

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 590
3277579

BETWEEN	MIN MYAT MON Applicant
AND	ALLIED AUTO PARTS LIMITED Respondent

Member of Authority:	Claire English
Representatives:	Simon Greening and Andrea de Stadler, counsel for the Applicant Ali Bator for the Respondent
Investigation Meeting:	4 February 2025 in Hamilton
Submissions received:	Up to 21 July 2025 from Applicant Up to 21 July 2025 from Respondent
Determination:	23 September 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Mon worked as a mechanic in the respondent's (Allied) auto parts business, together with the part owner and one of two directors of the company, Mr Ali Bator. Mr Mon was dismissed by text message on 19 July 2023, and his employment came to an end two weeks later on 2 August 2023 after Mr Mon had worked out his notice period. Mr Mon says that he was unjustifiably dismissed because he had not attended work for three days due to a work-related injury. Mr Bator says that he was dismissed because he wanted to work from home and had asked for a letter ending his employment.

[2] Mr Mon claims remedies, including wage arrears of \$1,118.88 for work he says he did on a Saturday, compensation for hurt, humiliation, and injury to feelings, loss of earnings, and costs.

[3] Mr Bator denies that any remedies are properly owed. He says that Mr Mon was often late to work and has been overpaid by a total of 64 hours. He also raises issues with Mr Mon having not paid for certain auto parts and having taken a magnet and tools on his last day of work, although he seeks no monetary remedy for this.

The Authority's investigation

[4] For the Authority's investigation a written witness statement was lodged from Mr Mon. Mr Bator did not provide a witness statement. Both attended the investigation meeting and responded to questions. At the conclusion of the investigation meeting, Mr Ali asked for more time to provide documents, particularly documents that would support his claim that Mr Mon was often late and had been overpaid by 64 hours. Mr Ali also said he needed more time to find a legal representative.

[5] I allowed time for both parties to provide documents they had referred to in the course of their verbal evidence, primarily being text messages between them. I also indicated to Mr Bator that if he wished to have a lawyer make submissions on his behalf, then the Authority needed to be contacted by that lawyer within 7 days, after which both parties could expect to be asked for written submissions. I advised that this was bearing in mind that this matter was first scheduled for hearing in July 2024, meaning that Mr Bator had had more than 7 months to find a lawyer, and his evidence was that he sought advice but had then chosen not to bring a lawyer to the investigation meeting for reasons of cost.

[6] Mr Bator indicated to the Authority that he intended to provide further information, including text messages. A generous amount of time was allowed for this to occur, and some information was received. In light of the lack of expected follow-up correspondence, I now proceed to issue this determination.

[7] 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

- [8] The issues requiring investigation and determination were:
- (a) Was Mr Mon unjustifiably dismissed?
 - (b) Was Mr Mon owed arrears of wages for work done on Saturdays?
 - (c) If Allied's actions were not justified, what remedies should be awarded, considering:
 - Lost wages (subject to evidence of reasonable endeavours to mitigate loss); and
 - Compensation under s123(1)(c)(i) of the Act.
 - (d) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Mr Mon that contributed to the situation giving rise to his grievance?
 - (e) Should either party contribute to the costs of representation of the other party.

Background

[9] Mr Mon was a qualified mechanic, and worked in Allied's auto parts business together with Mr Bator, commencing 9 March 2022. There were no problems with his work, with Mr Bator giving evidence that he had initially kept time sheets for Mr Mon, but after a few months had discontinued this as he felt they had built up sufficient trust and respect.

[10] Mr Mon's evidence was that he worked Monday to Friday, 8.30 am to 5.00 pm, and Saturdays from 10.00 am until 1.00 pm. He said that he commonly had to stay past 5.00 pm, sometimes to as late as 6.00 pm. When he raised this, Mr Bator said there was no overtime paid, but it was agreed that Mr Mon could start slightly later in the mornings to make up for this, which he did.

