NOTE: This determination contains a non-publication order prohibiting publication of certain information

IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2025] NZERA 794
3276599

	BETWEEN	HOBBY ZONE CO. LIMITED Applicant
	AND	VLO Respondent
Member of Authority:	Sarah Blick	
Representatives:	Amy De-La Cruz, advocate for the applicant India Townsend and Ngahuia Muru, counsel for the respondent	
Investigation Meeting:	3 September 2025	
Submissions and information received:	4 and 10 September 2025 from the applicant 10 September 2025 from the respondent	
Determination:	8 December 2025	

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Hobby Zone Co. Limited (Hobby Zone), a pop culture and anime merchandise store, is claiming former employee VLO breached the duty of good faith, an implied duty of fidelity and clauses of his employment agreement. Its claims are based on comments made by VLO in a Facebook Messenger chat group (chat group) used by Hobby Zone employees, alleged to be disparaging about Hobby Zone and its General Manager/Operations Coordinator (the manager), and inciting others to resign.

[2] Damages are sought in the form of medical and counselling expenses for the manager related to mental impacts, and recruitment advertising costs relating to replacement staff members. Unspecified damages of approximately $25,000 for alleged loss of sales were also sought, claimed to be a result of VLO's actions. At the investigation meeting and in closing submissions, Hobby Zone confirmed that claim for damages was no longer being pursued. It has therefore not been determined.

[3] Hobby Zone also seeks penalties in relation to above alleged breaches.

[4] VLO's counsel says Hobby's Zone case hangs entirely on comments made in a private discussion between friends, and VLO was only one of many individuals who wrote similar, and some others significantly worse, messages in the private chat group – yet VLO is the only one targeted through litigation.

[5] It was submitted that this is a case where a young person has been significantly and unfairly burdened by an unfounded and targeted claim by their ex-employer.

[6] VLO's counsel submits he has not breached any duties towards Hobby Zone. Further, VLO submits the damages claim is a personal claim brought by one employee against him, and it is therefore not within the jurisdiction of the Authority. Further, he submits the damages claim is not made out, and Hobby Zone's claims for penalties have been brought outside of the statutory timeframe in the Employment Relations Act 2000 (the Act).

The Authority's process

[7] The Authority received witness statements from Hobby Zone's director Jonathan Chen, the manager, and the employee who made the manager aware of the group chat messages, who I refer to as JAI in this determination. For VLO, the Authority received statements from VLO and former Hobby Zone employees Jasmine Singh Kang and Joshua Posadas. They each gave evidence under oath or affirmation at the Authority investigation meeting.

[8] 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 information received and considered.

Non-publication orders

[9] Hobby Zone has sought non-publication orders preventing publication of the manager's name and personal medical information provided during the investigation. It further seeks orders preventing the publication of JAI's name.

[10] At the investigation meeting VLO's counsel advised he was also seeking non-publication orders in relation to his name.

[11] Although Hobby Zone opposed orders in relation to VLO's name, I am satisfied that in terms of *MW v Spiga*, there are specific adverse consequences for all three individuals with respect to future employment prospects if their names are made known.[1] They are all at an early stage in their work lives, particularly VLO. There is enough information before me to rebut the presumption of open justice in this case. There is no public interest in their names and the manager's personal health information being disclosed. A permanent non-publication order is made under clause 10(1) of schedule 2 of the Act in relation to the manager's name and medical information disclosed during the investigation of this matter or referred to in evidence, and of JAI and VLO's names.

The issues

[12] The issues requiring investigation and determination are:

(a) Is Hobby Zone within time to bring penalty claims under ss 4, 134 and 135 of the Act?
(b) Did VLO act in breach of the duty of good faith, implied duty of fidelity and terms of his employment agreement (namely clauses 6.1 (2), (6), (11), 24, and 37) in comments made in Facebook messages?
(c) If brought within time, should a penalty or penalties be imposed on VLO?
(d) Has Hobby Zone suffered loss as a result of VLO's conduct, such that he should be held liable to pay damages to compensate for that loss?

