

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2021] NZERA 500
3128897

BETWEEN	HARJINDER BRAR Applicant
AND	ATATURK ENTERPRISES LIMITED Respondent

Member of Authority:	Peter Fuiava
Representatives:	Ken Usmar, advocate for the Applicant Ozgur Iseri for the Respondent
Investigation Meeting:	10 August 2021 at Whakatane
Submissions received:	By hand from the Applicant on 10 August 2021 6 July 2021 from the Respondent
Determination:	10 November 2021

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This is a claim of unjustified disadvantage and unjustified dismissal brought by Harjinder Brar, a citizen of India, against her former employer, Ataturk Enterprises Limited (Ataturk Enterprises), a food retail establishment and café in Whakatane. Ms Brar says that during the period of her employment (2 March 2020 to 24 July 2020), she was regularly sworn at and subjected to abusive and bullying behaviour by Ozgur Iseri, the business owner of Ataturk Enterprises.

The Authority's investigation

[2] 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.

[3] On 15 December 2020, Ms Brar commenced proceedings in the Authority by lodging a Statement in Problem in which Ataturk Enterprises Limited was the sole respondent. No Statement in Reply was filed in response by the company. When attempts at mediation were unsuccessful, a case management conference was held on 2 July 2021 in order to progress matters to an investigation meeting.

[4] Both Mr Usmar and Mr Iseri attended the conference by telephone during which time the Authority made timetabling directions and confirmed the date of the investigation meeting; Tuesday 10 August 2021 at Whakatane.¹ As directed, Mr Usmar provided the Authority with an undated written statement from Ms Brar on 15 July 2021. Similarly, Mr Iseri lodged his own written statement on 6 July 2021.

[5] Less than 48 hours before the scheduled investigation meeting, Mr Iseri emailed the Authority on the afternoon of Sunday 8 August 2021, advising that he was unable to attend the meeting because he was off work until October 2021 due to private family matters.

[6] On Monday 9 August 2021 at 12.51 pm, I emailed the representatives advising that it was unclear what Mr Iseri meant in his email by “private family matters” because no further information or supporting documents had been provided. Given the lateness of Mr Iseri’s request for an adjournment and there being no supporting evidence provided, I advised the parties that I was minded to proceed with the investigation meeting and encouraged them both to appear.

[7] Later that same day at 5.11 pm, Mr Iseri emailed the Authority to advise that he had not been told that he needed to provide evidence to support his request. He advised that he had three dependents: his sick mother, a son, and newly pregnant partner to look after. Mr Iseri stated that he was more than happy to provide proof of his circumstances and that he had “zero interest” in delaying matters. As to the suggestion that the

¹ As recorded in a minute from the Authority dated 2 July 2021.

investigation meeting would proceed, he considered this offensive and discriminative of his family circumstances.

[8] In response, Mr Usmar strongly objected to any adjournment and claimed that Mr Iseri had known from the case management conference what was required of him, that he was once more being “economical with the truth”, and that he had been uncooperative with the process from the outset.

Adjournment request declined

[9] I declined Mr Iseri’s application for an adjournment. In making that decision, I took into consideration that he had known about the investigation meeting since 2 July 2021 and while he had stated that he was unable to attend because of three dependents, it had not been shown that there were no other alternative care arrangements that could be put in place that would enable him to appear at the investigation meeting. In the absence of sufficient information to support the request for an adjournment, the investigation was to continue as scheduled.

[10] Prior to the commencement of the investigation meeting on the morning of 10 August 2021, an Authority officer telephoned Mr Iseri to let him know that the investigation meeting (scheduled for 9.30 am) would be delayed for 20 minutes to enable him to attend. The venue for the investigation meeting was a short distance away from Ataturk Enterprise’s place of business.

[11] Mr Usmar and Ms Brar attended the investigation meeting at 9.30 am. They were advised to wait in the foyer for 20 minutes to enable Mr Iseri more time to arrive. However, when he did not attend after 9.50 am, the investigation meeting proceeded pursuant to clause 12 Schedule 2 of the Act, which enables the Authority to act fully in the matter before it as if Ataturk Enterprises had duly attended or been represented.

Relevant Facts

[12] For the better part of five months, Ms Brar worked for Ataturk Enterprises as its duty manager. Her individual employment agreement (signed 2 March 2020) required her to work a minimum of 30 hours per week. She was initially paid \$20 per hour but this was subsequently increased at some point to \$21 per hour.