[11] Mr Bator agreed with these hours and days of work, but said that Mr Mon was often late, nevertheless he would still be paid his standard 40 hours, as his work was good and the business was desperate for staff. Mr Bator said this repeated lateness led to Mr Mon being overpaid by 64 hours, and that Mr Mon would not routinely have

needed to stay after 5.00 pm, because the business hours were 8.00 am to 5.00 pm and mechanics (who would be buying their product) didn't work past 5.00 pm.

[12] In relation to Mr Mon's claim for Saturday work, Mr Bator said that he paid Mr Mon \$100 cash in hand. When this was put to Mr Mon, he said it was often \$150 cash. Neither party had any records of this.

[13] On 14 July 2023, which was a Friday, Mr Mon said he fell from a car lift and injured his back, shoulder, and jaw in the fall. He says he mentioned he was in pain to Mr Bator, who encouraged him to keep moving and go home and have a hot shower, which he agreed with. He came into work on Saturday, but on Sunday, began to stiffen up and experience further pain. A colleague came round to his house to look at a car he was selling, and he asked that colleague to tell Mr Bator he would not be at work on Monday.

[14] On Tuesday, he still did not feel well, and Mr Mon says there was a brief text exchange between him and Mr Bator, where Mr Bator asked him to come to work and he replied that he could not because he was in pain from his injury. Mr Bator cannot recollect this, and documents were not in the end provided.

[15] On Wednesday, Mr Bator sent Mr Mon a text message that said:

Good afternoon Mon. I hope this email finds you well. With mixed feelings I have to inform you that we will not be able to continue providing you work with us. Unfortunately, as you have seen we have been very quiet in the months past. Every day I start work hoping today will be better, but that never happens. We have to make hard decisions to cut our losses. You have been an important part of our team and we appreciate your efforts and knowledge. If the situation changes in the near future we will get in touch with you. For now we are giving you 2 weeks notice. I am sure you will be able to find another job easily with your experience and [the final three words are cut off].

[16] Mr Mon returned to work, worked out his two weeks' notice, and his employment ended on 2 August. He says he was not paid any holiday pay. He says about \$300 was deducted from his final pay, he was not sure why, but he thinks later this was said to be car parts.

[17] Mr Mon says that after his job ended, he had problems with his bank and difficulties with his wife, and now he has no house and is divorced. He said that he nearly went mad throughout that time, and even now, he needs to focus on his thoughts

and his reading to support his mental health. He says that at first, he spent 3 months on a sickness benefit, but that now he has moved to a JobSeeker benefit, and MSD is helping him make job applications, which are difficult for him as he struggles to write in English, and platforms like Trade Me all ask for email applications.

[18] Mr Bator accepts that he sent the text to Mr Mon ending his employment on 2 weeks' notice. He says that he did not know Mr Mon had suffered a fall. He said that Mr Mon always had trouble with his shoulders and experienced shoulder pain (which Mr Mon accepts and freely said that he did not want to go on ACC for that as it made it harder to get a job). Therefore, he did not attach any significance to Mr Mon saying he had a sore shoulder or assume that there had been a new accident. Mr Mon did not go to the doctor, seek treatment, a medical certificate, or ACC support. Instead he completed his work on the afternoon after the accident and the following day, was away from work Monday, Tuesday, and Wednesday the following week, and then worked out his 2 weeks' notice.

[19] Mr Bator accepts that it appears he dismissed Mr Mon by looking at the text message alone, but says that this is not the full story. He says that Mr Mon spoke to him, and said that he was getting older and experiencing pain. He had a relatively large property and could repair cars from home, but he told Mr Bator that he needed a formal letter from him so he could show it to his bank and other interested parties. Mr Mon denies any conversation of this sort.

[20] In his statement in reply, Mr Bator also raised a concern that Mr Mon had taken tools, magnets, and some car parts and/or an engine. When asked about this at the investigation meeting, Mr Bator explained that the sum that had been taken out of Mr Mon's final pay had been for car parts that remained unpaid at the time. Although I invited him to quantify the amounts he said were lost, he declined to provide any supporting documents, and said that the point of the comment was not about the value of the products, it was to show Mr Mon's intentions. Mr Mon brought a magnet to the investigation meeting to return to Mr Bator, but Mr Bator declined to take it.