[1] *MW v Spiga Limited* [2024] NZEmpC 147.

Background

[13] VLO took a job with Hobby Zone as a retail assistant, stated to be on a casual basis at Sylvia Park shopping centre. He was 17 years old at the time, and says this was his first job. He took on the role from about October 2022 prior to studies commencing in February 2023.

[14] In a written individual employment agreement (IEA), VLO's pay was recorded as $21.50 (30 cents above the minimum wage at the time). He reported to the manager.

[15] Hobby Zone was operating a kiosk at Sylvia Park over the Christmas period in 2022, at which VLO worked, along with a number of other young employees. His hours fluctuated depending on Hobby Zone's business needs.

[16] There was a Facebook chat group, of which the manager was a member and in which operational work was raised and discussed.

[17] Ms Singh Kang gave evidence that she created the chat group to arrange a Christmas function with other employees, which VLO was invited to. It is common ground it was not set up or administered or used by Hobby Zone management. The Authority heard evidence that the intention for creating the chat group was to arrange a gathering to celebrate the busy Christmas period with certain colleagues. Sixteen people were in the group at relevant times. The chat group evolved into members chatting socially. Employees, including VLO, also messaged each other in the group about issues at Hobby Zone.[2] Hobby Zone's witnesses acknowledge the group was a private chat group.

[18] The manager says in the evening on Christmas Eve 2022, she received a notification of a one-star review from a customer complaining about the service they received at the kiosk. The manager sent a message to the customer that night saying she would urgently investigate because it would impact which staff members would be rostered to work on Boxing Day. She also sent a message to VLO about the complaint. He apologised if the complaint involved him and outlined which customer he thought it might be.

[19] The manager then sent a message to Hobby Zone employees screenshotting the Google review. One of her messages acknowledged December had been "very stressful for us all" and

[2] At the investigation meeting, it became clear that Hobby Zone had possession of other chat group messages, but only a selection of those involving VLO had been produced in the Authority.

said if anyone was feeling frustrated at her, to send their resignation letters to her, providing her email address. A screenshot provided of the messages show an employee left the work chat group that night.

[20] The manager says on Christmas Day she was "threatened" by another employee that they would quit their role if they did not receive a pay rise. She says she was also told all employees were unhappy.

[21] In the evening on Christmas Day, the manager messaged Hobby Zone employees again saying if anyone was unhappy with their pay, conditions and how the work was casual, to please send their resignations to her.

[22] VLO and others in the chat group sent various messages over this period, about which Hobby Zone complains.

[23] Ms Singh gave notice of her resignation on 28 December 2022.

[24] On 6 January 2023, JAI, who was a member of the group chat, shared messages from it with the manager. The manager says she was very distressed by them.

[25] Two to three other employees apparently resigned around this period.

[26] Mr Chen was overseas at the time the manager became aware of the messages, and at the investigation meeting, both he and the manager claimed the latter did not advise Mr Chen of the messages until after his return to New Zealand.

[27] During a rostered shift on Friday 3 February 2023, Mr Chen approached VLO telling him he need to speak to him, and took VLO to a nearby coffee shop. It is common ground Mr Chen raised the issue of the messages in the chat group. Feeling pressured, VLO says he told Mr Chen he would apologise to the manager for his comments. At the end of the conversation Mr Chen handed VLO a letter from Hobby Zone's representative, saying it had already found VLO had made comments in the chat group in breach of provisions of the IEA. The letter said it required VLO to cease the conduct and provide an apology to the manager by 5pm the next day, a Saturday. It further stated Hobby Zone considered VLO's conduct was serious misconduct, and it had reached a preliminary decision to dismiss him, and sought a response from him by 8 February 2023.

[28] Mr Chen says he then ended VLO's shift immediately. VLO says he was very distressed as a result of the events and sought legal support from Ms Singh Kang and another employee, along with mental health support from a public provider overnight.

