

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 539
3319620

BETWEEN NALIN JAYALATH
Applicant

AND INFOSYS LIMITED
Respondent

Member of Authority: Alex Leulu

Representatives: Dave Cain, advocate for the Applicant
Riddhika Shetty and Harpreet Virk, for the Respondent

Investigation Meeting: 6 May 2025 in Auckland and 10 June 2025 by audio-
visual link

Submissions and further 26 June 2025 from the Applicant
information received: 18 June 2025 and 26 June 2025 from the Respondent

Determination: 29 August 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Nalin Jayalath was employed by Infosys Limited (Infosys) as a full-time senior consultant. On 9 April 2024 Infosys dismissed Mr Jayalath for failing to comply with a direction for him to complete its mandatory online business modules. As a result, Mr Jayalath claimed he was unjustifiably dismissed by Infosys.

[2] Infosys disputed Mr Jayalath's claims saying it had acted fairly when it decided to dismiss him. It also said it had taken reasonable steps to allow Mr Jayalath the opportunity to complete the company's online modules.

The Authority's investigation

[3] For the Authority's investigation, written witness statements were lodged from Mr Jayalath and Infosys employees, Dheeraj Sambhar, Harpreet Virk and Aris

Karavokyris. All witnesses answered questions under oath or affirmation from me and the parties' representatives. The representatives also gave oral closing submissions.

[4] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[5] The issues requiring investigation and determination were:

- (a) Was Mr Jayalath unjustifiably disadvantaged and/or unjustifiably dismissed from his employment with Infosys?
- (b) If Mr Jayalath was found to be unjustifiably dismissed and/or unjustifiably disadvantaged during his employment with Infosys, to determine whether he is entitled to:
 - i. reimbursement for lost wages incurred because of the actions of Infosys; and
 - ii. compensation 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 Mr Jayalath that contributed to the situation giving rise to his grievance?
- (d) Whether one party is to pay the costs of representation of the other?

Context

Mr Jayalath's employment

[6] Infosys is a global information technology company which operates in 56 countries around the world. It employs over 300,000 employees worldwide with around 200 employees based in New Zealand.

[7] On 28 September 2020 Mr Jayalath started his employment for Infosys as a senior consultant. Upon starting his employment he was assigned to a client company providing day to day IT services. Mr Jayalath worked on site at the client company's premises while reporting back to his Infosys manager, Mr Sambhar.

Smart Awareness Quiz (SAQ)

[8] Shortly after starting his employment, Mr Jayalath completed an online business module called the Smart Awareness Quiz (SAQ). The SAQ was an online multi choice questionnaire designed to ensure staff awareness and compliance with various business-related policies and procedures. These policies covered several business topics which included information security, data privacy, intellectual property, business continuity management, sexual harassment, anti-bribery and corruption.

[9] All Infosys staff worldwide at all levels were required to complete the SAQ once a year. This also included the company's chief executive officer.

Mr Jayalath's participation in the SAQ

[10] Upon starting his employment in 2020, Mr Jayalath completed his first SAQ which was scheduled to be done by 2021. He also completed the 2022 SAQ without incident.

[11] In 2023 Mr Jayalath raised issues with Infosys about whether he should be engaged by Infosys as an employee or as an independent contractor. The parties dispute whether Mr Jayalath raised any issues about his difficulties in completing the 2023 SAQ. Mr Jayalath ultimately completed the 2023 SAQ.

The 2024 SAQ

[12] The 2024 SAQ was to be completed by Mr Jayalath on 6 February 2024 (the SAQ deadline). From 10 December 2023 up until the SAQ deadline, Mr Jayalath received automated email reminders to complete the 2024 SAQ. The SAQ completion reminders were sent weekly until 21 January 2024, where they were then sent daily up until the SAQ deadline. Mr Jayalath did not complete the SAQ by the SAQ deadline.

[13] From 6 February 2024 up until 3 March 2024 Infosys sent Mr Jayalath four escalation emails which required him to complete the SAQ to prevent any further escalations. Although Infosys was unable to produce copies of the first two escalation emails, the third and fourth escalation emails explained that any failure by Mr Jayalath to complete the SAQ could lead to disciplinary action which could include possible termination of his employment.

[14] After Mr Jayalath received his fourth escalation email, he was contacted through two separate phone calls by both Mr Sambhar and another Infosys line manager. He was reminded about the need to complete the 2024 SAQ and was asked about why he failed to complete it.

[15] In response, Mr Jayalath confirmed he had not completed the SAQ because he had completed a similar module for the contracting company. For this reason he believed he did not need to complete the Infosys 2024 SAQ. During these calls, Mr Jayalath also reiterated his previous views about his preference for Infosys to engage him as an independent contractor.

