



New Zealand Employment Relations Authority Decisions

You are here: [NZLII](#) >> [Databases](#) >> [New Zealand Employment Relations Authority Decisions](#) >> [2003](#) >> [2003] NZERA 558

[Database Search](#) | [Name Search](#) | [Recent Decisions](#) | [Noteup](#) | [LawCite](#) | [Download](#) | [Help](#)

D v N Limited AA 290/03 (Auckland) [2003] NZERA 558 (25 September 2003)

Last Updated: 13 December 2021

Attention is drawn to the non-publication order that applies to this determination, contained in page 8, paragraph 29 of the Employment Court's decision AC 13/04.

In accordance with the non-publication order, various minutes referred to in the text of this determination are not attached.

Determination Number: AA 290/03 File Number: AEA 52/02

Under the [Employment Relations Act 2000](#)

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND OFFICE

BETWEEN D (Applicant)

AND N Limited (First Respondent)
AND Y (Second Respondent)

REPRESENTATIVES Malcolm Crotty, Counsel for Applicant

No appearance for First Respondent

Andrew Steel, Counsel for Second Respondent

MEMBER OF AUTHORITY Y S Oldfield

INVESTIGATION MEETINGS

8 November 2002, 20 March 2003, 26 March 2003, 4 April 2003

FURTHER SUBMISSIONS 12 November 2003, 20 June 2003, 12 August 2003

DATE OF DETERMINATION 25 September 2003

DETERMINATION OF THE AUTHORITY

Mr [D] commenced work at the [*deleted*] restaurant in [*deleted*] in December 1999. He was dismissed from his employment in May 2000 and alleges that this dismissal was unjustified. He also claims that prior to his dismissal he was sexually harassed by the second respondent, Mr [Y].

[N Ltd], the first respondent, owned and operated [*deleted*] until October 2000 when it was shut down and the premises sold to new owners. Mr [Y] was a director of the first respondent from 27 October 1999 until 1 April 2000. In addition, both during and after this time, he provided management services to the respondent as a consultant. His name was shown on the

restaurant's liquor licence.

The applicant has submitted through Counsel that the first and second respondents were jointly his employers. In the alternative, it is submitted that the Authority should lift the corporate veil and grant orders against the second respondent personally. In any event, it is submitted that if the second respondent was not the applicant's employer, the second respondent incited, instigated, aided and abetted breaches of the applicant's employment agreement.

On this basis, Mr [D] seeks the following remedies from the respondents:

- Wages lost as a result of the dismissal grievance for the period 4 May 2000 to 15 November 2000 in the sum of \$11,500.00;
- Unpaid wages for the period 27 April to 4 May 2000 in the sum of \$500.00;
- Compensation for hurt and humiliation arising out of the sexual harassment and unjustified dismissal grievances pursuant to [section 123\(c\)\(i\)](#) of the [Employment Relations Act 2000](#) in the sum of \$100,000.00;
- Penalties against the second respondent pursuant to [s.134\(2\)](#) of the [Employment Relations Act 2000](#).

There was no appearance for the first respondent at the investigation meeting, however I am satisfied that it was properly served with notice of the meeting and indeed two previous directors of the company gave evidence to the Authority. At my insistence also the second respondent has taken steps to advise a current director who is resident in China that this matter was being investigated by the Authority.

