

**Attention is drawn to the order
prohibiting publication of certain
information in this determination**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2026] NZERA 50
3351580

BETWEEN CAMERON ROWETH
Applicant
AND MT OUTDOORS LIMITED
Respondent

Member of Authority: Peter van Keulen
Representatives: Hayley Johnson, advocate for the Applicant
Cherilyn Walthew, advocate for the Respondent
Investigation Meeting: 19 November 2025 in Wanaka
Submissions Received: 19 November 2025 from the Applicant
19 November 2025 from the Respondent
Date of Determination: 29 January 2026

DETERMINATION OF THE AUTHORITY

Non-publication orders

[1] This employment relationship problem arises as MT Outdoors Limited made Cameron Roweth, an employee on a fixed term agreement, redundant. To show that its decision to make Mr Roweth redundant was substantively justified, MT Outdoors provided commercial and financial information as part of its evidence in the investigation meeting.

[2] The commercial and financial evidence was sensitive and confidential to MT Outdoors and its shareholders and directors. It has not been necessary for me to refer to any of the specific information in this determination and there is no need for the information to become

publicly available. For these reasons it is appropriate that I make orders for non-publication in respect of the information.

[3] Pursuant to Clause 10 of schedule 2 of the Employment Relations Act 2000 (the Act) I prohibit from publication any commercial and financial information relating to the MT Outdoors Limited's business that has been provided in its evidence for this employment relationship problem.

Employment relationship problem

[4] Mr Roweth was employed by MT Outdoors as a Seasonal Retail/Ski Boot Fitting Assistant on a fixed term employment agreement. The term of Mr Roweth's employment was 5 June 2024 – 20 October 2024.

[5] On 28 June 2024 Mr Roweth was invited to a meeting with the Store Managers of MT Outdoors. In this meeting Mr Roweth was told that MT Outdoors could no longer sustain his employment and his fixed term agreement was terminated. Mr Roweth's employment ended that day and he was paid two weeks' notice in lieu of working.

[6] Mr Roweth raised a personal grievance for unjustified dismissal on 8 August 2024.

[7] MT Outdoors accepts that the process it undertook in terminating Mr Roweth's employment was not justified but it says the substantive decision to terminate Mr Roweth's fixed term employment was justified in the circumstances. MT Outdoors says it had four fixed term employees hired by it to cover an anticipated increase in work in the ski season. The increased work never eventuated for MT Outdoors, and the financial impact meant it had to reduce costs; for this reason MT Outdoors decided to disestablish one of the four fixed term roles and then it selected Mr Roweth for redundancy (out of the four possible fixed term employees).

The Authority's investigation

[8] It is Mr Roweth's employment relationship problem based on unjustified dismissal that I investigated and this determination resolves

[9] I investigated the employment relationship problem by receiving written evidence and documents from the parties and holding an investigation meeting on 19 November 2025. In

my investigation meeting, under oath or affirmation, witnesses confirmed their written statement and gave oral evidence in answer to questions from myself.

[10] The advocates for both parties provided written submissions and made oral submissions at the investigation meeting.

[11] As permitted by s174E of the Act my determination has not recorded all the evidence and submissions received. I have stated relevant findings of fact and stated the relevant principles of law. Based on this I have reached a conclusion on the employment relationship problem.

Unjustifiable dismissal

What happened?

[12] MT Outdoors operates two retail stores in Wanaka specialising in outdoor equipment and, ski and snowboard hire.

[13] Through the second quarter of 2024 MT Outdoors had a significant reduction in revenue against the second quarter of 2023. In the same period, it had an increase in costs, including employee costs – due in part to opening a second retail store in early 2024.¹

[14] In response to this in June 2024 MT Outdoors decided it had to immediately reduce its costs, and it identified two areas in which it could – marketing and employment costs. In respect of employment costs, after considering its staff numbers against business need it decided to disestablish one of four fixed term employment positions - these positions had been created and filled for on an expected increase in work (and revenue) due to the winter ski season and this had not materialised.

[15] Then after considering the four employees employed in the fixed term employment positions MT Outdoors decided it would terminate Mr Roweth's employment. This decision was made by MT Outdoors before it met with Mr Roweth.