Disciplinary meetings

[16] On 27 March 2024 Mr Jayalath received a call from Infosys management based in Australia to attend a meeting on the following day to discuss an allegation of breach of conduct.

[17] Mr Jayalath attended the meeting while Ms Virk attended on behalf of Infosys (the notice meeting). During the meeting Ms Virk presented Mr Jayalath with a letter headed "Show Cause Notice" and read out the notice which set out allegations against Mr Jayalath for failing to complete the SAQ. The Show Cause Notice also explained allegations against Mr Jayalath for breaching chapters of the Infosys Employee Handbook. The Show Cause Notice gave Mr Jayalath an opportunity to respond in writing to the allegations by 2 April 2024.

[18] During the notice meeting, Mr Jayalath again explained his preference to be made a contractor. The reason being that he felt he was doing two jobs, with one job for Infosys and the other for the client company.

[19] After the notice meeting Mr Jayalath did not respond to the allegations. As a result Infosys contacted Mr Jayalath to attend a follow up meeting on 8 April 2024. Because he was unable to attend the meeting, Mr Jayalath asked for the meeting to take place on 9 April 2024. This was agreed to by Infosys.

[20] Mr Jayalath attended the follow up meeting on 9 April 2024 (the outcome meeting). During this meeting he reiterated his views about his preference of being a contractor. In response Infosys confirmed the allegations were proven and presented Mr Jayalath with a further letter terminating his employment.

Unjustified disadvantage

[21] Mr Jayalath claimed he was unjustifiably disadvantaged when Infosys failed to properly consider and address his communication to the company in 2023 about becoming an independent contractor. Mr Jayalath said during this time he said he had also raised issues about not having enough time to complete the 2023 SAQ. Mr Jayalath claimed Infosys did not respond to his communications.

[22] The only documented evidence of Mr Jayalath's 2023 claims was in the form of an email he sent to Infosys on 5 March 2023. The email was relatively short and confirmed Mr Jayalath's request to be a contracted developer for Infosys. The email also requested a response to be sent specifically to Mr Jayalath's personal email.

[23] During the investigation meeting, Mr Sambhar said the only issue he was aware of was Mr Jayalath's request to become a contractor. He also said he had checked with others at Infosys about this possibility and eventually called Mr Jayalath in July 2023. During the discussion, he explained Infosys did not engage with contractors in the manner suggested by Mr Jayalath. In Mr Sambhar's view, Mr Jayalath's request on 5 March 2023 was addressed during the July 2023 phone call.

[24] Based on the available evidence I accept Mr Jayalath asked about being a contractor in 2023. I also accept, Mr Sambhar called Mr Jayalath to respond to the request. However, there is little evidence to show Mr Jayalath properly raised a personal grievance in accordance with the Act.¹ There is also little evidence to show Mr Jayalath had been unjustifiably disadvantaged in any way as a result of Infosys' response to his request. For these reasons, Mr Jayalath's unjustified disadvantage claims were not established.

Unjustified dismissal

Mr Jayalath's claims

[25] Mr Jayalath raised several arguments alleging his dismissal by Infosys was both substantively and procedurally unjustified. He claimed it was unreasonable for him to be required by Infosys to complete the SAQ every year because:

¹ Employment Relations Act 2000, s114.

- (a) his employment agreement with Infosys did not refer to the requirement for him to complete the SAQ;
- (b) preparing for and completing the SAQ would take up to three days which was a significant amount of time which meant he had to complete the SAQ outside his usual work hours;
- (c) he was not paid the additional hours required for him to prepare and complete the SAQ;
- (d) he completed a similar test for the client company which he explained was more thorough and relevant to his obligations to the client company; and
- (e) had raised issues about completing the test as early as March 2023.

[26] Mr Jayalath also claimed Infosys' process leading to his dismissal was flawed because he was not given ample opportunity to seek legal advice and properly respond to Infosys' allegations.

[27] Prior to the notice meeting, Mr Jayalath said he should have been informed by Infosys of the initiation of the disciplinary process before the meeting. As a result of Infosys' alleged process failures, he said he was surprised about Infosys' decision to terminate his employment.

Infosys' response

[28] Infosys disputed Mr Jayalath's claims and said it was a requirement as part of his employment to complete the SAQ. In support of its argument it referred to a clause of Mr Jayalath's employment agreement which explained:

The Company has various Human Resources and administration policies and procedures ... While these policies do not form part of your employment agreement, you are required to abide by all applicable policies.