Chronology of Events

1. In December 1999 Mr [D] had been in New Zealand for five years on a student visa and in that time he had completed seventh form and a tertiary qualification. He had neither permanent residence nor a work permit. Despite this, at the conclusion of the 1999 academic year he began looking for permanent work. He responded to a newspaper advertisement for a position as restaurant manager at the *[deleted]* restaurant and was interviewed by Mr [Y] on 18 December 1999.
2. Later that day Mr [Y] telephoned Mr [D] and after some negotiation, offered him full time work at \$500.00 per week. Apart from this, terms of employment were not discussed. Over the course of the employment his hours of work were adjusted from time to time. In addition, changes in the way the three restaurants were organised saw Mr [D] lose some of his managerial duties. I also accept, although it is not the reason given for the dismissal, that Mr [D] struggled with the management role.
3. The parties never entered into a written employment agreement.
4. *[deleted]* was one of three restaurants in *[deleted]* operated by a group of entrepreneurs: Mr [Y]'s brother, Mr [X], Mr [Z] and Mr [W]. Mr [X] was director and shareholder of the first respondent from October 1999 until November 2002, but did not play an active part in the running of the restaurant himself.
5. From the beginning of his employment, Mr [D] reported directly to Mr [Y] who was in overall charge of *[deleted]*. Mr [Y] told me that his brother and the other owners brought him in to set it up from scratch and to employ staff. Mr [Y] told me that he was made a director of the company for a time in order to give him greater accountability and credibility. He was not a shareholder and denies ever having a proprietary interest in the restaurant. Since I have heard no firm evidence to the contrary, I accept what he says on this point.
6. Mr [D] was paid in cash each week by someone (referred to only as *[deleted]*) who he says was responsible for the accounts for all three businesses. Mr [D] never completed a tax form.
7. In early January 2000 a Ms [H] was employed as overall manager of all three cafes after which Mr [D] reported to her rather than Mr [Y]. For a while Mr [Y]'s involvement declined. He spent some time in China in January and again in February. After the end of the America's Cup, business dropped off and he again took on a more hands on role. Apparently, however, it was no longer seen as necessary for him to be a director and in early April he was removed from that position. He told me that the reason for this was that he was at this time in a more conventional management role.
8. Mr [X] gave evidence to the Authority although he did not represent the first respondent in doing so since he had been removed as a director prior to the investigation meeting at which he gave evidence. He told me that [N Ltd] was Mr [D]'s employer under his brother's "recommendations" which I take to mean supervision. Mr [X] told me the first respondent paid his brother as a consultant and that he saw his brother's role as being complementary to that of Ms [H]. Mr [X] told me he had no involvement of any sort in Mr [D]'s dismissal, because "[Y] deals with all such things."
9. On 28 March 2000 Mr [D] and Mr [Y] entered into a relationship of sorts that was conducted in bars and hotel rooms around downtown Auckland. After hearing considerable disputed evidence on the subject I have concluded that when it began it must be described as consensual. It was based on the following agreement (reduced to writing at Mr [D]'s insistence.)

“This is agreements between [D]and [Y].

- (1) [Y] will sign the immigration papers and provide all information that’ll be needed for the permanent residency purpose.
- (2) [Y] will pay all the fees that need to be needed for the permanent residency purpose (including the fees for application/immigration & also the fee for immigration consultant and all in the full amount.
- (3) Only will work for “[deleted]” until the P.R. has been produced.
- (4) [D] will do anything that is asked of him within reason.

Date 28 March 2000.”

10. The arrangement continued up until 20 April 2000, although Mr [D] was by this time becoming uncomfortable with his association with Mr [Y], and unhappy that progress on his residence application was slow. It is common ground that Mr [Y] had already put up the money for this as agreed.
11. On 20 April there was an incident in a downtown hotel room, which decided Mr [D] to end the relationship. Again, I heard considerable disputed evidence about this incident. After considering it all, I have concluded that Mr [D] became frightened when Mr [Y] imposed sexual acts on him that resulted in physical injury to him. Mr [D] did not however make a complaint to the police.
12. Mr [Y] did not wish to end the relationship. He told me that he was obsessed by Mr [D]. Mr

[Y] told me that after 20 April, [D] asked him to “stop pestering him” but Mr [Y] could not stop himself from ringing him repeatedly at the restaurant and at home and coming to the restaurant to watch him while he worked.