[13] Clause 8 of Ms Brar's employment agreement referred to health and safety and the Health and Safety in Employment Act 1992 which has long since been repealed.² Clause 8 of the employment agreement required Ataturk Enterprises to take all reasonable steps to provide Ms Brar with a healthy and safe work environment.

[14] During her employment, Ms Brar says that she was regularly subjected to abusive language and swearing by Mr Iseri. She ignored these at first but matters came to a head at approximately 2.30 pm, Thursday 23 July 2020.

[15] On that occasion, Ms Brar was cutting up some lamb when she was approached by Mr Iseri who asked why she had not cooked it earlier. She advised that there were already two containers of lamb out at the time. He then shouted at her calling her "useless" and "stupid". As Ms Brar was getting ready to take her break, Mr Iseri said that he could not clean her "shit now". He became very abusive towards her calling Ms Brar a "motherfucker" in front of staff and customers. Mr Iseri told her to leave the premises immediately and to find another job. Ms Brar returned home feeling very embarrassed and upset.

[16] Upon returning home, Ms Brar received a text message from Mr Iseri at 2.57 pm stating:

"I am terribly sorry, I am tired of dealing with lamb and I am tired of telling you guys the (sic) cut it. I am terribly sorry."

[17] At 2.59 pm that same afternoon, Ms Brar received a text message from one of her co-workers which stated:

"Hope you are okay Harjinder, Jahn (Mr Iseri) was way out of line, don't take it personally."

[18] At 5.52 pm that same afternoon, Ms Brar texted Mr Iseri the following response:

"I am very upset with your behaviour. This is not the first time it happened, it happened before so many times. Your behaviour was not tolerable and your language was inappropriate. You always use abusing language which is not professional and not acceptable. You always use inappropriate language in front of other staff and customers."

[19] In response, Mr Iseri texted, "I am terribly sorry dear and I am."

² Repealed 4 April 2016, Health and Safety at Work Act 2015, section 231(1).

[20] The following morning at 7.18 am, 24 July 2020, Ms Brar texted Mr Iseri that she was not coming into work because she was not feeling well and was still very upset from what had taken place the day before.

[21] Mr Iseri texted Ms Brar at 9.23 am asking her to call him and to let him know who else was working that day. Ms Brar advised there were two other workers rostered that day. Mr Iseri later texted that one of workers had not arrived. At 12.56 pm, he texted Ms Brar again stating that he needed her because it was very busy at the store. Her response was as follows:

“Why you want me come back now because you told me to find another job so, I will let you know my decision soon. Thank you.”

[22] Later that same evening (24 July 2020) at 8.27 pm, Ms Brar emailed Mr Iseri the following:

“Hello Jahn,

I am writing this letter to inform you that I am feeling very depressed and unable to come to work for the next 2 weeks. Your behaviour was not acceptable and you humiliated me in front of others and I felt very insulted. It has not happened the first time, I have tolerated your misbehaviour so many times as well but now it is going out of control.

Please see the attached medical certificate for my stress leave. I will update you if I will feel better.”

[23] At some point that same evening, Ms Brar received a telephone call from her store manager, Navdeep Kaur, who was in India at the time. Ms Brar was advised that Mr Iseri did not want to work with her anymore and that he wanted her to return her uniform.

[24] In response to Ms Brar’s email of 24 July, Mr Iseri emailed the following to her on 25 July 2020:

Last week you wanted me to make you a manager and \$6 increase so you could apply for residence and I told you NO, this café is not your father’s café or I am your brother, this business supports over 10 people and I do not wish to be part of your options so you could get residence from here or you could get married if my business does not work out for you, the answer is NO.

I am not going into any argument, I am going to seek advice and then I will make the decision however I suggest you do not use my business for your personal needs also I suggest you if you wish to get your residence thru management, you need to act like a manager and you need to learn first what

manager does, NZ immigration is not stupid so I could give you manager wages so you can apply for your residence and tell your lawyer or whoever has done the contract for you, I am not signing also I can see how you can use the system more clear, GOOD WORK. Have a nice day.

[25] Ms Brar emailed Mr Iseri later that same afternoon stating that she did not understand what he was saying but his reference to her father and brother was unprofessional and showed that he was still “misbehaving”. Ms Brar’s main issue with Mr Iseri was his misbehaviour and abusive language which she could no longer tolerate. This was not first time either. It had happened “a lot of times” which she had ignored previously but matters were now getting out of control. Ms Brar felt very insulted and hurt as a result.