[29] Infosys said all staff had to be familiar with its policies and procedures before and during their employment. Before commencing employment, new Infosys employees were required to read several important documents included policy documents on confidentiality and the code of conduct. These documents were also part of the SAQ.

[30] Infosys argued the requirement to complete the SAQ ensured staff were maintaining their awareness of the various policies and any changes which may arise. It also said:

- (a) it disputed Mr Jayalath's arguments for how long it took to complete the SAQ and said it should only take 40 minutes to complete; and
- (b) the first time they were made aware of his issues about completing the SAQ (in terms of time and being unpaid) was during the notice meeting.

[31] In terms of its dismissal process, Infosys said it followed a fair and reasonable process by initiating the process with the Show Cause Notice and then gave Mr Jayalath an opportunity to comment before meeting with him to discuss the outcome of its process.

[32] Infosys argued Mr Jayalath had the opportunity to respond to the Show Cause Notice and was also aware he could have asked for more time to respond and seek advice. It should be noted that Mr Jayalath asked for the outcome meeting to be delayed because it was not practical for him to attend at the original set date. Infosys agreed to delay the outcome meeting to a later date and would have considered a further delay to allow Mr Jayalath to seek advice.

The Authority's assessment

[33] By requiring its staff to complete the SAQ, Infosys was taking steps to ensure all staff were aware of its policies (which included substantive policy changes) and the introduction of new policies and procedures. An example of a new policy was the introduction of the artificial intelligence policy which was introduced after the start of Mr Jayalath's employment.

[34] As a global information technology company, Infosys had certain regulatory and client obligations which both it, and its staff had to maintain and adhere to. In Mr Jayalath's case he was assigned to a significantly large and well-established financial institution. This meant Mr Jayalath was exposed to highly sensitive information about the client company's organisation.

[35] It was not unreasonable for Infosys to require Mr Jayalath to complete the SAQ because as part of his employment agreement, he was required to abide by Infosys' policies. I accept the requirement to undertake the SAQ was part of these policies.

[36] Mr Jayalath also accepted the requirement through completing the three SAQ's for the first years of his employment. There was insufficient evidence to show Mr Jayalath had raised any prior concerns about completing the SAQ with Infosys until he attended the notice meeting.

[37] Failing to complete the SAQ was also a valid reason for Mr Jayalath being made subject to a disciplinary process. Mr Jayalath was made aware of his obligations through numerous email reminders for him to complete the SAQ. Over a 60-day period he had received 27 written reminders which also included warnings of the possible termination of his employment.

[38] It should not have been a surprise to Mr Jayalath when he was invited to attend the notice meeting and was given formal confirmation of his potential dismissal. Mr Jayalath must have been aware of the seriousness of the matter because he did consider whether to engage a representative or lawyer for advice (but decided not to).

[39] Although, Infosys gave Mr Jayalath an opportunity to provide a written response to the Show Cause Notice, it did not consider Mr Jayalath's views raised at the notice meeting. During the meeting, both Ms Virk and Mr Jayalath's evidence confirmed:

- (a) Ms Virk read the Show Cause Notice to Mr Jayalath;
- (b) Mr Jayalath verbally raised his concerns and views about doing two roles at the same time (with one for Infosys and one for the client company);
- (c) Ms Virk told Mr Jayalath to relay his concerns in writing; and
- (d) Ms Virk did not take any notes during the meeting.

[40] The termination letter showed Infosys did not take into account Mr Jayalath's expressed views during the notice meeting and referred to the following:

You were provided with an opportunity to respond in writing to the allegations made against you ... however you chose not to respond and have not provided us with any valid justifications for your actions ...

[41] Infosys should have considered Mr Jayalath's verbal concerns raised during the notice meeting. This was a defect in its disciplinary process which was likely due to the disjointed representation throughout the disciplinary process which included:

- (a) Mr Sambhar, Mr Jayalath's reporting manager not having any involvement leading up to and during the disciplinary process;
- (b) Ms Virk being present on behalf of Infosys at the notice meeting;
- (c) the involvement of another Infosys manager Ashok Mysore, who signed both the Show Cause Notice and the termination letter; and
- (d) a separate Infosys employee, Mr Karavokyris representing Infosys at the outcome meeting.

[42] Infosys' failure to consider Mr Jayalath's views before dismissing him was not a minor defect in its disciplinary process and were not the actions of a reasonable employer. For this reason, Mr Jayalath's claim for unjustified dismissal was successful.

Remedy for lost wages

[43] Mr Jayalath established his personal grievance for unjustified dismissal and is entitled to an assessment of remedies. Infosys did not provide any submissions in respect of any response to Mr Jayalath's remedy claims.