13. Subsequent to the incident on 20 April, Ms [H] had observed bruises and scratches on Mr [D]’s neck and arm, and noticed that he displayed a very anxious demeanour when Mr [Y] came into the restaurant. She asked Mr [D] about this and he told her that Mr [Y] was responsible and had been sexually harassing him. He did not go into details. Ms [H] told me that from what she knew of Mr [Y] and what she had observed of Mr [D]’s demeanour around him, she believed Mr [D]’s allegation.
14. Ms [H] gave Mr [D] a tape recorder and suggested he record any future conversations with Mr [Y]. After this, Mr [D] met Mr [Y] on two to three further occasions over a period of approximately a week at most and taped the exchanges between them. Transcripts were provided to the Authority, and were confirmed by Mr [Y] as being accurate.
15. Ms [H] counselled Mr [D] to tell Mr [W] about the situation, and reluctantly he agreed. She spoke briefly to Mr [W] first, explaining that Mr [D] had been too embarrassed to tell her the details but had told her that Mr [Y] was sexually harassing him. On her advice, she said, he was now prepared to talk with Mr [W] about it.
16. Mr [W] agreed to keep the information in confidence until he met with Mr [D]. However, Ms

[H] told me that she believed Mr [Y] knew (prior to Mr [D]’s dismissal) that Mr [D] had confided in her. She told me that he “would send text messages to my mobile phone telling me to keep out of his business (meaning I shouldn’t be talking to [D].)”

17. In late April Ms [H]’s role was changed so that she was no longer in charge of all three restaurants. By early May she had been moved to a role as Maitre D’ in one of the three (not the [deleted].) After talking to Mr [W] she had no further involvement in Mr [D]’s complaint, apart from continuing to give personal support to Mr [D].
18. Neither party took any steps to have Mr [W] give evidence to the Authority. I therefore requested that he attend the investigation meeting. Although he was clearly reluctant to become involved in the matter, I am satisfied that he answered my questions honestly.
19. He confirmed that Ms [H] approached him in the manner she had described. He also confirmed Mr [D]’s evidence that a subsequent meeting took place between him and Mr [D] in which Mr

[D] outlined what had happened to him.

20. Neither Mr [W] nor Mr [D] was entirely sure when their conversation took place but it appears to have been soon after he was dismissed. Mr [W] was very frank in his evidence to me about this meeting. Mr [W] asked Mr [D] what he wanted and Mr [D] told Mr [W] that he wanted to send Mr [Y] to jail.
21. By his own account Mr [W] told Mr [D] that he wanted no involvement and could not help. He told him Mr [X] was his best friend and so he could not tell him about it. He also said he had no way of knowing if what Mr [D] was saying was true, and Mr [D] responded by saying he was prepared to go to Court.
22. Mr [W] told me that at this time, he was the biggest shareholder in the three restaurants and “had the most to lose.” He used the expression to me that “if you go to the top of the feeding pile” he was Mr [D]’s employer. He said he therefore asked Mr [D] to give him time to get his money out of the businesses before he took any legal action. In the weeks that

followed, this is exactly what Mr

[W] did.

23. Mr [W] ended the meeting by telling Mr [D] that he should keep him informed and let him know if there was anything he could do for him.
24. In August 2000 after Mr [W] had got his assets out of the joint venture and was running one of the three restaurants on his own, he gave Mr [D] written confirmation of a job offer there. By this time Mr [D] had resurrected his residence application and used this letter to support his application. However, he never went to work at Mr [W]'s restaurant because he was too depressed.
25. Mr [D]'s personal file refers to him having been given a number of verbal warnings at different times during his employment, and one written warning. He denies the verbal warnings but agrees that he was presented with a written warning signed by Mr [W]. This was dated 3 May 2000 and expressed to be for making personal telephone calls when told not to do so by Mr [Y]. Mr [W] told me that he recalls signing a warning but did so on the advice of Mr [Y] and has no first hand knowledge of the reasons for it.
26. Also on 3 May 2000 Mr [D] had an argument, at work, with another employee, Mr [C]. At this time it appears that Mr [C] had also been given some management responsibilities over Mr [D], which caused some tension between them. The argument arose out of a disagreement over finishing times. It lasted a few seconds and ended when the applicant turned and walked away.
27. Mr [C] described this incident to Mr [Y] as a "barney." He told Mr [Y] that he had felt so annoyed with Mr [D] that he wanted to hit him. Mr [Y] also told me that a staff member in the café next door had spoken to him of hearing raised voices.
28. After speaking with Mr [Y], and with his approval, Mr [C] presented Mr [D] with a warning in connection with the incident. He did this shortly before lunch on 4 May.
29. However, Mr [Y] did not leave the matter there. Later that day he asked Mr [D] for his explanation. Mr [Y] told me:

