

**NOTE: This determination
contains an order prohibiting
publication of certain
information**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 527
3346740

BETWEEN	CYP Applicant
AND	KWN LIMITED Respondent

Member of Authority:	Alex Leulu
Representatives:	WKT, for the Applicant KRI, for the Respondent
Investigation Meeting:	28 May 2025 in Auckland
Submissions received:	12 June 2025 from the Applicant 25 June 2025 from the Respondent
Determination:	27 August 2025

DETERMINATION OF THE AUTHORITY

Non-publication orders

[1] At the conclusion of the investigation meeting, the Authority expressed its concerns about the sensitive nature of the allegations and relatively young age of some of the people involved with this matter. In response, the parties acknowledged the concerns and agreed for non-publication of the parties' names and any other information which may identify the parties in this matter.

[2] Accordingly, the Authority made non-publication orders under clause 10 (1) of schedule 2 of the Employment Relations Act 2000 (the Act) prohibiting publication of the name and identifying details of the applicant (CYP or the applicant), her father

(WKT), the respondent company (KWN Limited or the company), the director of the respondent company (KRI) and the respondent employee (RIV).

Employment relationship problem

[3] In early 2024 the applicant was employed part time by the company. While carrying out her work for the company in July 2024, the applicant said she was sexually harassed by another staff member. As a result she claimed she was unjustifiably disadvantaged by company when it failed to take practicable steps to investigate her complaints and protect her from sexual harassment.

[4] The company opposed the applicant's claims saying it had undertaken appropriate steps once it became aware of the applicant's allegations of sexual harassment.

The Authority's investigation

[5] For the Authority's investigation written witness statements were lodged from the applicant and WKT. For the company, written witness statements were lodged by KRI, RIV and two other company employees. All witnesses answered questions under oath or affirmation. The representatives also gave written closing submissions.

[6] As permitted by s 174E of 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 the applicant unjustifiably disadvantaged by the company due to the company's alleged failure to properly address and investigate sexual harassment in the workplace?
- (b) If the Authority determines that the applicant was unjustifiably disadvantaged by the company, to also determine whether she is entitled to a remedy in the form of compensation for distress, hurt and humiliation under s 123(1)(c)(i) of the Act?

- (c) If any remedies are awarded, should they be reduced (under s 124 of the Act) for blameworthy conduct by the applicant that contributed to the situation giving rise to her grievance?
- (d) Whether one party is to pay the costs of representation to the other party?

Context

The applicant's employment

[8] KWN Limited operated as a take-away store trading on the North Shore. In December 2023 the company advertised for a part time role as "Kitchen Help". The applicant applied for the role and after an initial trial, she commenced her employment for the company in February 2024.

[9] As part of her role the applicant was supposed to report to KRI. Because KRI was not always at the shop, the applicant reported to RIV who worked as both the company chef and site supervisor.

Sexual harassment allegation

[10] On 2 July 2024 the applicant was at work sorting out bottles inside the store's walk-in fridge. The applicant claimed RIV approached her and gave her a hug and did not let go. She said his behaviour escalated to kissing her and pulling her close to him in an inappropriate manner. The applicant told him she did not want to be kissed and tried to evade his advances. The encounter ended when a customer entered the store.

[11] The applicant said RIV approached her again 30 minutes later and put his arms around her again asking if he had made her uncomfortable. She said she did not know how to respond to him and decided to leave the store premises.

The company's intervention

[12] The applicant told her mother about what had happened (the incident). At the time, WKT was out of town but was informed about the incident by telephone from the applicant's mother. WKT decided to return home and in doing so, called KRI about the incident. The parties disputed aspects of the discussion including whether WKT was aggressive and angry towards KRI during the call. During the conversation WKT said he would contact the Police while KRI said he would investigate the matter further.

[13] The next day on 3 July 2024 KRI began to gather information to ascertain what had happened. That morning KRI contacted RIV to attend a meeting to discuss the applicant's allegations against him. KRI also contacted two other employees to ascertain whether they had any previous concerns about RIV's workplace conduct.

[14] KRI also contacted the applicant by sending her the following text message:

... hope you are doing well, just wanted to check about the incident that took place last night. Can you send a email to ... about the incident and concerns so I can investigate further about it. As we take type of harassment very serious in our workplace.

Thank you

[15] The applicant and WKT were aware of KRI's text message but did not respond. This was the last direct contact between KRI and the applicant. KRI continued his investigation and was able to review CCTV footage of the area where the alleged incident occurred. The footage did not cover the inside of the fridge and it showed the applicant and RIV were in the fridge for a short amount of time.

[16] Early on the same morning, RIV messaged the applicant about the incident apologising about any misunderstanding. In response, WKT on behalf of the applicant messaged KRI explaining the applicant would not be attending work for the rest of the week and asked him to tell RIV to stop messaging the applicant.

Warning letter and staff email

[17] KRI met with RIV later in the same morning (3 July 2024). During the meeting RIV denied he had sexually accosted the applicant. RIV also claimed he was bullied by the applicant and other employees in the workplace. He said the applicant and the other employees had teased him continuously about whether he was gay. In terms of the incident, RIV told him he touched the applicant by placing his hand on her shoulder and asked her for a kiss. He said he asked to kiss her to prove he was not gay. He claimed nothing further happened.