[16] On 28 June 2024 the two Store Managers for MT Outdoors met with Mr Roweth. In this meeting one of the Store Managers simply told Mr Roweth that as had been discussed

¹ The financial information provided by MT Outdoors and the oral evidence of Stephen Hart, a director and shareholder of MT Outdoors, support these findings but to protect the confidentiality and sensitivity of the commercial information I will not set out the detail of the revenue and costs.

previously with staff the MT Outdoors business was under financial stress and hard decisions needed to be made; one of those decisions was that MT Outdoors could no longer sustain his employment so his employment was terminated with two weeks' notice, which he did not need to work.

[17] What followed was a brief discussion in which the Store Managers reassured Mr Roweth that the decision was not based on performance as they had no issues with Mr Roweth and had enjoyed working with him. Mr Roweth suggested he could work reduced hours or the possibility of Mt Outdoors speaking to suppliers to see if they had work for him but the Store Managers showed no enthusiasm for, or interest in, these suggestions.

[18] Mr Roweth subsequently received written notice of termination, dated 27 June 2024 and he was paid his final pay which included two weeks' notice.

Issues

[19] Mr Roweth was dismissed based on the disestablishment of one fixed term employment role and his selection, out of four employees, for redundancy. MT Outdoors must establish that this was justified, applying the test for justification at s103A of the Act. This means MT Outdoors must show its decision to dismiss Mr Roweth and how it went about coming to that decision, comprised actions and acts that a fair and reasonable employer could have done in all the circumstances.

[20] The Court of Appeal applied this test in the context of a redundancy situation in *Grace Team Accounting v Brake*.² Applying *Grace Team Accounting* and s 103A of the Act, for me to establish that if MT Outdoors acted as a fair and reasonable employer could, I need to be satisfied that:

- (a) MT Outdoors provided Mr Roweth with the relevant information relating to the potential disestablishment of the fixed term role and his selection for possible redundancy, and it gave him an opportunity to comment on the information, which it considered before it made its decision on both aspects.³

² *Grace Team Accounting Ltd v. Brake* [2014] NZCA 541.

³ Employment Relations Act 2000, s 4(1A).

- (b) MT Outdoors' decision to disestablish one of four fixed term employment positions and then selecting Mr Roweth out of the four fixed term employees for redundancy were both genuine or substantively justified.

Consultation

[21] MT Outdoors had predetermined it would dismiss Mr Roweth for redundancy before the meeting on 28 June 2024. For this reason, there was no effective consultation with Mr Roweth. Specifically:

- (a) MT Outdoors did not provide sufficient information to Mr Roweth for him to properly consider and respond to regarding the disestablishment of a fixed term employment role and his selection, of the four fixed term employees, for redundancy.
- (b) MT Outdoors did not give Mr Roweth an appropriate opportunity to respond to the disestablishment of a fixed term employment role and his selection, of the four fixed term employees, for redundancy.
- (c) MT Outdoors predetermined that Mr Roweth would be made redundant, so it did not consider any comments or feedback from Mr Roweth on the disestablishment and selection for redundancy.
- (d) MT Outdoors failed to discuss options available for Mr Roweth that might have meant termination of employment could be avoided.

Were the proposed disestablishment and redundancy genuine?

[22] I am satisfied that MT Outdoors' decision to disestablish one of the fixed term employment roles was genuine and substantively justified – the commercial and financial evidence supports this.

[23] I have some difficulty with the decision to select Mr Roweth for redundancy. There were several factors in the selection of Mr Roweth and the decision to terminate his employment that should have been consulted over. And, if consultation had occurred it may have been possible that MT Outdoors would have selected one of the other employees or it may have found an alternative to terminating Mr Roweth's employment.

[24] Without proper and effective consultation taking place I cannot say the selection of Mr Roweth for redundancy was genuine or substantively justified.

Conclusion

[25] MT Outdoors did not carry out the consultation with Mr Roweth over the disestablishment of the fixed term employment role and his selection for redundancy in a way that a fair and reasonable employer could have done.

[26] MT Outdoors's decision to disestablish one of the four fixed term employment roles was justified from a business perspective. However, due to the failed consultation process I cannot conclude that the decision to select Mr Roweth for redundancy was substantially justified – consultation could have caused MT Outdoors to select one of the other employees or it could have produced an alternative to redundancy for Mr Roweth.

[27] Mr Roweth was unjustifiably dismissed by MT Outdoors.