"I was not satisfied that [Mr D] had any good excuse for arguing with his manager and it was quite clear that he did not recognise [Mr C]'s authority nor show any remorse for his outrageous outburst the night before.

In light of this and the fact that he had earlier been warned on several occasions for lateness to work or talking on the café phone on personal calls, I recommended to the directors that he be dismissed."

30. At the end of the day, as Mr [D] was closing up the restaurant, Mr [Y] told him not to come in the next day, he was dismissed. Mr [D] received no payment for his final week of work.
31. Mr [Y] denied that Mr [D]'s dismissal was motivated by the ending of their association. However, he conceded that he found it very difficult to have him working there.
32. Although Mr [W] signed the warning letter dated 3 May, he told me he was not aware of the dismissal until afterwards. He says he asked Mr [Y] about it and was told "something about fighting." He said he did not become involved because "[Mr Y] looked after *[deleted]* and all related staff matters."
33. Mr [D] told me that in the period after his dismissal he became seriously depressed. Mr [Y] continued for some time to ring him at home which he found very distressing. He sought medical help in May 2000 and was referred to ACC for counselling for sexual abuse. In the second half of 2000 his relationship with his partner (who had not known of his association with Mr [Y]) ended. Mr [D] attributes the break up to the fact that his partner "could not take what

had happened" to him. Mr [D] told me that he chose not to inform the police of his allegations against Mr [Y] because he did not want to cause his partner embarrassment.

34. He says he was not initially well enough to look for a job and in addition, of course, he was still unable to work here legally. He finally got permanent residence (with the support of Ms [H] and Mr [W]) in October 2000 and went onto an unemployment benefit. In November 2000, with assistance from WINZ, he obtained three months temporary employment at IHC. In early 2001 he became very depressed again and was hospitalised briefly following a drug overdose. After this he went overseas to visit his family. On his return in November 2001 he took a job in the retail industry but unfortunately his health deteriorated again and in November 2002 he went on a sickness benefit.

Conclusions

Mr Crotty and Mr Steele have made extensive and thorough submissions. I thank them for this assistance, although for reasons of economy I do not reproduce their arguments here.

Preliminary issue: was the grievance raised within 90 days?

This issue was determined as a preliminary matter. In a minute dated 8 November 2002 (attached) I recorded that the grievance was not raised with the respondents within 90 days, but for the reasons recorded there I have granted the applicant leave to raise the grievance out of time, and proceeded with the investigation of the substantive matters.

Credibility issues

The events which are the subject of this determination took place some time ago which has at times made it difficult for witnesses to reliably recall dates and times of events. However, the sequence of key developments was clear and there was undisputed evidence of the dates of certain key events (such as the dismissal and the incident of 20 April) which has enabled me to construct the foregoing chronology without difficulty. In addition, certain critical evidence such as Mr [Y]'s conduct towards Mr [D] after 20 April, and the process which led to the dismissal itself, was not disputed.