[26] As for the allegation that she had tried to obtain residence through a management position, Ms Brar stated that as Ms Kaur was stuck in India due to the COVID-19 pandemic there, she had covered for her despite the fact that Ms Brar had been hired as a duty manager and that none of Ms Kaur’s management duties were included in her job description.

[27] Ms Brar further stated that when it became apparent to Mr Iseri that Ms Kaur might not be able to come back to New Zealand, he had offered her a pay increase of \$6 per hour and a promotion to store manager. Ms Brar had not initiated this but she did ask Mr Iseri to provide her with a new employment agreement if she was to be promoted. It was during this time that Ms Brar’s remuneration was increased from \$20 to \$21 per hour.

[28] Ms Brar’s email ended with her referring to her earlier telephone conversation the night before with Ms Kaur and she asked Mr Iseri whether he still wanted her to return her uniform.

[29] Mr Iseri’s response to Ms Brar’s email was short. He wished her a good day and told her that he did not have time for her “drama”.

[30] The whole incident left Ms Brar feeling very stressed and anxious. She found it difficult to go to sleep which impacted her health and her family in India advised her to see a doctor which she did. It took Ms Brar several weeks to get over the stress Mr Iseri had caused her. Approximately, three weeks later, she found alternative

employment as a duty manager for a restaurant in Papamoa, Tauranga. She currently works 35 hours per week and is paid \$24.30 per hour.

[31] By letter of 7 August 2020 from her former representative, Ms Brar raised a personal grievance against Ataturk Enterprises for unjustified disadvantage and unjustified dismissal. On 10 December 2020, the parties agreed to attend mediation at a venue in Whakatane. While making their way to mediation, and after traveling approximately 100 kilometres from Tauranga, Ms Brar and her newly-appointed employment advocate, Mr Usmar, received notice that Mr Iseri had pulled out of mediation approximately one hour before it was to commence.

[32] Ms Brar subsequently lodged a Statement of Problem with the Authority. No Statement in Reply from Ataturk Enterprises was lodged. A subsequent direction to mediation did not resolve matters between the parties.

The issues

[33] The issues requiring investigation and determination are:

- (a) Was Ms Brar unjustifiably disadvantaged in her employment as a result of being bullied and verbally abused by Mr Iseri, the owner of Ataturk Enterprises?
- (b) Did Ms Brar resign from her employment or was she unjustifiably dismissed?
- (c) If the employer's actions were not justified (in respect of disadvantage and/or dismissal), what remedies should be awarded, considering:
 - Lost wages (subject to evidence of reasonable endeavours by Ms Brar to mitigate her 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 Brar that contributed to the situation giving rise to her grievance?

Ms Brar was unjustifiably disadvantaged

[34] Ms Brar has raised an unjustifiable personal grievance. Section 103(1)(b) of the Act is applicable to disadvantage grievances and states:

103 Personal grievance

(1) For the purposes of this Act, personal grievance means any grievance that an employee may have against the employee's employer or former employer because of a claim—

...

(b) that the employee's employment, or 1 or more conditions of the employee's (including any condition that survives termination of the employment), is or are or was (during employment that has since been terminated) affected to the employee's disadvantage by some unjustifiable action by the employer;

[35] Section 103A(1) of the Act requires the Authority and the Employment Court to deal with personal grievances for unjustifiable disadvantage or unjustifiable dismissal on an objective basis by applying the test of justification at s 103A(2) which states:

The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.

[36] Ms Brar must therefore establish that there was some unjustifiable action by Ataturk Enterprises which affected the terms and conditions of her employment to her disadvantage.

[37] Ms Brar says that, throughout her employment, she was regularly subjected to abusive and bullying behaviour by Ataturk Enterprises' business owner, Mr Iseri. The bullying behaviour consisted of but was not limited to swearing at her, shouting at her, and belittling her with negative and hurtful comments. Much of that behaviour was said to be done in front of other staff and customers of the business.