[44] Mr Jayalath sought an order for reimbursement for lost wages under the Act.² The Authority has a discretion as to whether to order a remedy in Mr Jayalath's favour. In terms of Mr Jayalath's claim for lost wages the Authority must determine whether he is entitled to an order for Infosys to pay him the lesser of a sum equal to lost remuneration or 3 months' ordinary time remuneration.³ This is subject to whether there was sufficient evidence to support Mr Jayalath's claim for lost wages.

[45] Mr Jayalath provided a significant amount of evidence to show his attempts to seek employment after his dismissal by Infosys. His evidence showed he was able to obtain employment eight weeks after his dismissal. He sought an order for payment of lost wages for this period amounting to \$26,400 which was calculated from a rate of \$68.75 per hour at 40 hours a week.

² Employment Relations Act 2000, s 123(1) in reference to the wording "it may".

³ Employment Relations Act 2000, s 128(2).

[46] It was difficult to understand how Mr Jayalath had reached his claim amount and why he formed the view that he was paid \$68.75 per hour. The only documentary evidence which confirmed Mr Jayalath's salary was his employment agreement which was signed in 2020. In the absence of any other evidence of financial documentation, bank records or payslips, any analysis of Mr Jayalath's claim for lost wages should be assessed against his employment agreement.

[47] Mr Jayalath's employment agreement confirmed his base salary at \$125,000. Calculating this salary amount into an eight-week period equals \$19,230.76. Before any assessment of contribution, Mr Jayalath is entitled to a remedy for lost wages for \$19,230.76.

Compensation and contribution

Mr Jayalath's claim for compensation

[48] Mr Jayalath also claimed compensation for hurt and humiliation because of Infosys' actions leading to his dismissal. Under the Act, the Authority *may* grant Mr Jayalath a remedy for hurt and humiliation.⁴

[49] In his evidence, Mr Jayalath claimed he suffered anger, frustration and self-doubt as a result of the decision to terminate his employment. This was made worse by his difficulty in trying to obtain employment and the strain on him and his family to meet their financial commitments.

Mr Jayalath's actions leading to his disciplinary process

[50] Mr Jayalath's disciplinary process arose from his failure to complete the SAQ. As previously stated, this was a requirement of his employment he was aware of and had previously adhered to. Mr Jayalath clearly made a decision not to comply with the requirement to complete the SAQ. In doing so, he failed to properly inform Infosys about his concerns about completing the SAQ and he effectively ignored numerous reminders to complete the SAQ. He was also given a considerable amount of time after the deadline to complete the SAQ.

⁴ Employment Relations Act 2000, s 123(1)(c).

[51] The SAQ could also have been completed in parts to allow completion of the SAQ across a period of time. Mr Jayalath did not complete any part of the 2024 SAQ. After multiple warnings and his failure to properly communicate with Infosys, the disciplinary process was inevitable.

The impact of contribution on any remedies ordered

[52] Although Mr Jayalath had suffered some distress as a result of the termination of his employment, he was ultimately the author of his own misfortune. Putting aside the defect in Infosys' disciplinary process, his dismissal was more than a likely outcome. For this reason, no order is made in his favour for a remedy of compensation for hurt and humiliation under the Act.⁵

[53] Where the Authority determines an employee has a personal grievance, it must also consider the extent to which the employee's actions contributed towards the situation giving rise to the personal grievance and if the actions require, then reduce remedies it would otherwise have awarded.⁶

[54] For reasons already stated, Mr Jayalath had significantly contributed to the grounds giving rise to his grievance and a significant reduction to his remedies should reflect his contribution. From his lost wages remedy of \$19,230.76, Mr Jayalath's remedies are reduced by 75 per cent to \$4,807.69. Accordingly, Infosys is ordered to pay Mr Jayalath \$4,807.69 in remedies for his unjustified dismissal within 28 days of this determination.

Wage arrears claims

[55] In both his witness statement and his closing submissions, Mr Jayalath sought arrears of wages from Infosys representing an amount equivalent to what he believed was payment for the time that he spent completing previous SAQ modules.

[56] His wage arrears claim was not a claim included as part of his statement of problem and therefore was not identified as an issue for the Authority's investigation. For this reason, Mr Jayalath's wage arrears claim is dismissed.

⁵ Employment Relations Act 2000, s 123(1)(c).

⁶ Employment Relations Act 2000, s 124.

Costs

[57] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Jayalath may lodge, and then should serve, a memorandum on costs within 10 days of the date of this determination. From the date of service of that memorandum Infosys will then have 10 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.

[58] 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.⁷

Alex Leulu
Member of the Employment Relations Authority

⁷ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1