[21] The text message sent by Mr Bator suggested that there was a redundancy situation, but Mr Bator denied that this was the case. When directed to the redundancy provision in the signed employment agreement between the parties, he said this was too technical, and he had not read it. Instead, Mr Bator said that he provided 2 weeks'

notice because that was what was required by the contract, and was not aware that the redundancy clause required 4 weeks' notice.

Raising of the personal grievance

[22] Although Mr Mon's last day of work was 2 August 2023, he did not raise his personal grievance until his lawyer sent a letter to Allied on 17 January 2024. This is outside the 90-day period provided for raising a personal grievance claim set out in s 114 of the Act. Although no concerns were raised by Allied about this, it is submitted for Mr Mon that exceptional circumstances exist, namely that his employment agreement does not contain a dispute resolution provision or any reference to the 90-day time limit within which grievances must be raised.

[23] It is an accepted principle that where an employment agreement does not contain information about the 90-day time limit, grievances may be raised outside it. I find that this is the case here. Allied's failure to include reference to the 90-day time limit in its own agreement, or indeed any reference to dispute resolution or how to raise or resolve disputes at all, coupled with Mr Mon's limited English language skills, amounts to exceptional circumstances. He is entitled to raise his grievance despite the time delay.

Was Mr Mon Unjustifiably Dismissed?

[24] I will now consider whether Mr Mon was unjustifiably dismissed, and whether his dismissal was what a fair and reasonable employer could have done in all the circumstances at the time. In accordance with s 103A of the Act, I must consider whether Allied:

- a. Sufficiently investigated the matters which were of concern to it;
- b. Raised the concerns that it had with Mr Mon before dismissing him;
- c. Gave him a reasonable opportunity to respond; and
- d. Genuinely considered any response or explanation Mr Mon might have had, prior to dismissing him.

[25] It will be apparent immediately that none of these steps occurred, as Mr Bator simply texted Mr Mon stating that he was dismissed on 19 July 2023, and setting out that he would receive 2 weeks' notice. It is not even clear if Mr Mon's employment came to an end for reasons of redundancy (which is what is stated in the text but Mr Bator denies was the reality at the time), because Mr Mon had taken time off work

(which is what he assumed based on receiving the text after being away for 3 days), or for other reasons (which was Mr Bator's in-person evidence which is denied by Mr Mon).

[26] As the undisputed evidence establishes that Allied did not take any of the steps set out in s 103A of the Act, and is unable to establish with certainty the real reason for the termination of Mr Mon's employment, his dismissal is unjustified. Allied's actions in dismissing Mr Mon in the manner it did were not what a fair and reasonable employer could have done in all the circumstances at the time his dismissal occurred.

[27] It is not disputed that Mr Mon worked out his notice, but the parties did not discuss matters further. Mr Mon says that this is because he did not see the point. He went to Citizens Advice Bureau and showed them the text, and was told that it meant he had no job, but was being given a final 2 weeks of work, so this is what he did.

[28] Mr Bator did not discuss matters with Mr Mon, he says because he sent the text that Mr Mon had asked him for, and had told him he wanted to end his employment for health reasons and to either work somewhere else or own his own business. There is no record of any such discussion between the parties.

[29] When standing back and considering matters, Mr Mon's dismissal is unjustified. Not only did Mr Bator not follow any of the requirements of the Act, he denied the explanation he had given to Mr Mon at the time via text was accurate, and said it was for another reason which he could not show had been discussed. This left Mr Mon assuming it was because he injured himself at work, even though this was not in Mr Bator's mind.

[30] Mr Mon's personal grievance claim of unjustified dismissal is made out, and he is entitled to remedies accordingly.