[38] It would be helpful to have some insight into what might be considered to be bullying behaviour. In *Isaac v Chief Executive of the Ministry of Social Development*, the Authority made the following observation:³

[55] The concept of bullying has not been defined in a legal sense because it is a difficult concept. Bullying is about behaviours that are repeated and carried out with a desire to exert dominance and an intention to cause fear and distress. The behaviours usually include elements of personal denigration and disdain of the person subject to it. It is intended to control the behaviour or actions of its target in particular ways.

³ *Isaac v Chief Executive of the Ministry of Social Development* [2008] NZERA Auckland 92.

[56] Bullying usually refers to behaviour of an employer to an employee, between two or more employee's and occasionally even by an employee towards a supervisor or manager. Criticism or feedback from an employer is not bullying although it might become so because of the manner or purpose of its delivery or a particular vulnerability of the recipient.

[39] The above observations provide a useful starting point. Since *Isaac* was decided in 2008, bullying has unfortunately evolved to include cyberbullying which is bullying that occurs online, often through instant messaging, text messages, emails and social networks.

[40] In his written statement to the Authority (6 July 2021), Mr Iseri denied having bullied or verbally abused Ms Brar. Those denials however are inconsistent with the text messages noted above at [16] to [19] which were sent within close proximity of Ms Brar being verbally abused by Mr Iseri, told to leave the premises immediately, and that she needed to find another job.

[41] The contemporaneous text messages corroborate Ms Brar's account. I am satisfied that on 23 July 2020 at approximately 2.30 pm, Mr Iseri verbally abused and swore at Ms Brar. On that occasion, he called her "stupid", "useless", that he was not going to clean up her "shit" (a puerile reference to her work station) and that she was a "motherfucker". The comments were made in the presence of staff and customers in the business. One of Ms Brar's co-workers texted her shortly afterwards, concerned for her welfare, and acknowledging that Mr Iseri's actions were way out of line but that she should not take it personally. However, given the high-handed and unwarranted manner of Mr Iseri's rebuke, it is difficult to imagine how Ms Brar could not have taken things to heart.

[42] Had Mr Iseri done nothing wrong as he claimed in his written statement to the Authority, he would not have apologised for his actions on two separate occasions to Ms Brar that afternoon at 2.57 pm and again at approximately 5.52 pm.

[43] As to whether Mr Iseri had also bullied Ms Brar in terms of *Isaac*, there is evidence to support such a finding. Ms Brar's text and email message (see [18] and [22] above) both refer to her being upset about Mr Iseri's behaviour (the name calling, swearing, and embarrassing her in front staff and customers). More importantly, the messages show that this was not the first time. It had happened many times before.

[44] I find that this was not an isolated or one-off incident that could be attributed to aberrant behaviour on Mr Iseri's part. Instead the contemporaneous text and email messages corroborate and support the credibility of Ms Brar's account. By bullying and verbally abusing her, Mr Iseri disadvantaged Ms Brar because pursuant to clause eight of her individual employment agreement, Ataturk Enterprises was obliged to provide her with a healthy and safe work environment which it failed to provide on multiple occasions.

No ulterior motive behind Ms Brar's grievance

[45] Mr Iseri further claimed in his written statement to the Authority that Ms Brar had an ulterior motive for bringing proceedings against his company. He alleged that she had grown bitter towards him when he refused to give her a management position with which she could apply for residence. As such, the present proceedings was just a way for Ms Brar and her advocate to "scam" as much money from Ataturk Enterprises.

[46] It is accepted that, at some point, Ms Brar will want to apply for residence. However, she currently holds a three-year Essential Skills work visa and therefore has ample time to apply for residence if she has not done so already. I find no evidence to connect the present proceedings to an ulterior motive and I am satisfied that Ms Brar's case has nothing to do with her visa status but rather Mr Iseri's "misbehaviour" towards her. Mr Iseri's claim is one that is easily made but without supporting evidence, cannot seriously be entertained.

Conclusion on unjustified disadvantage

[47] For the reasons given above, I find that, during the course of her employment with Ataturk Enterprises, Ms Brar was subjected to abusive language and bullying behaviour by the company's owner, Mr Iseri. This was an unjustifiable action on the part of the business which resulted in Ms Brar being disadvantaged.

Ms Brar was unjustifiably dismissed

[48] Mr Iseri's written statement to the Authority of 6 July 2021 records that he did not dismiss Ms Brar but that she left on her own accord and did not return to work despite being given her roster on a number of occasions by Mr Iseri. The difficulty with that argument is that the evidence does not bear this out. None of Ms Brar's text

messages or emails to Mr Iseri record that she had resigned. Instead, she wished to go on two weeks stress leave because she was still upset as to how she had been treated and spoken to by Mr Iseri on the afternoon of 23 July 2020.

