

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2025] NZERA 600  
3348180

BETWEEN ICARO ANDRE RIBEIRO  
Applicant  
AND HEB CONSTRUCTION  
LIMITED  
Respondent

Member of Authority: Claire English  
Representatives: Icaro in person  
Seamus Kennedy and Dayna Stone for the Respondent  
Investigation Meeting: 15 July 2025 in Palmerston North and by AVL  
Submissions received: 18 July and 1 August 2025 from Applicant  
30 July and 13 August 2025 from Respondent  
Determination: 26 September 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The applicant, Mr Icaro Ribeiro, worked as a surveyor for the respondent, HEB Construction Limited (HEB) from January to June 2024. Mr Mark Daghish, Mr Ribeiro's line manager, became concerned that the accuracy of Mr Ribeiro's work was not up to standard, and began taking steps to support him in his work.

[2] This was not successful. At the beginning of June, Mr Ribeiro was invited to attend a formal meeting to discuss a performance improvement plan. Mr Ribeiro attended this meeting with his lawyer, who proposed what was described as an "exit settlement" instead. A draft record of settlement was prepared. Mr Ribeiro signed this

draft agreement but then refused to provide his consent to the mediator's countersignature. Mr Ribeiro emailed HEB on 21 June 2024 stating that he was leaving New Zealand and attaching copies of his plane tickets back to his home country of Brazil.

[3] Mr Ribeiro filed his statement of problem on 19 December 2024. In that statement, he alleged that his manager had sent him rude emails, and had used a bad word to address him. He stated that "the company needs to comply with the last agreement I signed" and that if no "solution" was reached, that he be reinstated to work.

[4] HEB says that Mr Ribeiro never raised a personal grievance claim, and was out of time to do so now. It denied any inappropriate treatment or correspondence. It says that it was Mr Ribeiro who had refused to confirm his acceptance of the draft agreement, and the agreement was never finalised, which he was advised at the time by both HEB and his own lawyer. Finally, HEB said that in any event, Mr Ribeiro could not be reinstated, as the roading project he had been employed to work on had since been completed.

### **The Authority's investigation**

[5] For the Authority's investigation written witness statements were lodged from Mr Ribeiro; and on behalf of HEB from Mr Mark Daghish (Mr Ribeiro's line manager); Mr Jarrod Franklin-Browne (Engineering Manager and Mr Ribeiro's one-up manager); Mr Seamus Kennedy (HR Business Partner); and Ms Dayna Stone (HR Business Partner), both of whom were responsible for certain documents on HEB's file in this matter. All witnesses answered questions under affirmation from me and the parties' representatives. Mr Ribeiro was assisted at the investigation meeting by a certified translator. The representatives also gave closing submissions.

[6] 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**

[7] The issues requiring investigation and determination were:

- (a) Should HEB be required to make payment to Mr Ribeiro under the draft agreement?
- (b) Does Mr Riberio have any personal grievance claim against HEB? And if so, should he be allowed to raise it out of time?
- (c) If HEB's actions were not justified, what remedies should be awarded, considering Mr Ribeiro's request for reinstatement as his only remedy?

## **Background**

[8] Mr Ribeiro worked as a surveyor for HEB from January to June 2024. Mr Ribeiro was from Brazil, and had previously worked on roading projects in Ireland. HEB employed him as an experienced international surveyor.

[9] Mr Daghish supported Mr Ribeiro to join the team. This included helping Mr Ribeiro obtain a New Zealand bank account, driver's licence, and IRD number, and when Mr Ribeiro found himself the victim of a scam when attempting to pay a deposit on rental housing, Mr Daghish arranged for Mr Ribeiro to be permanently housed at HEB company housing without charge. He and others also arranged for Mr Ribeiro to be invited to various social occasions including BBQ's and weekend hikes so that Mr Ribeiro could get to know his colleagues and enjoy some of New Zealand's lifestyle. Mr Ribeiro accepts that all of this occurred.

[10] Over time, Mr Daghish became concerned that the accuracy of Mr Ribeiro's work was not up to standard, and began taking steps to support him including assigning him to work on a minor structure, and emailing him instructions with pictures and diagrams of what was needed, as well as step by step break-downs of key jobs. This was not successful, with Mr Ribeiro at one point logging out of the relevant inbox on his work phone resulting in him being unable to receive his manager's emails, although he did not immediately advise this had occurred.

[11] Mr Ribeiro met with his manager and Mr Franklin-Browne to discuss matters on an informal basis. Mr Daghish continued to be concerned that Mr Ribeiro was not producing accurate survey results, and appeared to need to be given step-by-step breakdowns of relevant tasks in order to perform them.

[12] During this time, Mr Ribeiro had sessions with a counsellor provided by HEB, who was well known on site and to the management team. Mr Ribeiro said that he was supportive.

[13] At the beginning of June, Mr Ribeiro was invited to attend a formal meeting to discuss the beginning of a performance improvement plan. This was not a disciplinary meeting, and no such plan had yet been put forwards. HEB wanted to discuss what such a performance improvement process might look like.