Nonetheless, credibility remained a major issue because of differences on two key matters. The first was whether there was ever a consensual sexual relationship between Mr [D] and Mr [Y]. Mr

[D] strongly denied this. This second related to the incident on 20 April. Mr [Y] strongly denied Mr [D]'s allegations of what amounted to a sexual assault, claiming that their encounter on this day, like all those which had occurred earlier, was consensual. He maintained that Mr [D] chose to end their association because of a quarrel over a proposed gift of a ring from Mr [Y] to Mr [D].

During the course of the investigation meeting I heard a great deal from both Mr [D] and Mr [Y] about the history of their association, including the dates, times and locations of meetings. I also made close scrutiny of the transcripts of the taped conversations. In addition I had the benefit of the evidence of Ms [H], who was a wholly credible witness.

Unfortunately I cannot say the same for either Mr [D] or Mr [Y].

Mr [D] asserts that Mr [Y] made unwanted sexual advances towards him from around 18 March, yet he proceeded to accept \$3,000.00 from him pursuant to the agreement of 28 March, and on several occasions thereafter spent nights on the town with him at Mr [Y]'s expense before visiting

hotel rooms with him in the early hours of the morning. There were (undisputed) discussions between them about the purchase of an expensive ring as a gift. In addition the tone of what is recorded in the transcript indicates a high degree of familiarity, as well as tension, between the parties.

One of the witnesses at the investigation meeting described Mr [Y] as "[Mr D]'s sugar daddy" and I have to say that I have concluded that at the outset, this description was accurate. My assessment is that Mr [D] was initially happy to take advantage of Mr [Y]'s infatuation with him. Unfortunately, he underestimated the situation in which he was becoming involved. I do not accept his denial that the association began by consent. In my view, that denial arises out of Mr [D]'s inability to accept responsibility for getting involved with Mr [Y] in the first place, something he now regrets and with the benefit of hindsight, regards as a serious mistake.

As for Mr [Y], he did not impress me as a reliable witness at all. Much of his evidence was contradictory and inconsistent. For example, his written statement indicated no on-going involvement in the management of the restaurant after the start-up phase, but this was contradicted independently by the evidence of his brother (who came to give evidence in his support) as well as that of Mr [W]. Mr [Y] then accepted that he did continue to have primary responsibility for managing *[deleted]* throughout the entire period it was open.

The general unreliability and self-serving nature of much of Mr [Y]'s evidence incline me to prefer Mr [D]'s account of what took place between the two men on 20 April (as recorded above in my summary.) This view has been reinforced by references in the transcript which support what Mr

[D] has said, and by Ms [H]'s evidence of Mr [D]'s nervous demeanour around Mr [Y].

Identity of the employer

The attached minutes dated 5 October 2002 and 8 November 2002 record some of the history associated with this issue since the matter was first lodged with the Authority. I consider that the evidence in this case falls well short of establishing that Mr [Y] personally employed Mr [D], or anyone else who worked at the *[deleted]* restaurant.

There is no evidence that Mr [Y] has ever held a proprietary interest in either the restaurant itself or the company [N Ltd] that appears to have owned it. The evidence is that he was simply paid for services rendered to the company.

On the evidence I have, it would appear most likely that [N Ltd] reaped the profits of the *[deleted]* and hence the benefit of Mr [D]'s labour, and paid Mr [D]'s wages in return. There is certainly no evidence whatsoever that Mr [Y] paid Mr [D]'s wages or profited from his work. Mr [Y] may have been the human face of the enterprise, but I have not heard anything to suggest that he was acting as anything more than an agent for the company.

For completeness I note that the only alternative scenario for which there is any evidence is that the restaurant was operated by some sort of partnership or joint venture operated by the three entrepreneurs, Mr [X], Mr [Z] and Mr [W], and that this partnership employed Mr [D]. That is to say, if one were to look behind the corporate veil, one might see these three individuals standing behind the first respondent.