[31] Mr Mon claims lost remuneration for the period between his dismissal and his reemployment. His evidence was that at the time of the investigation meeting, he was still out of work. He explained that he had recently asked MSD to assist him in actively seeking jobs, as prior to this he felt as a result of the dismissal, he could not work even if he had been offered a job, and had been on a medical benefit as a result. He also needed help given his limited English language skills as I have already described.

[32] In these circumstances, the evidence of steps taken by Mr Mon to mitigate his loss may be described as mixed. Having said this, I accept his description of the toll his dismissal had taken on him and that it effectively prevented him from being work ready for a time, and the practical difficulties raised by his English language skills. Mr Mon's evidence was that after 3 months, he felt able to ask for help with his job search, and he did so, which is a responsible step in mitigation.

[33] My view is that s 128 requires that, where an employee has lost money as a result of their personal grievance, the Authority must award the lessor of either lost remuneration, or three months wages. Mr Mon has still not obtained a new job in the period from his dismissal in August 2023 though to the date of the investigation meeting being some 18 months. Having said this, not all of this impact can be laid at the feet of his employer. I take the view that three months is a reasonable assessment of loss in his specific circumstances, and decline to award more.

[34] Mr Mon's employment agreement provided for a 44-hour week at the rate of \$28.00 gross per hour, being Monday to Friday 8.00 am to 5.00 pm, and Saturday from 9.00 am to 1.00 pm. Accordingly, his gross weekly wage is \$1,232.00. Multiplied by 13 weeks (that is, three months), this amounts to \$16,016 gross. Orders are made accordingly.

[35] Mr Mon has also raised a claim of compensation for hurt, humiliation, and injury to feelings resulting from his dismissal. He gave evidence as to the personal impact this had had on him, including the loss of his marriage, the loss of his house, the adverse impacts on his mental health, and how he still struggled with intrusive thoughts as a result. I accept his evidence.

[36] I have considered what a fair award of compensation might be in these circumstances. I have also considered Mr Bator's submissions that as a small business he naturally faces financial difficulties, as well as the potential impacts of what Mr Bator said was his own ill health. On balance, I award \$18,000. This is well within the usual range of awards in the Authority, and could have been higher in other circumstances.

[37] I have also considered whether Mr Mon contributed to the circumstances resulting from his dismissal, in such a way that it would require a reduction in the

remedies awarded. Mr Mon did not communicate well with Mr Bator when he had his fall, nor did he communicate well when he relied on a colleague to speak with Mr Bator on his behalf when he did not attend work on the Monday afterwards. However, this did not contribute to the situation that led to his dismissal, as he was not dismissed for either injury or non-attendance. Likewise, although Mr Bator raised concerns about Mr Mon's partial payment for car parts and/or some tools, this was not pursued at the investigation meeting, with both parties agreeing that this had resulted in the deduction of monies from Mr Mon's final pay, rather than being the cause of his dismissal. Accordingly, I find that Mr Mon's actions did not contribute to his dismissal. No reduction in remedies is required.

[38] Mr Mon also raised a claim of arrears of wages, resulting from working on certain Saturdays which he says were not paid for. However, in his in-person evidence, Mr Mon admitted that he had received cash payments from Mr Bator for working on Saturdays. In light of this admission, I find that no wages are property owing, and no orders are made.

[39] In addition, Mr Mon has claimed reimbursement of the filing fee. As he is the successful party, he is entitled to this amount, being \$71.55. Orders are made accordingly.

Orders

[40] Min Myat Mon has a personal grievance in that he was unjustifiably dismissed.

[41] Allied Auto Parts Limited is ordered to pay to Mr Min Myat Mon within 28 days of the date of this determination :

- a. The sum of \$16,016.00 gross as compensation for lost remuneration;
- b. The sum of \$18,000 without deduction as compensation for hurt and humiliation;
- c. The sum of \$71.55 being reimbursement of the filing fee.

Costs

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

[43] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the applicant 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 the respondent 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.

[44] 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.¹

Claire English
Member of the Employment Relations Authority

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