed on Monday morning. Thank you so much for this incredible opportunity. I am very excited.

The Training course 6 – 8 May 2024

[18] The three day training course commenced on 6 May 2024. Ms Wilkins was late arriving on the first day. She said she had building issues on her home that required addressing, but she messaged and explained the delay.

[19] Murdoch and Ash Razmi said they understood that issues with building projects happened, and they offered to await her arrival before starting the training. However they were dissatisfied when she was late arriving on another morning of the training course.

[20] Ms Wilkins denied being late on a second day of the training course and said that the first morning was the only morning she was late.

[21] When Ms Wilkins arrived Murdoch Razmi said he asked her for the signed employment agreement. She told him it was signed, but she had forgotten to bring it. Ash Murdoch said he was present and he recalled Ms Wilkins saying she had signed it.

[22] Ms Wilkins agreed she had said the employment agreement was at home, but denied having said she had signed it.

[23] She said if she had realised that the training course was the start of her employment, she would have brought the signed employment agreement with her.

[24] Ms Wilkins said that during the training course she telephoned two of her previous contacts and some carpenters, and told them about DDGH.

[25] Murdoch Razmi said he had been unaware that Ms Wilkins was contacting her previous contacts. He said he had not asked her to do so, and it was unnecessary for her to have done so because DDGH already had contractor arrangements in place and were not seeking replacements.

[26] He said that he was aware of Ms Wilkins leaving the training sessions frequently to make telephone calls and/or vape. He said she also constantly spoke over the other team member attendees and guest speakers, pulled faces at the other team member attendees and/or called them names.

[27] Ms Wilkins agreed that she did leave the training sessions to make telephone calls and would vape when doing so.

[28] In relation to the allegation of speaking over and pulling faces at the other team member attendees, she said she had not done so “all the time” but that one team member in particular kept speaking and she did interrupt him with the aim of trying to redirect the training back to the guest speaker.

[29] Murdoch Razmi agreed that one other team member attendee did ask quite a number of questions, but that the questions were relevant. He said the team member was not rude, nor did he talk over people, or interrupt the guest speakers as Ms Wilkins had done.

[30] Ash Razmi said Ms Wilkins was rude and offensive throughout the training course. He said she would roll her eyes, blurt out comments and talk over the other team member attendees. In addition she made no notes, and did not give the impression of wanting to be there.

[31] He also said he had been unimpressed during a session when DDGH’s CRM (Customer Relationship Management) was being discussed, and Ms Wilkins had stated emphatically that she would not be entering her contacts into the DDGH database.

[32] There was a team dinner one evening during the training course. Murdoch and Ash Razmi said that during it Ms Wilkins told them that on one occasion she had become so intoxicated at a previous client meeting that she had to ‘pull over and have a rest’. In addition, the former director of DDGH had attended the team dinner and they were quite shocked when Ms Wilkins made sexual comments and touched him inappropriately.

[33] Ms Wilkins said she did not talk about having been intoxicated at a client meeting, and strongly denied that she acted in an inappropriate manner towards the former DDGH director.

[34] On the morning of 8 May 2024, the last day of the training course, Ms Wilkins gave the signed employment agreement to Murdoch Razmi,

[35] Ms Wilkins said that at the close of the last day of the training course, she had farewelled everyone and said Murdoch Razmi told her a car and kit would be ready for her on 4 June 2024.

[36] Murdoch Razmi said he did not recall saying anything to Ms Wilkins about the car or kit. Ash Murdoch said that he had also been farewelling the course attendees with Murdoch and he did not hear Murdoch say anything to Ms Wilkins about the car and kit.

Dismissal decision

[37] Following the training course Murdoch Razmi said the directors discussed Ms Wilkins' behaviour during the three days. The former director complained about her behaviour towards him, and several of the other team members also complained about her behaviour. He said that after what they had observed regarding Ms Wilkins' conduct during the three day training course, the directors did not want to proceed with her employment with DDGH.

[38] On 14 May 2024 Ms Wilkins said she was shocked to receive an emailed letter from Murdoch Razmi terminating her employment. The email stated:

Termination of employment during the trial period

As you aware, the employment agreement in place between you and DD Group Holdings Limited (t/a Decking Direct New Zealand) provides that the first 90 days of your employment are a Trial Period.