[29] At the investigation meeting, Mr Chen stated two other employees involved in the chat group were provided with similar letters as the one he gave to VLO. The Authority was told one reached a settlement, and the other was not pursued. There is no evidence Hobby Zone took action in relation to other employees in the chat who made comments about Hobby Zone.

[30] Hobby Zone says despite his "promises", VLO failed to apologise to the manager and informed other employees about Hobby Zone's actions. VLO gave evidence that was upset by the developments and sought help from employees he considered were his friends, and with Ms Singh Kang's help, engaged with Youth Law and sought legal advice, which he followed. Youth Law sought an extension to respond to Hobby Zone's letter.

[31] Four other Hobby Zone employees resigned between about 7 and 14 February 2023.

[32] By 15 February 2023, Youth Law wrote to Hobby Zone giving notice of termination of VLO's employment, and advised he was prepared to leave the chat group and not make disparaging comments about Hobby Zone, its officers or employees. Youth Law informed Hobby Zone of his right to raise a personal grievance, but also that if Hobby Zone accepted his response he was willing to put the matter behind him.

Time limitations for penalties under the Act

[33] An action for the recovery of a penalty under the Act must be commenced within 12 months after the earlier of the date when the cause of action first became known to the person bringing the action; or the date when the cause of action should reasonably have become known to the person bringing the action.[3]

[34] Hobby Zone's statement of problem, lodged on 2 February 2024, states the chat group messages attributed to VLO were discovered on 3 February 2023. It said Mr Chen took immediate action by discussing the matter with VLO during his work shift (namely, the same day). The preliminary decision letter was provided to VLO at the same time. However, at the

[3] Employment Relations Act 2000, section 135(5).

investigation meeting, the manager acknowledged that the group chat came to her attention in "early January 2023", when she was in charge of Hobby Zone in Mr Chen's absence. JAI's evidence confirmed that it was on 6 January 2023 that they showed the manager the group chat.

[35] As general manager/operations co-ordinator, and being in charge of all operational matters at Hobby Zone in Mr Chen's absence, the manager was acting in the highest position in the company at that time. VLO submits that the arising action is at the point when the chat messages were shown to the manager on 6 January 2023. I agree. The penalty causes of action first became known to Hobby Zone or should reasonably have become known to Hobby Zone by 6 January 2023.

[36] If I am wrong in that finding, Hobby Zone's evidence that Mr Chen did not become aware of the chat group until 2 February 2023 was implausible. He discussed staffing matters with the manager a number of times when he was overseas. On the balance of probabilities, it was unlikely the manager would not share her discovery with Mr Chen given their close relationship. This was stated to be a discovery that left her distressed and unable to sleep at night and having to seek medical advice.

[37] Mr Chen's evidence of the date of his arrival also shifted, and no supporting evidence of the date of his arrival was provided. At the investigation meeting Mr Chen gave evidence at that the first time he heard about the group chat was at the office on 2 February 2023. It is highly implausible that he was then able to instruct his representative in the early evening on 2 February 2023, carry out any type of inquiries, have time to read and consider the messages, consider three employment agreements and draft three letters for them to be provided to Mr Chen around lunchtime the following day. Mr Chen must have known about the discovery of the group chat prior to the afternoon of 2 February 2023 and therefore Hobby Zone's claims are out of time.

[38] Given all these factors, it is reasonable to conclude that Hobby Zone was aware or ought reasonably to have been aware of the alleged breaches before 3 February 2023. Hobby Zone's claims for penalties for the alleged breaches were not brought in time, and there is no discretion to extend those timeframes.

Alleged breaches of good faith, fidelity and clause 6 of IEA

[39] Hobby Zone claims VLO breached duties of good faith and fidelity he owed it and his contractual obligations by:

(a) telling people in the chat group they deserve better than working in Hobby Zone;
(b) telling people in the chat group that he wanted Hobby Zone to receive one star rating in Google reviews;
(c) inciting employees to quit with negative connotations;
(d) acknowledging staff for quitting;
(e) bringing ex-employees into the conversation and spreading rumours and negative sentiment.

