

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

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-A-TARA ROHE**

[2025] NZERA 643  
3257879

BETWEEN	JLG Applicant
AND	DAX Respondent

Member of Authority:	Rowan Anderson
Representatives:	Denise Evans, counsel for the Applicant Dianne Lester, counsel for the Respondent
Investigation Meeting:	29 November 2024 in Wellington
Submissions and further information received:	Up to and including 24 September 2025
Determination:	13 October 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The applicant, JLG, was employed by DAX. DAX is a partnership of his father and mother. DAX traded in the installation and repair of garage doors.

[2] The DAX partnership was formed in 2016 and JLG was employed with DAX from that time. The business had operated prior to DAX being formed and JLG had worked, in one way or another, in the business for approximately 27 years. In 2023 there was a breakdown in the employment relationship and JLG last attended work on 15 May 2023. The business has since been sold to a third party.

[3] JLG has lodged a statement of problem claiming, amongst other things, unjustified dismissal, unpaid holiday pay, and reimbursement for wages said to have been deducted without authority.

[4] DAX denies the claims made by JLG and have raised a counterclaim seeking the return of property allegedly taken by JLG.

### **Non-publication**

[5] Having regard to the contentious nature of the proceedings and the relationships involved, I sought further information from the parties as to whether non-publication orders were being sought. Counsel for JLG confirmed that non-publication orders were sought having regard to the special family circumstances involved. The application was supported by DAX.

[6] I am satisfied that there is an appropriate basis on which to make non-publication orders relating to the names of the parties and witnesses. Having convened an in-person investigation meeting, I directly observed the conduct of the individual family members and in many cases the difficulties they had in giving evidence. The proceedings and employment relationship problem have impacted all of the relevant individuals considerably and I conclude there is a real and significant risk that publication of their identifying details would likely lead to increased, significant, and unnecessary distress.

[7] The difficulties, and likely impacts, are additional to what might be expected in terms of the stresses and impacts of employment relationship problems more generally. This is in large part due to the nature of the relationships involved and the breakdown of personal relationships.

[8] I order, pursuant to clause 10 of the second schedule of the Employment Relations Act 2000 (the Act) that the names and identifying details of the parties and all of the witnesses, other than appear in this determination, be prohibited from publication.

[9] A random generator has been used to refer to the applicant, respondent, and witnesses in these proceedings.

## **Issues**

[10] The issues identified for investigation and determination, are:

- (a) Was JLG dismissed or did he abandon his employment?
- (b) Did JLG raise his personal grievance within the statutory 90-day period at s 114 of the Act?
- (c) Was JLG unjustifiably dismissed (subject to having raised a grievance within 90 days)?
- (d) If DAX's actions were not justified what remedies should be awarded, considering:
  - (i) Compensation for humiliation, loss of dignity, and injury to feelings (s 123 of the Act); and/or
  - (ii) lost wages (s 123 and 128 of the Act).
- (e) Is JLG entitled to payment for arrears of wages or holiday pay, or any unauthorised deductions made from his wages?
- (f) Should any order be made requiring JLG to return any items (including business records, materials and tools) and/or reimbursement of sums claimed by DAX as to tools, property or other costs incurred?
- (g) Should either party contribute to the costs of representation (if any) of the other party?

## **The Authority's Investigation**

[11] An initial case management conference was held on 14 March 2024. The parties were directed to attend mediation and amended documents were lodged following the case management conference.

[12] A further case management conference was held on 23 July 2024 to discuss the procedural arrangements for the Authority's investigation. Timetable directions, including for the provision of written witness statements, were issued and an investigation meeting set down.

[13] A written witness statement was received from applicant, JLG, in support of his claims. COY, JLG's father, and XWM, JLG's mother lodged written witness statements along with KQX, JLG's sister, and AHH, a friend of JLG's who had previously been in a relationship with him.

[14] An investigation meeting was held in Wellington on 23 June 2025. All witnesses attended and gave evidence under oath or affirmation. A timetable for the exchange of written submissions following the investigation meeting was agreed.

[15] 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.

**Was JLG dismissed from his employment? If so, was JLG unjustifiably dismissed?**

[16] While the onus is on DAX to establish a justification for any dismissal, the initial onus is on JLG to establish that he was dismissed from his employment. The first question requiring determination is whether JLG was dismissed from his employment.

[17] The last day on which JLG worked was 15 May 2023, his evidence being that was the day on which he suffered an injury in relation to which he made a claim with ACC.