[49] On the evening of 24 July 2020, it was Ms Brar's evidence that she received a telephone call from Ms Kaur, her store manager, who told her that Mr Iseri no longer wanted to work with Ms Brar and that he wanted her to return her work uniform.

[50] While Ms Brar may have had good reason to believe at that point that she had been dismissed, I note that she emailed Mr Iseri the following day stating (among other things) whether he *still* wanted her to return her uniform. However, any hope Ms Brar may have had of a change in mind were dashed when she was curtly advised by Mr Iseri in an email (25 July 2020) that he did not have time for her "drama".

[51] When the above email is considered in combination with the discussion Ms Brar had with Ms Kaur the night before, I find that she had been dismissed on 24 July 2020. I further find that Ms Brar was dismissed because she wanted to take two weeks sick leave from work.

[52] Ms Brar had not completed six months of continuous employment with Ataturk Enterprises to be entitled for paid sick leave.⁴ However, her desire to take time off as a result of being bullied and verbally abused by her employer did not warrant summary dismissal. Neither was this a case of feigned sick leave which is clear from the text messages, emails, and the doctor's certificate Ms Brar provided to the Authority.

[53] There was no proper process followed by Mr Iseri in dismissing Ms Brar. If he had reason to doubt the genuineness of her request for sick leave, he could have taken steps to investigate matters further. He did not. Under clause 4 of Ms Brar's individual employment agreement, Mr Iseri could have asked Ms Brar to provide proof of her eligibility for sick leave. He did not do this. He simply dismissed her.

⁴ Holidays Act 2003, s 63(1)(a).

Conclusion on unjustified dismissal

[54] For the reasons given above, I find that Ms Brar did not resign from her employment but was unjustifiably dismissed by Ataturk Enterprises on 24 July 2020. There being no process followed whatsoever it cannot be said that the company's actions were those of a fair and reasonable employer in terms of the test of justification at s 103A of the Act.⁵

Lost wages

[55] Section 123(1)(b) of the Act provides for the reimbursement to an employee a sum equal to the whole or any part of wages lost as a result of his or her grievance. The Act further states that this sum be the lesser of the actual amount lost or three months' ordinary time remuneration.⁶

[56] During the investigation meeting, Ms Brar advised that she obtained her current employment approximately three weeks after she had been dismissed. Given the relative short time she was out of employment, I fix Ms Brar's claim for lost wages at three weeks ordinary time remuneration which equates to gross wages of \$1,890 (30 hours x \$21 per hour x 3 weeks).

Compensation

[57] I have found that Ms Brar was unjustifiably disadvantaged (bullying and verbal abuse) and that she was unjustifiably dismissed by Ataturk Enterprises when she sought two weeks' stress leave to recover from what Mr Iseri had done to her on 23 July 2020. I further find that his actions and his dismissal of Ms Brar caused her humiliation, loss of dignity and injury to feelings.

[58] In my view, the unjustified disadvantage had a greater emotional impact on Ms Brar than her actual dismissal from employment. The bullying and verbal abuse affected her to her core as it had happened a number of times before during her employment. Ms Brar lost sleep and consequently her health was affected. Without the support of immediate family in New Zealand, she lacked the social support around her to minimise the emotional harm she experienced. Although she rebounded

⁵ Employment Relations Act 2000, s 103(3).

⁶ Section 128(2).

relatively quickly and found alternative employment in short order, as a work visa holder, Ms Brar would have had little choice but to find alternative employment as soon as possible.

[59] Any compensation award I make under s 123(1)(c) of the Act for hurt and humiliation is for the effects on the employee of the grievance and not to punish or be a penalty imposed on the employer to indicate disapproval of their conduct.

[60] In her Statement of Problem, Ms Brar seeks compensation of \$10,000 for hurt and humiliation arising from unjustified disadvantage. I consider this an appropriate award given the repetitive and sustained nature of the bullying and verbal abuse she experienced and its cumulative effect on her emotional and mental health. While Ms Brar says that it took her several weeks to recover from the stress Mr Iseri had put her through, this does not minimise the emotional toll on her in any way. Instead, this is a testament of Ms Brar's resilience and strength of character to have rebounded in way she has.