However, on balance I remain satisfied that Mr [D]’s contract of employment was with [N Ltd], and that company must properly be the respondent to the claims of personal grievance. Mr [Y] remains as second respondent in respect of the claims against him personally pursuant

to [s.134](#) of the [Employment Relations Act 2000](#).

First Cause of Action: Sexual Harassment.

It is abundantly clear on the undisputed evidence that from 20 April onwards the applicant was sexually harassed by Mr [Y] in a manner that falls squarely within [s.108\(1\)](#) of the [Employment Relations Act 2000](#). Directly and by telephone, in the workplace and at Mr [D]’s home, Mr [Y] pressured Mr [D] to resume their association, and ignored requests to desist from this pressure. Mr

[D] told of the distress that this caused and Ms [H] has confirmed this. Mr [Y] was clearly a “representative of the employer” and subjected Mr [D] to behaviour that was unwelcome to him and had a detrimental effect on him. Mr [D] is entitled to remedies for his distress.

I note that in setting the level of compensation for the harassment I take into consideration the effect of the incident of 20 April in the sense that this has clearly had a huge impact on the distress Mr [D] felt each time he saw Mr [Y] afterwards. However the award of compensation for sexual harassment is not intended to compensate for the immediate distress arising out of the incident. I have concluded that what took place in the hotel room on the night of 20 April happened outside the employment relationship. I do not mean this in the sense that it occurred away from the restaurant. An employee may be harassed in his employment even if the harassment takes place in a physical location outside the workplace. Here, however, the context of incident was a relationship that existed independently of the employment and had, up until that point, been consensual. Mr [D] was not being “harassed...in his employment” on the night of 20 April.

Second Cause of Action: Unjustified dismissal

Again on the evidence I have heard it is possible to come to only one conclusion in relation to Mr [D]’s dismissal and that is that it has not been justified, substantively or procedurally. On the basis of a very cursory inquiry Mr [Y] laid blame for the altercation upon Mr [D]. He could not, at the investigation meeting, offer me any real explanation as to why he saw this brief argument as such a serious incident or why he believed responsibility for it lay with Mr [D]. Moreover, Mr [D] was dismissed for something which had already been the subject of a warning. Despite Mr [Y]’s protestations to the contrary, I find that the circumstances give rise to a strong inference that he dismissed Mr [D] because he had realised that he had spoken to Ms [H] about Mr [Y]’s conduct.

Name Suppression

Mr [Y] has sought name suppression on the grounds that publication of his name as the harasser in this case will cause him public humiliation and be excessively punitive in its effects. His application for suppression has been opposed by Mr [D].

The Employment Court has had occasion to discuss the question whether the perpetrators of sexual harassment should be entitled to name suppression, and has come to some strongly worded conclusions that generally, they will not be.

In [Z v A \[1993\] 460 at 495](#) Judge Goddard stated:

“at the end of the day the world is probably entitled to know who the sexual harassers are and for whom they work and where, because that will enable their superiors, and indeed compel them, to take steps to ensure that other employees will not be subjected to the conduct complained of and may also lead to the harasser changing

his or her ways...

it is not normally a good reason for protecting the identity of the harasser that disclosure would embarrass him, still less so that it would affect the employer...”

In [Slogett v Taranaki Health Care \[1995\] NZEmpC 92; \[1995\] 1 ERNZ 553 at p.571](#) Chief Judge Goddard reiterated his earlier views, saying:

“I cannot see any valid reason for masking [the harasser’s] identity, particularly as he is not free from blame...”

and went on:

“it is appropriate to allow name suppression only in cases where it is necessary to protect the victim or the interests of the due administration of justice.”

I consider it clear from these authorities that it is not proper for me to suppress the name of the harasser in a matter such as this, where the victim opposes suppression. As previously advised to the parties therefore, suppression is declined in this case.