During the Trial Period, your employment can be terminated by giving seven days. While your start date with Decking Direct was agreed to be 4 June 2024, you attended three days of training with us last week, which we agreed to pay you for. Therefore, the trial period is deemed to have commenced on 6 May 2024.

This letter serves to confirm that we have decided to end your employment pursuant to this provision. We have decided to pay you your notice period of seven days immediately. This means that the employment relationship with Decking Direct ends today.

You will receive the notice period payment together with pay for the hours you attended training last week with us, as soon as we can process this.

[39] When she received the email Ms Wilkins said she tried telephoning Murdoch Razmi but he did not answer, so she sent him a text message stating:

I handed you contract signed for June
I am going to talk to a lawyer, as this is a total lack of good faith

I did the training as a favour to you
Next call you get will be from one of NZ top employment lawrrs (sec)
So disappointed and now angry.

[40] Murdoch Razmi responded by text message stating:

Sorry for missing your calls. I'm in and out of meetings all day which is why I suggested we speak later in the week.

In regard to the reasons, quite frankly, there were numerous instances of behaviour that don't align with DD's values. We have had many complaints, and are incredibly concerned about how this behaviour would reflect on our brand with customers, suppliers and strategic partners. Given we are a new organisation we can't take the risk to our reputation so we had to make the call.

There was absolutely no ill faith, quite the opposite. I had high hopes and am also disappointed in this result.

Outside of discussions with the directors we had mentioned nothing to anyone or spoken ill, have agreed to pay you for the days and a week, to give you time to pursue other options, in good faith.

[41] He concluded the email by offering to have a discussion with Ms Wilkins when she felt ready to do so.

[42] Ms Wilkins responded that she would like to hold an in person discussion and stated that she had attended the training 'as a favour to you'. She added that she had never had a complaint from a client and stated : "This is mere speculation on your part."

[43] In his response text message Murdoch Razmi stated:

...
I don't understand how attending was doing us a favour? We were offering to pay to up skill you?

Especially given:

- You took no notes the entire time
- You spoke over the speakers half the time
- You spoke over the other team members numerous times
- You made rude comments or rolled your eyes numerous times
- You made inappropriate and patronise (sec) comments to team members numerous times
- You would leave on your own accord, numerous times throughout ...

[44] On 18 June 2024 Ms Wilkins raised a personal grievance for unjustifiable dismissal. The parties subsequently attended mediation but this did not resolve the issue and on 19 November 2024 Ms Wilkins lodged a Statement of Problem in the Authority.

Was Ms Wilkins unjustifiably dismissed by DDGH in reliance on a valid trial period provision?

[45] The Act makes provision for trial periods at ss. 67A and 67B. The Act states:

S 67A When employment agreement may contain provision for trial period for 90 days or less

- (1) An employment agreement containing a trial provision, as defined in subsection (2), may be entered into by an employee, as defined in subsection (3) and an employer
- (2) **Trial provision** means a written provision in an employment agreement that states, or is to the effect, that –
 - (a) For a specified period (not exceeding 90 days), starting at the beginning of the employee’s employment, the employee is to serve a trial period, and
 - (b) During that period the employer may dismiss the employee; and
 - (c) If the employer does so, the employee is not entitled to bring a personal grievance or other legal proceedings in respect of the dismissal.
- (3) **Employee** means an employee who has not previously been employed by an employer

S 67B Effect of trial provision under section 67A

- (1) This section applies if an employer terminates an employment agreement containing a trial provision under section 67A by giving the employee notice of the termination before the end of the trial period, whether the termination takes effect before, at, or after the end of the trial period.
- (2) An employee whose employment agreement is terminated in accordance with subsection (1) may not bring a person grievance in respect of the dismissal.

[46] The effect of a valid trial period provision is that if the employee is given notice of dismissal during the trial period, he or she cannot raise a personal grievance for unjustified dismissal.

[47] On the basis that the trial period provisions remove long-standing employee protections, the provisions require strict adherence. It is a requirement that the trial period provision is contained in a written employment agreement which has been signed by both parties before the commencement of the employment.¹ In *Senate Investment Trust Through Crown Lease Trustees Ltd v Cooper*, the Employment Court stated:.