[40] Hobby Zone claims VLO breached clause 6 of the employment agreement, which relevantly stated the following:

> 6.1. The Employee agrees to:
> …
> 2) carry out the duties faithfully and honestly, and in the best interests of the Employer
> …
> 6) not do anything that may affect the goodwill and reputation of the Employer
> …
> 11) deal with the Employer in good faith in all aspects of the employment relationship.

Duties of good faith and fidelity

[41] The duty of good faith is a mutual obligation on parties to an employment relationship to deal with each other in good faith and not to do anything (whether directly or indirectly) to mislead or deceive each other or that is likely to mislead or deceive each other. It requires the parties to an employment relationship to be active and constructive in establishing and maintaining a productive employment relationship, in which the parties are responsive and communicative.[4]

[42] A duty of fidelity is owed by an employee, and is breached when there is conduct that undermines the relationship of trust and confidence between employer and employee.[5] The

[4] Employment Relations Act 2000, section 4(1A).
[5] *Smiths City (Southern) Ltd (in rec) v Claxton* [2021] ERNZ 904 at 923.

duty of fidelity, amongst other things, implies that the employee will at all times act in the best interest of the employer. The more senior the employee, the more onerous is the duty of fidelity.

(a) "Deserve better" comment

[43] VLO described Hobby Zone as a difficult working environment, being required to work long hours standing at the kiosk without the ability to take meal and toilet breaks during a busy Christmas period. Ms Singh Kang gave evidence that she shared concerns about the working environment. The manager gave evidence about the efforts she made to accommodate employee preferences for hours of work and allow staff to take rest breaks. However, her message to staff on Christmas Eve acknowledged the stress all staff had been under.

[44] I accept VLO's message that staff "deserved better" reflected his frustration with work conditions. This sentiment appears to have been widespread as shown by VLO's colleagues' comments in the selection of the group chat messages lodged.

(b) Google review

[45] Hobby Zone is claiming VLO has breached his duty of good faith and fidelity by making a comment about wanting Hobby Zone to receive a one-star review on Google.

[46] The evidence showed VLO became aware of the one-star google review when the manager messaged him about it on Christmas Eve. VLO was open and communicative with the manager and provided a response about what he recalled and was genuinely apologetic.

[47] VLO and Ms Singh Kang recall feeling the manager overreacted to the one-star review. Objectively that was the case. I accept VLO's explanation that he was frustrated with the way Hobby Zone had handled the one-star review, and his comments were not serious, and he had no intention of following through with his comment. There was also evidence of other employees joking about the one-star review.

[48] There is no evidence to support that the message sent by VLO caused any damage to the Hobby Zone's customer base, or that his conduct at work did so. Additionally, the message was private and not visible to customers.

(c) Inciting employees to resign

[49] Hobby Zone claims VLO incited people to resign in the messages he sent. VLO's messages relate to his own personal wish to send his resignation letter in. He congratulated another employee for resigning, after another had done so. There is no evidence of pressure from VLO to others to resign.

[50] Ms Singh Kang and Mr Posadas' evidence was that they were in no way incited or encouraged by VLO to resign, and provided other credible reasons for so doing. Supporting correspondence from other employees provide their personal reasons for resigning, which unrelated to any actions by VLO. The employees that resigned were employed on a casual basis, many over the summer months prior to school, university and permanent job commitments. As pointed out for VLO, the very nature of casual employment is the lack of guaranteed hours or ongoing commitment for both employee and employer.

[51] The incitement has not been proven by Hobby Zone. VLO's evidence, corroborated by the evidence of the manager indicates it was more the working conditions that led people to resign. It seems likely that if anyone encouraged resignations, it was the manager, through her reaction and messages to staff on Christmas Eve and Christmas Day, and the apparent cutting of staff shifts.