[18] DAX claims that they first heard JLG was on ACC in late June 2023, that JLG was absent without explanation for 5 months, and that during that time COY had made numerous unsuccessful attempts to contact him. COY says those attempts included trying to contact JLG by phone, text message, and in person.

[19] JLG claims that he was dismissed from his employment by text message from COY. JLG attached a copy of the text message that, while undated, he says he received from COY in October 2023:

[JLG]

I am sick and tired of all your threats and disrespect for your mother and I. We have 7 sectional doors to install now. No installation means no income!

It appears you don't want to be employed anymore, so I am seriously thinking of winding up.

I want all my paperwork Back.

[20] While JLG also says that on 11 September 2023 DAX wrote to him requiring him to remove any of his property from the work premises, he clearly relies on the text message as having given him the impression that his employment had been terminated.

[21] COY does not deny sending the text message, although says it was sent in the context of having attempted contact with JLG numerous times in order to find out what

was going on. DAX maintains that JLG abandoned his employment having been absent from work for an extended period in circumstances where no explanation was provided, and he failed to respond to numerous attempts to contact him about his return to work.

[22] JLG did not respond to the text message at the time. I conclude that he conducted himself in a manner consistent with the employment relationship having been ended from at least that point in time. It is clear that, at some point following the text message in October 2023, the parties both proceeded on the basis that the employment relationship had come to an end. JLG proceeded on that basis because he considered, I find incorrectly, he had been dismissed via the sending of the text message. That did not amount to a dismissal and while I conclude the employment relationship later ended, it did not end by way of dismissal as alleged.

[23] I do not consider the October 2023 text message evidences a dismissal at the initiative of DAX. The content is somewhat problematic and may have been relevant in other circumstances, for example if JLG had resigned based on a breach of duty by DAX and was claiming constructive dismissal, but does not amount, having regard to the other circumstances at the time, to an unequivocal sending away. Instead, it has the clear appearance of COY seeking to illicit a response from JLG and to prompt him to return to work.

[24] JLG's evidence was that DAX made a deposit of 10 cents into his account in November 2023 and that XWM also put 10 cents into his letterbox. I am not satisfied, in the context of those matters being denied by COY and XWM and in the absence of any documentary evidence, that that occurred. As such, I am not satisfied that dismissal occurred at that time.

[25] I am not satisfied that JLG was dismissed from his employment as alleged. The basis for there being a dismissal at the initiative of DAX has not been made out and JLG has not discharged its onus of proving that there was such a dismissal. Consequentially, JLG has not established that there was an unjustified dismissal. Further, I need not consider the issue of whether the grievance was raised within time, nor the issue of remedies.

**Is JLG entitled to payment for unpaid wages, holiday pay, or allowances?**

[26] The amended statement of problem lodged by JLG sought payment of unpaid wages, holiday pay, and allowances. The claim for unpaid wages appears to relate to what were said to be unauthorised deductions made from his wages.

[27] In submissions, JLG sought the imposition of penalties upon DAX for failing to provide an employment agreement and failing to maintain wage and time records. No penalties were sought in the amended statement of problem, DAX were not on notice of what is now claimed, and I decline to consider the issue of penalties.

[28] JLG claims that he was not paid annual leave or for holidays. It is apparent that no records were kept evidencing when or if annual leave or other forms of leave were taken. Such as records were kept and those records were sought by COY and DAX, I find those were business records concerning health and safety matters and other information such as those concerning warranties and operation manuals for products sold. JLG, aside from one discrete period, effectively says that he did not take any annual leave and is entitled to payment going back years.

[29] I am not satisfied that JLG was correctly paid out any annual leave that was owing at the end of the employment relationship. I also find that he would have had an entitlement to a modest amount of leave as at that time. However, I do not accept JLG's evidence that he never took annual leave.

[30] There is some uncertainty as to the leave entitlement given the absence of compliant record keeping and the unsatisfactory evidence of all concerned. However, I consider it more likely than not that JLG did not use his full entitlement to annual leave each year, including having regard to the evidence and his status effectively as the sole employee, for the final five years of his employment. I find that an appropriate measure of the unused annual leave is two weeks for each of those years, that being a total of 10 weeks of annual leave that is due.

[31] JLG also claims payment for work performed on public holidays for which he says he was not paid correctly. In his written evidence, he contends that he worked "overtime on public days throughout the annual Christmas closure of the business and have never received any additional compensation". Albeit compliant records were not kept by DAX, and having considered all of the evidence, I consider it implausible that JLG carried out significant work on public holidays for which he was not paid.