[14] Mr Ribeiro attended this meeting with his lawyer, who proposed what was described as an “exit settlement” instead. It was agreed that Mr Ribeiro would remain off work while a draft record of settlement was prepared on a “without prejudice” basis. Mr Ribeiro signed the draft agreement and his lawyer provided it to HEB, who also signed. The draft agreement was sent to Mediation Services for countersigning by a Mediator. At this point, Mr Ribeiro refused to provide his consent to the Mediator’s countersignature, saying the draft agreement was unfair.

[15] When the Mediator advised HEB that Mr Ribeiro had refused to authorise his countersignature, HEB contacted Mr Ribeiro’s lawyer to continue discussions. This resulted in a further attempt by HEB to discuss matters with Mr Ribeiro and his lawyer, but this was unsuccessful. At that meeting, Mr Ribeiro took the view that the amounts offered in the draft agreement were too low, and refused to confirm the draft agreement despite his earlier signature. He was told by both HEB and his lawyer that this meant that the draft agreement was at an end. Mr Ribeiro then ceased to be represented.

[16] HEB asked Mr Ribeiro to return to work as his employment continued. Mr Ribeiro replied by email on 21 June 2024 stating that he was leaving New Zealand and attaching copies of his plane tickets back to Brazil. He never returned to work, and promptly left New Zealand, despite HEB advising him by email that if he did so, it would have to consider this to be his resignation.

[17] Mr Ribeiro filed his statement of problem on 19 December 2024. In that statement, he first alleged that his manager had sent him rude emails, and had used a bad word to address him.

[18] HEB says that Mr Ribeiro never raised a personal grievance claim, and was out of time to do so now. Mr Ribeiro accepted that he had never raised a personal grievance

claim in any formal way. In his in person evidence, Mr Ribeiro said that during his confidential counselling sessions at HEB, he had told the counsellor he was unhappy at work, and that he considered Mr Daghish was “over-managing him” or being too prescriptive in how he wanted Mr Ribeiro to work.

[19] He raised two particular concerns, that Mr Daghish had used bad language during work which Mr Ribeiro said he found offensive even if others did not, and that on one occasion he believed he had been bitten by a poisonous spider and Mr Daghish had told him there were no poisonous spiders in New Zealand which Mr Ribeiro considered to be flippant. Mr Ribeiro said that he believed he had told the counsellor to raise his concerns with Mr Daghish, and this was when and how he raised his personal grievance claim. Mr Ribeiro accepted that he could not say when, where, or how he had given these instructions to the counsellor. He also accepted that he did not know if the counsellor ever raised these concerns with anyone. He did not follow up to check this at any point.

[20] Although Mr Ribeiro was unable to name this person, all HEB witnesses were aware of the person referred to. It was explained to me that HEB and other business involved in the relevant roading project contracted the services of an independent counsellor who was willing and able to assist staff on a confidential basis on a number of personal matters, from work performance, stress management, financial matters, and personal stressors unrelated to work. He was well-known to the management team and was described as someone who was fully empowered to raise concerns he might have on behalf of staff generally or on behalf of individual workers on occasion. Mr Daghish and Mr Francis-Browne said that no such concerns had ever been raised with them about Mr Ribeiro.

[21] In relation to the allegation of bad language, Mr Daghish’s evidence was that he and others might occasionally use swear words on the job, although he did not direct those at people. Mr Ribeiro accepted that this was so. In relation to the spider incident, Mr Daghish said that he had told Mr Ribeiro that there were no poisonous spiders in New Zealand as he was concerned about this, and had also told him to go see the site nurse and to register this as an incident. He later found out that Mr Ribeiro had declined to see the site nurse. Mr Ribeiro did not dispute this either.

[22] When questioned about his remedies, Mr Ribeiro's in person evidence was that he had struggled to find a job after he left his employment with HEB, and he now sought orders from the Authority that HEB pay him the amount initially agreed, even though he had previously said this was not sufficient and was unfair. There was no suggestion by Mr Ribeiro that he would sign a record of settlement in any form. He simply wanted the Authority to order HEB to pay the sum it had previously agreed to pay. He said that he had been confused and upset at the time, and criticised both his lawyer and HEB, saying that he did not trust what they had said to him even though they had both told him the same things about the draft agreement.

[23] When questioned about his claim for reinstatement, Mr Ribeiro indicated that he understood that this meant an order for him to return to his previous job. He also said that he did not intend to return to New Zealand to take up a role with HEB, and that in any event, he would not obey the instructions of Mr Daghish as he did not like or trust Mr Daghish. When it was put to him that HEB might require him to discuss issues about his performance with him, he further indicated that he would not accept that.

### **Analysis**

[24] Mr Ribeiro described his personal grievance claim as being about the poor treatment, lack of support, and incidents of "bullying" by HEB. Nevertheless, I have considered whether Mr Ribeiro's employment came to an end by reason of dismissal, or by way of his resignation, as HEB contends.

[25] Mr Ribeiro was asked to attend a meeting with HEB to discuss his work and ways to improve upon it. No disciplinary process was commenced. Although HEB were considering a performance improvement plan, they had not yet put forward such a plan. Mr Ribeiro's employment was not at risk.