However, I do note that the chronology recorded above is a summary of the facts as I have found them to be. I have not included specific details of all the allegations of harassment. I consider it unnecessary to do so, and I rely on the following statements by Chief Judge Goddard in Z v A [1993] 460 at 491:

“...how extensive reasons are to be in any particular case must depend on the facts and circumstances of the case and the manner in which it is conducted and not on any inflexible rule. There is certainly no hard and fast rule where particulars are given, as they should always be, that each of the particulars of an allegation must be discussed in the decision. Sometimes it is possible to deal with the gravamen or thrust of a case or allegation without going into fine detail...

I consider these remarks particularly apposite in the present case. For the purposes of my determination, the most relevant conduct is that between 20 April and 4 May, which involved no physical contact between Mr [Y] and Mr [D]. I see no reason to include details of earlier conduct.

Remedies

Compensation pursuant to [s.123](#)

In his statement of problem, Mr [D] has claimed a global figure of \$100,000.00 pursuant to [s.123](#) as compensation for both the sexual harassment and the dismissal. I have decided that it is appropriate to treat the compensation for the two causes of action as one lump sum, since the distress Mr [D] experienced as a result was all part of a whole for him, and because, as I have found, the dismissal was directly connected to the harassment.

Mr [D] was, I accept, deeply traumatised by Mr [Y]’s conduct over the two week period prior to his dismissal and by the loss of his job. There can be no doubt that a significant award is called for. **The first respondent is ordered to pay to Mr [D] the sum of \$60,000.00 as compensation for hurt and humiliation arising out of the sexual harassment and the unjustified dismissal.**

Loss of earnings

At the time of his dismissal, Mr [D] did not have permanent residence in this country. He was not legally entitled to be in paid employment. By the time he obtained residence, the respondent company had closed the doors of the *[deleted]*. Mr [D] has not therefore lost remuneration as a result of the personal grievance, and I can make no award for reimbursement of lost earnings pursuant to [s.128](#) of the [Employment Relations Act 2000](#).

Arrears of wages

He had, however, already earned his final week’s wages. **The first respondent is ordered to pay to Mr [D] the sum of \$500.00 gross pursuant to [s.131](#) of the [Employment Relations Act 2000](#).**

Penalties

[Section 134\(2\)](#) of the [Employment Relations Act 2000](#) provides:

“Every person who incites, instigates, aids or abets any breach of an employment agreement is liable to a penalty imposed by the Authority.”

Both the sexual harassment itself, and the dismissal, constitute breaches of Mr [D]’s employment agreement. In my view there can be no doubt that as the perpetrator of the sexual harassment, and the architect of the dismissal, Mr [Y] instigated both these breaches. The serious and deliberate nature of his conduct is clearly such as to warrant penalties, and at the maximum level.

In the circumstances also I am satisfied that it is appropriate for those penalties to be paid directly to Mr [D].

The second respondent is therefore ordered to pay to Mr [D]:

- **\$5,000.00 for a breach associated with the personal grievance of sexual harassment;**
- **a further \$5,000.00 for a breach associated with the personal grievance of unjustified dismissal.**

Summary of Remedies

The first respondent is ordered to pay to the applicant the following:

- \$500.00 arrears of wages;
- \$60,000.00 total compensation pursuant to [s.123](#) for distress arising out of personal grievances of sexual harassment and unjustified dismissal.

The second respondent is ordered to pay to the applicant the following:

- \$5,000.00 being penalty for instigating a breach of the applicant's employment agreement associated with sexual harassment of the applicant;
- \$5,000.00 being penalty for instigating a breach of the applicant's employment agreement associated with his unjustified dismissal.

Costs

At this stage I leave this issue to the parties to negotiate between themselves. If however they cannot reach agreement, they have a period of 28 days from receipt of this determination in which to request a timetable for submissions on the issue.

Yvonne Oldfield

Member, Employment Relations Authority

NZLII: [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#)

URL: <http://www.nzlii.org/nz/cases/NZERA/2003/558.html>