[32] I do not accept JLG's evidence to the effect that it was a regular occurrence. Given the absence of any reasonable detail from JLG as to the days in question, I find there is an insufficient evidential basis on which to make a finding that he is due wages related to public holidays. While the Authority may accept the claims as proved as to the wages paid and details of the work undertaken,<sup>1</sup> I am not prepared to do so in circumstances where the evidence from JLG is so significantly limited and unquantified having regard to days worked and relevant background events.

[33] The inadequacy of the evidence is not explained by the ordinary prejudicial effect of the employer's failure to maintain records. In effect, no real attempt was made by JLG to quantify his claims other than by way of general and irrelevant calculations based on the total period for which he was engaged, without any acknowledgment that any leave was taken. Where evidence was given by JLG it, at best, conflicted with his broader claims that he never took annual leave at all. I decline to make any order as to payment for public holidays.

[34] It has not been established that there were any other unpaid "allowances", and I decline to make any orders in relation to that claim.

[35] I order that DAX, within 28 days of the date of this determination, calculate and make payment of 10 weeks of annual leave to JLG. JLG's other claims in relation to payment of wages are unsuccessful.

#### **Payment for unauthorised deductions**

[36] JLG claims that unauthorised deductions were made from his wages by XWM. The evidence in the Authority is that a regular sum was deposited directly into an account in the name of XWM without having been paid in wages directly to JLG.

[37] JLG claims that any payments not made to him were unlawful deductions and seeks reimbursement of \$151.24 per week said to be the difference between the legitimate expenses and the amount deducted.

[38] XWM's evidence is that JLG was having financial issues in 2012 and that she agreed to help him by setting up an automatic payment for money to be taken from his earnings to be deposited into a separate account in her name. She would then apply the

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<sup>1</sup> Employment Relations Act 2000, s 132(2).

funds to his debts and expenses with JLG then being paid any excess in cash on his request. She says she would keep cash for that purpose and says it was a private arrangement made outside of the employment relationship.

[39] DAX submitted that the deduction issue is not strictly an employment one and is instead a matter of a private arrangement. It was submitted for DAX that the arrangement was consensual and that the sums claimed are unreliable and grossly inflated.

[40] The Authority was provided records from the relevant bank account. I have had the opportunity to review those records in light of the other evidence given. I find that the records are consistent with the evidence of XWM in that the outgoing payments reflect that payments were made to utility companies, credit purchase facilities, for traffic enforcement, for medical and legal bills, and for other services which I conclude were for the benefit of JLG. I also consider it clear that XWM must have known that the relevant sums were being applied to his expenses and for his benefit over a significant period. I find there was a consensual arrangement made whereby funds would be directed straight from JLG's wages to the account controlled by XWM so that XWM could facilitate payments for JLG.

[41] As a matter of equity and good conscience, I decline to make any order requiring reimbursement of the funds paid to the account that was operated by XWM in JLG's interests.

#### **DAX's claims regarding removal of property**

[42] DAX, in its amended statement in reply, sought orders from the Authority as to what it claims were items removed from the business's premises by JLG. This included tools estimated to be valued at \$5,000 and the return of business records. DAX also claims reimbursement relating to bills it continued to pay for JLG following the end of the employment relationship.

[43] There was some evidence from AHH indicating that items were removed or were otherwise stored in a manner indicating they would be removed by JLG. However, I am not satisfied that the claims have been made out such as would allow me to make any meaningful orders. I am also not satisfied that the claims relate, as such, to the employment relationship in that the alleged actions were said to have taken place after the employment relationship ended and in circumstances where there were apparently

other arrangements in place of a family nature outside of the employment relationship, including as to the payment of personal expenses.

[44] DAX's counterclaim is unsuccessful.

### **Costs**

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

[46] If the parties are unable to resolve costs, and an Authority determination on costs is needed, JLG 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 DAX 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.

[47] 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.<sup>2</sup>

### **Summary of orders**

[48] I order that DAX, within 28 days of the date of this determination, calculate and make payment of 10 weeks of annual leave to JLG.

[49] JLG's other claims, and DAX's counterclaim, are unsuccessful.

Rowan Anderson  
Member of the Employment Relations Authority

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<sup>2</sup> For further information about the factors considered in assessing costs see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)