[26] Instead of engaging with HEB, Mr Ribeiro immediately proposed the ending of his employment by way of agreement. HEB agreed to discuss this with him instead. When Mr Ribeiro suddenly changed his mind and withdrew from this agreement, HEB attempted to discuss and understand his position, and to "hold the door open" for his eventual agreement.

[27] When Mr Ribeiro again refused to confirm the draft agreement which he had initiated, HEB required him to return to work. HEB made it clear that Mr Ribeiro's job remained open for him and that it wanted and needed him to continue performing it. It was only when it was made clear to him that HEB expected his employment to continue in all respects that Mr Ribeiro acted, refusing to return in the clearest way possible by booking plane tickets and leaving the country. Even then, HEB did not passively accept this. It advised Mr Ribeiro that it would consider this to be the ending of his employment, effectively giving him one last chance to change his mind. He did not.

[28] I find that in all the circumstances, Mr Ribeiro was not dismissed but resigned his employment at HEB. He made a decision to leave his employment in circumstances where HEB wanted and expected his employment to continue.

[29] I have considered whether Mr Ribeiro's resignation might properly be a constructive dismissal, in that it was caused by any breach of contract or unjustifiable action by HEB.

[30] I find this is not the case. Mr Ribeiro was unable to point to any action on the part of HEB that could be considered a breach of its obligations towards him. While the general allegation that Mr Daghish used occasional bad language in the workplace is made out, it is not disputed that this was not language aimed at Mr Ribeiro and there is no suggestion this was routine or consistent. This falls far short of any action sufficient to amount to a breach of contract. The allegation that Mr Daghish was "flippant" when Mr Ribeiro complained about being bitten by a spider is not made out, especially in the face of the evidence that Mr Daghish was concerned enough about Mr Ribeiro to tell him to seek medical advice and report it. It was Mr Ribeiro who did not follow through, suggesting he was not much concerned with the matter at the time.

[31] I find that Mr Ribeiro was not bullied or inappropriately managed in his work. The evidence is that Mr Daghish and Mr Francis-Browne were active in finding ways to communicate effectively with Mr Ribeiro, and in making sure that he received pastoral support throughout. The evidence is that Mr Ribeiro was resistant to any suggestion that he needed to work in a particular way. I remain concerned that Mr Ribeiro's "logging out" of his work email on his phone which only occurred after Mr Daghish began to email him more detailed work instructions, was not entirely accidental.

[32] There is no evidence to suggest that Mr Ribeiro's resignation was driven by HEB, or that HEB breached its obligations towards Mr Ribeiro. Accordingly, I find that Mr Ribeiro has no personal grievance claim for unjustified dismissal. A personal grievance claim for any unjustified disadvantage arising from alleged mistreatment during his employment is not made out either.

[33] In addition, I find that Mr Ribeiro did not raise his personal grievance claims in time. Mr Ribeiro's evidence on this was lacking. He was not able to say, when, where or how he had raised his personal grievance claims with HEB. Even if I accepted that he had raised claims with the counsellor, this was not in fact his evidence at the investigation meeting. Instead he said that he had asked the counsellor to raise claims for him. This statement is not supported by any evidence, and is undermined by Mr Ribeiro's other evidence that he never followed the matter up or sought responses until the filing of his statement of problem some 9 to 10 months later.

[34] As Mr Ribeiro's personal grievance claims were not made within time, and are not made out in any case, he is not entitled to any remedies.

[35] However, it is important to state that Mr Ribeiro's claim of reinstatement was a claim which had no prospect of success in the face of his own evidence which was that he did not intend to return to New Zealand to take up the job, and even hypothetically, he did not intend to follow directions or instructions from his managers. In light of his own evidence that he did not intend to perform the work that he had asked for, this claim should not have been made.

[36] Finally, I have considered Mr Ribeiro's claim that HEB should be compelled to pay to him the amounts set out in the draft agreement. There is no dispute between the parties that the draft agreement was never concluded or finalised. There is also no dispute that it was Mr Ribeiro's actions that brought an end to the negotiations about this agreement. The draft agreement was conditional on the mediator's countersignature, and Mr Ribeiro understood that by refusing to consent to this, he refused the agreement as a whole. Mr Ribeiro's stance was that although he rejected the draft agreement at the time on the grounds that it was insufficient and somehow unfair, he now wanted the Authority to compel HEB to pay what it had originally offered without he himself needing to agree to those terms. While this would obviously benefit Mr Ribeiro, it would not be fair to HEB.

[37] Mr Ribeiro has provided no reason why the Authority could or should order HEB to be bound by an offer that never became a binding contractual agreement. It was Mr Ribeiro's actions at the time that prevented the draft agreement from being concluded. He accepts that it was never concluded. As there was never a binding contractual agreement, HEB has no obligation to pay Mr Ribeiro. No orders are made.

[38] As neither party was legally represented, there is no issue as to costs.

Claire English  
Member of the Employment Relations Authority