[52] Hobby Zone also suggested VLO instigated people to resign by telling current employees of the matters raised against him. At the investigation meeting, Mr Chen acknowledged serving similar letters on two other employees. VLO was then not allowed to work the remainder of his shift. His evidence was that he only told two people about the allegations against him – Ms Singh and another employee, who were no longer employed by Hobby Zone at the time. Both were in a position to or able to assist VLO in dealing with the employment relationship problem he was facing.

[53] VLO states he did not advise any current employees, including those who resigned, about Hobby Zone's investigation process. While Hobby Zone claims it is more likely than not that VLO warned his friends about the investigation process Mr Chen was undertaking, the evidence was shown to be speculative.

(d) Acknowledging staff for quitting

[54] Hobby Zone is claiming that VLO's message saying "good job" in response to another employee resigning was also a breach of his duty of good faith and fidelity. It is evident that the working environment at Hobby Zone was difficult at the time, so it is understandable why staff may have been looking for other work opportunities.

(e) Bringing ex-employees into the conversation and spreading rumours and negative sentiment

[55] This claim appears to be based on comments by VLO suggesting notice of resignation did not need to be given when staff could just not show up to work, and a further comment that he was glad he was leaving the country (for a holiday) in January 2023, and potentially other comments.

Findings

[56] I accept the submission made for VLO that he has been disadvantaged in the proceedings being brought by Hobby Zone at a late stage, with the evidence he is able to provide. Hobby Zone has also provided only selective extracts of the group chat which is likely not reflective of the entire context of conversation and purposes of the group. I have taken this into account in my assessment of the evidence presented.

[57] I take into account VLO was a junior, casual employee and earning just above the minimum wage rate, in his first employed job. Given these factors the duty of fidelity imposed on him are much lower than is suggested by Hobby Zone.

[58] Counsel for VLO submitted that if Hobby Zone's position is upheld, it will create a dangerous precedent, condoning an employer's ability to encroach on an employee's private discussions and lives without their consent. Such discussions naturally occur electronically in his generation - while in past generations this may have been chat in a coffee shop or pub. It was said it would also create an extreme level of pressure and fear for ordinary conduct in the workplace, and employees should be allowed the right to talk privately and let off steam. It was pointed out that VLO's evidence was corroborated by the evidence of Ms Singh Kang and Mr Posadas, that the group chat was a "way for us to destress". The participants did not expect their employer to "see into their private lives".

[59] Observations about the use of social media platforms some years ago have only grown in relevance:[6]

> It is apparent that the increased use of social networking sites by individuals to express dissatisfaction with their employers is becoming more prevalent. This carries a risk. It is well established that conduct occurring outside the workplace may give rise to disciplinary action, and Facebook posts, even those ostensibly protected by a privacy setting, may not be regarded as protected communications beyond the reach of employment processes. After all, how private is a written conversation initiated over the internet with 200 'friends', who can pass the information on to a limitless audience.

[60] While I in no way condone the comments made by VLO in the chat group, I have factored into my assessment the age group of the members and that it was intended to be a private chat group. The communications were among young people accustomed to communicating electronically, who appear not to have comprehended that their private communications might carry the risk of being passed on to others, including their employer in this situation.

[61] In all these circumstances the alleged breaches of duty of good faith and fidelity by VLO have not been established on the balance of probabilities.

Alleged breach of confidentiality obligations

[62] Hobby Zone is claiming VLO breached confidentiality obligations in his IEA as set out in clause 24, by sharing an employee roster in the chat group on one occasion. VLO denies that a work roster, consisting of employee's names and shifts can be reasonably meet the definition provided for under the IEA.

[63] The elements of the test as to whether information is "confidential" or not has been variously examined. These elements are: the role played by the employee and whether they routinely deal with sensitive information, the nature of the information, whether the employer regards the information as confidential and if this has been communicated to the employee and the extent to which the information said to confidential can be "isolated" from other information the employee has access to.