Accordingly, taking into account the strict approach to compliance with which s67A should be regarded, the failure to have Mr Cooper sign the agreement before he started employment is fatal. An agreement is only a draft or a proposed agreement until it is executed.²

[48] Ms Wilkins’ evidence was that she had not signed the employment agreement provided to her on 2 May 2024 prior to attending the training course on 6 May 2024.

¹ *Smith v Stokes Valley Pharmacy (2009) Ltd* [2010] NZEmpC 111 at [100] – [101].

² *Senate Investment Trust Through Crown Lease Trustees Ltd v Cooper* [2021] NZELR 886 at [43].

[49] Ms Wilkins' evidence was that she had not realised that the training course was the start of her employment, however DDGH did regard her employment as commencing on that date.

[50] Since the employment agreement had not been signed prior to the employment commencing, I find that DDGH could not rely on it in regard to the trial period provisions of the Act.

[51] I determine that Ms Wilkins had been unjustifiably dismissed by DDGH.

Remedies

[52] Ms Wilkins has been unjustifiably dismissed and is entitled to remedies.

Lost remuneration

[53] Ms Wilkins said that she applied for other positions after her dismissal, obtaining alternative employment starting on 26 August 2024.

[54] DDHG is to pay Ms Wilkins the sum of \$25,000.00 gross (calculated as \$100,000 per annum ÷ 52 weeks x 13 weeks) pursuant to s 28(3) of the Act less any monies paid by way of contractual notice.

Compensation

[55] Ms Wilkins said she was shocked by her dismissal. Her evidence was that she had been extremely upset by her divorce, and having to repair her home following the Auckland floods. The dismissal caused her to fall further into anxiety and depression.

[56] I accept that the termination of employment caused Ms Wilkins additional distress and anxiety when she was already anxious and stressed.

[57] Considering all the circumstances including the brevity of the employment relationship and the range of awards in cases of this kind, I consider an award of compensation of \$8,000.00 to be appropriate.

[58] DDHG is ordered to pay Ms Wilkins the sum of \$8,000.00 for humiliation, loss of dignity and injury to feelings, pursuant to s 123(1) (c) (i) of the Act.

Contribution

[59] I am required under s. 124 of the Act to consider the issue of any contribution that may influence the remedies awarded.

[60] While Ms Wilkins denied acting as alleged at the team dinner, she confirmed in her evidence that she did behave as mentioned in some of the incidences described, namely by leaving to make a number of telephone calls and vaping during the training course sessions, and by constantly interrupting and behaving disrespectfully towards other team members during the three training days. I observe that she corroborated in her own evidence the claims that she acted disrespectfully and openly towards at least one other team member during the training course.

[61] Prior to the training course the evidence is that DDGH was keen to have Ms Wilkins as part of its operation. The evidence establishes that it was Ms Wilkins' own conduct during the training course which altered its decision to continue with the employment. I find that to a large extent Ms Wilkins was the author of her own misfortune.

[62] I find that Ms Wilkins contributed towards the situation which resulted in her dismissal and reduce the remedies ordered by 70 per cent.

Filing Fee

[63] I order PNZ to pay Mr Wilkins filing fee of \$71.55.

Orders

[64] I have made the following orders:

- **DDHG is ordered to Ms Wilkins the sum of \$7,500.00 gross (calculated as \$25,000 less 70 percent) pursuant to s 28(3) of the Act**
- **DDHG is ordered to pay Ms Wilkins the sum of \$2,400.00 (calculated as \$8,000 less 70 percent) for humiliation, loss of dignity and injury to feelings, pursuant to s 123(1) (c) (i) of the Act.**
- **DDHG is ordered to pay Ms Wilkins the filing fee of \$71.55.**
- **All orders for payment are to be paid within 28 days of the date of this determination.**

Costs

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

[66] If they are not able to do so and an Authority determination on costs is needed Ms Wilkins 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 DDHG 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. \

[67] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[68] 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.³

Eleanor Robinson
Member of the Employment Relations Authority

³ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].