[18] As a result of RIV's admission of touching the applicant's shoulder, the company issued RIV a written warning for inappropriate contact with another employee. KRI also explained there may still be further action subject to his ongoing investigation and any discussion with the applicant about the incident.

[19] On 4 July 2024 the company sent an email to all staff stating that it had been notified of “instances of inappropriate behaviour in our workplace, specifically related to sexual harassment and bullying” (the staff email). The email also confirmed it had a zero-tolerance policy towards any form of sexual harassment or bullying and would take any allegations of such seriously.

Personal grievance raised

[20] Apart from a message communication from WKT to the company about whether the applicant was entitled to discretionary leave, WKT did not have any further contact with the company from 10 July 2024. Because of the lack of communication between the parties, it was unclear when the employment relationship ended.

[21] On 19 July 2024 the applicant raised a personal grievance against the company for unjustified disadvantage in respect of the incident on 2 July 2024. Specifically, the applicant’s claim against the Company was for sexual harassment in accordance with s 117(a) of the Act.

Police complaint

[22] On 3 July 2024 the applicant also made a complaint to the Police and explained her recollection of what had occurred. Over the next few months the Police made inquiries into the allegation by interviewing the applicant, RIV and KRI.

[23] On 17 September 2024, the Police confirmed it would not take any further action into the applicant’s complaint as there was insufficient evidence to continue the matter further.

Unjustified disadvantage claim

The applicant’s claims

[24] The applicant’s unjustified disadvantage claim focussed on the company’s actions both before and after the 2 July incident. Under the Act, if an employee is subject to sexual harassment by a fellow employee and makes a complaint to the employer, the employer must make inquiries into the matter.¹ Such an inquiry must be fair and reasonable.

¹ Employment Relations Act 2000, s 117.

[25] The applicant claimed the company failed to:

- (a) take practicable steps to investigate complaints of sexual harassment;
- (b) protect her from such harassment in her place of work; and
- (c) take all practicable steps to provide her with a safe and healthy workplace.

[26] The applicant said it was clear from the company's staff email that it was satisfied RIV's sexual harassment behaviour had taken place and it did not take any other practicable steps to investigate the complaint or protect the applicant in her place of work.

[27] The applicant also said KRI and the company failed to show any empathy towards her after the incident including by:

- (a) denying during the phone discussion with WKT that the incident had occurred; and
- (b) declining to grant her paid discretionary leave for the time she took off after the incident.

The company's reply

[28] Prior to the incident, the company claimed it had never had any previous issues about inappropriate behaviour in the workplace. KRI explained he had not personally received any reports of either sexual harassment or bullying in the workplace. He was only aware of a previous staff issue relating to overuse of mobile phones in the workplace which he said he had addressed.

[29] KRI said he first became aware of the incident after the call from WKT on the night of the incident. During the phone call he acknowledged to WKT his doubt as to whether RIV had acted in the way alleged by WKT in the call. However, he did say he was going to investigate the matter.

[30] The company submitted it had taken immediate and reasonable steps to investigate the matter by reviewing the CCTV footage and engaging with RIV and other company employees. It said it also attempted to contact the applicant by sending her a message to provide a written account of what had occurred. Because it did not get a

response to the message, the company said it was unable to properly conclude its investigation into the incident.

The Authority's assessment

[31] After being informed of the incident, the company responded relatively quickly and took steps to ascertain what had happened. Both the applicant and WKT confirmed they were aware of the text message from KRI to the applicant seeking her view of the incident. Understandably, the applicant explained she was not ready to respond to the message and did not respond.

[32] In WKT's case he said he forgot about the text message and expected KRI to message again. It is important to note, later on the same day WKT messaged KRI about other matters (and did not refer to KRI's request).

[33] KRI said the reason he did not try to send a second request for information to the applicant was because of he was aware of her possible state because of the incident. He also said he did not want to contact WKT directly because of his aggressive nature during their initial phone discussion.

[34] Given the seriousness of the matter the company took steps to try and investigate the matter as soon as possible to allow it to make an informed decision on the next steps. Although I acknowledge how difficult the situation was for the applicant, it appeared she did not want to engage further with the company or KRI. In her evidence, she acknowledged her employment had effectively ended on the day of the incident and was not returning to the workplace.

[35] I disagree with the applicant's claim regarding the company's staff email being evidence of endorsing sexual harassment behaviour in the workplace. KRI confirmed the staff email was sent out in response to information he had received as part of his investigation around staff behaviour arising from the applicant's allegations and his meeting with RIV.

[36] The company was in a difficult situation where it could not reach a conclusion on its investigation of the incident. It was important for its investigation to include the applicant's recollection of what had occurred. As a result, it proceeded based on the information it had.

[37] The company's actions were those of a reasonable employer because it had taken appropriate steps to investigate the allegations of sexual harassment in the workplace. Given there had been no previous allegations or safety concerns about sexual harassment in the workplace, it would have been difficult for the company to pre-empt the types of circumstances which arose during the incident.

[38] The only potential defect of the company actions was whether it should have approached WKT and applicant for a second time to obtain the applicant's view on the incident. Given the matter was referred to the Police and the limited engagement by the applicant and WKT with the company, any such defect would have been minor. In any event, for the stated reasons, the applicant's grievance claims (and her claims for remedies) are dismissed.

Costs

[39] The applicant was represented by her father while the company was represented by KRI. As a result, there was no issue as to costs.

Alex Leulu
Member of the Employment Relations Authority