[61] In terms of Ms Brar's unjustified dismissal, I consider an award of \$5,000 appropriate for loss of dignity and injury to feelings. Ms Brar had hoped that she might be able to return to work but that was not to be. There being no process followed with her dismissal meant that the whole incident left her feeling considerably stressed on an emotional and physical level for which compensation pursuant to s 123(1)(c) of the Act is warranted.

Contribution

[62] As I have awarded remedies to Ms Brar, I must consider whether she has contributed to the situation that has given rise to her personal grievances.⁷ It has not been demonstrated that Ms Brar had done anything wrong or contributed to her own disadvantage or dismissal. A reduction in remedies is not warranted.

Penalties

[63] On the morning of the investigation meeting, Mr Usmar provided me with an undated written submission in which he sought, for the first time, new penalties against

⁷ Employment Relations Act 2000, s 124.

Ataturk Enterprises. These comprised penalties for a breach of good faith by not including in Ms Brar's employment agreement a paid day off in lieu if a normal working day for her fell on a public holiday, not informing her of her rights to be consulted when a condition of employment was changed, and not providing a plain language explanation in the employment agreement of the services available for resolution of employment relationship problems including a reference to the period of 90 days in s 114 within which to raise a personal grievance.⁸

[64] The difficulty for Mr Usmar in asking for the above penalties now is that they were not expressly included in Ms Brar's personal grievance letter of 7 August 2020 from her former representative. I consider the above penalty claims to be time barred under s 114 of the Act.

[65] In addition to the above penalties, Mr Usmar also sought a penalty against Ataturk Enterprises for failing to provide Ms Brar with a copy of her wages and time record when requested.⁹ This was a matter that was included in Ms Brar's personal grievance letter and was therefore raised with the company in time. Mr Usmar submitted that, in the absence of Ms Brar's wage and time records, it was "highly likely" that she was owed payment for lieu days in respect of working on public holidays.

[66] I remain unconvinced. When questioned, Mr Usmar stated that he had received "some stuff" but it did not cover everything. It appears *prima facie* that Ataturk Enterprises did provide wage and time records for Ms Brar. As such, I see no basis for awarding a penalty for a breach of s 130 of the Act. If what was provided was not to Mr Usmar's satisfaction, he had ample opportunity to file an amended statement of problem with the Authority. He did not and as such I take the matter no further.

Filing fee

[67] Ms Brar is to be reimbursed the filing fee of \$71.56 by Ataturk.

⁸ Section 65(4).

⁹ Employment Relations Act 2000, s 130(4).

Costs

[68] The investigation meeting did not take long. Clause 15 Schedule 2 of the Act enables the Authority to order any party to a matter to pay to any other party such costs and expenses it considers reasonable.

[69] Costs generally follow the event and there is no reason for that not to be the case here. The current tariff for a one-day investigation meeting is \$4,500. I consider it appropriate to make a costs award of \$2,250 as a contribution towards Ms Brar's legal costs.

[70] On 10 December 2020, Ms Brar and Mr Usmar was required to attend mediation which was cancelled by Mr Iseri approximately one hour before the scheduled mediation was to commence. By then, Ms Brar and Mr Usmar had travelled some 100 kilometres in their own vehicles only to have to turn around and return whence they came. If Mr Iseri had contacted mediation services earlier, Ms Brar would not have had to take a day off from work and Mr Usmar's morning would not have been for naught.

[71] I may have been minded to award costs for Ms Brar's and Mr Usmar's travel expenses if the mediation on 10 December 2020 was one the parties had been directed to attend by the Authority which would call into question whether a penalty under s 134A for obstruction and delay should be imposed. However, this is not the case here which means Ms Brar and Mr Usmar will need to shoulder these costs on their own.

Summary of orders

[72] The Authority makes the following orders. Ataturk Enterprises Limited is ordered to pay the following sums to Harjinder Brar no later than 4 pm 25 November 2021:

- (i) lost wages of \$1,890 (gross);
- (ii) compensation under s 123(1)(c)(i) of the Act of \$10,000 for unjustified disadvantage;
- (iii) compensation under s 123(1)(c)(i) of \$5,000 for unjustified dismissal;
- (iv) filing fee of \$71.56; and

(v) costs of \$2,250 for the investigation meeting.

Peter Fuiava
Member of the Employment Relations Authority