[64] VLO was in a junior position with Hobby Zone, and it was not common, given his position, that he would habitually handle confidential information. Hobby Zone would also

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[6] *Hook v Stream Group (NZ) Pty Ltd* [2013] NZEmpC 188; [2013] ERNZ 357.

share the roster with its employees through its own chat group, so it was likely not apparent to VLO that doing the same would be a breach of his confidentiality obligations in any event. Rosters are a commonly used tool by employers, any disclosure of this would not provide any insight or competitive edge over Hobby Zone as to cause it loss. VLO has given evidence that he was never informed by Hobby Zone that the information was confidential, which has not been disputed. There are also no features on the roster such as "confidential" that would go so far as to let VLO know that the information should not be disclosed outside the workplace.

[65] This alleged breach has also not been made out.

Alleged breach of disparagement clause

[66] Hobby Zone further says VLO breached his obligation not to disparage his employer, at clause 37 of the IEA which provided:[7]

> 37. NON-DISPARAGEMENT
> The Employee must not at any time, either during their employment, or at any time after termination, disparage or otherwise make any statement, or permit or authorise any statement to be made, which is **calculated or reasonably likely** to **damage the reputation or cause other damage** to the Employer or any of its Employees or officers.

[67] Hobby Zone relies on the same group chat messages this breach.

[68] Having heard VLO's evidence, I am satisfied his comments were not calculated, nor reasonably likely to cause damage to the reputation of Hobby Zone or its employees, including the manager. Some of the comments were either expressing feelings of frustration, which was to some extent understandable, in the circumstances, even if expressed in an unprofessional way. None of the messages sent into the group suggest VLO's ability, or other workers' ability to deliver customer services, was impacted by their engagement in the group.

[69] The messages in the chat group are distinguishable from other cases the Authority has been referred to, on the basis that the group chat was private, and was only accessible to a limited number of people.[8] Given the privacy of the group chat, the content shared in it was not available for customers to be able to see, nor were customers exposed to any of the messages.

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[7] Emphasis added.
[8] Examples included *Marcellino v Veenhuijesn* [2020] NZERA 26; *Hamilton City Council Ltd v Halse* [2022] NZERA 34.

[70] Hobby Zone's evidence shows that VLO was only one of a number of employees who made similar comments, with one individual making far worse comments in the group chat. It has not been shown how VLO was solely responsible given this. This claim has also not been made out.

Damages

[71] As Hobby Zone has not established any of the alleged breaches, the issue of damages does not need to be determined.

[72] The Authority observes, however, that the loss incurred would need to have been caused by VLO's conduct, and be sufficiently proximate and not too remote. The burden of proof would have been on Hobby Zone to establish such loss on the balance of probabilities.

[73] As VLO's counsel has pointed out, there was no evidence of reimbursement of the manager's medical expenses or contribution to them by Hobby Zone, despite Hobby Zone being given an opportunity to provide evidence of loss suffered. This ultimately appears to have been a personal claim made by one employee against another. Further, even if Hobby Zone was able to show it has incurred any of the alleged losses, it would not have been able to show it was due to VLO's conduct. The loss said to be suffered by Hobby Zone would have been too remote.

Outcome

[74] Hobby Zone's penalty claims are declined, having been brought out of time. The remainder of its claims have also not been established.

[75] While the Authority acknowledges the manager has been significantly impacted by discovering the contents of the group chat messages, it would have been an unfair and disproportionate response to impose liability for penalties and damages on VLO, had breaches been established.

[76] I also acknowledge the profound impact these proceedings have also had on VLO early in his working life.

Costs

[77] VLO has been represented on a pro bono basis by current and previous counsel. To enable VLO to consider his position on costs, costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[78] If VLO wishes to pursue costs, and the parties are unable to resolve them such that an Authority determination on costs is needed, VLO may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Hobby Zone will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[79] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual "daily tariff" basis unless circumstances or factors, require an adjustment upwards or downwards.

Sarah Blick
Member of the Employment Relations Authority