Remedies

[28] As Mr Roweth has been successful with his unjustified dismissal personal grievance, I must consider the remedies he may be entitled to.

Compensation

[29] Turning to compensation, this is an award for the humiliation, loss of dignity and injury to feelings that an applicant suffers and is made pursuant to s 123(1)(c)(i) of the Act.

[30] When assessing compensation my task is to quantify the harm and loss caused by any humiliation, loss of dignity and injury to feelings arising out of the unjustified actions.⁴ I must consider the effect of the unjustified dismissal on Mr Roweth and establish what this shows in terms of the harm caused to him and the loss he suffered as a result. I then quantify the harm and loss by assessing that harm and loss against others who have been unjustifiably dismissed and establishing where that sits compared to the range of compensation awarded.⁵

[31] The relevant evidence shows that in response to the unjustified dismissal Mr Roweth:

⁴ *Stormont v Peddle Thorp Aitken Ltd* [2017] NZEmpC 71, *Waikato District Health Board v Kathleen Ann Archibald* [2017] NZEmpC 132, *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

⁵ *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

- (a) Was shocked and felt “blindsided” by the decision, having no advance warning of what was going to be discussed in the meeting on 28 June 2024.
- (b) Felt anxious and betrayed and hurt by the decision; the anxiety continued as he was unable to find new employment.
- (c) Struggled with the financial impact, finding it stressful as he was unable to afford many of the basics for day to day living in Wanaka.

[32] Based on this I assess the harm and loss as moderate and at the lower end of the impact seen in other cases. I quantify the compensation to be \$15,000.

Reimbursement

[33] Mr Roweth has lost remuneration because of his unjustified dismissal. Pursuant to sections 123 and 128 of the Act, Mr Roweth is entitled to the lesser of his actual lost remuneration or three months ordinary time remuneration.

[34] Mr Roweth says he was unable to find work in Wanaka and the surrounding area. So, in August 2024 Mr Roweth and his partner decided to leave New Zealand. They both already had visas to work in Canada and had been planning to travel there when his fixed term employment came to an end (at the end of October 2024). They were unsure about travelling to Canada to find work in August, so their first step was to travel to Salt Lake City in the United States where they would travel before deciding whether to fly to Canada and try to find work or fly to the United Kingdom.

[35] Mr Roweth and his partner left New Zealand in September 2024, spent time backpacking in the United States before deciding to travel to the United Kingdom, arriving there in October 2024. Mr Roweth then obtained employment in Scotland in January 2025.

[36] So, Mr Roweth was unemployed for over six months, and his actual loss (over six months of income) is greater than three months ordinary time remuneration. On this basis Mr Roweth seeks reimbursement of three months ordinary time remuneration.

[37] The issue that arises with awarding Mr Roweth three months remuneration is that his decision to leave New Zealand in the beginning of August 2024 (when he and his partner bought flights to the United States) meant he was not available to work from that point until

he arrived in the United Kingdom at the end of October 2024. And this means he failed to mitigate his loss from August 2024.⁶

[38] A failure to mitigate loss, means that an employee's lost remuneration stops being caused by the unjustified dismissal but rather becomes a product of that failure to look for new employment. In Mr Roweth's case this came about with the decision to leave New Zealand and travel to the United States, which was made around the second week of August 2024. So, Mr Roweth's actual loss is the loss of remuneration until the second week of August 2024 – this being six weeks remuneration.

[39] I calculate Mr Roweth's lost remuneration to be six weeks wages at 36 hours per week paid at a rate of \$25.00 per hour. This is \$5,400.

Notice pay

[40] Mr Roweth's employment agreement provides that in the event of termination by redundancy he will be paid four weeks' notice. MT Outdoors only paid Mr Roweth two weeks' notice so he is entitled to an additional two weeks' pay. This is \$1,800.

Contribution

[41] As I have awarded remedies to Mr Roweth, I must now consider whether the amounts should be reduced for contribution.⁷

[42] Mr Roweth did not act in a manner that contributed to his unjustified dismissal and there is no basis to find any contribution.

Conclusion

[43] MT Outdoors unjustifiably dismissed Mr Roweth. In settlement of this employment relationship problem, MT Outdoors must:

- (a) Pay Mr Roweth \$15,000 (without deduction) for compensation pursuant to section 123(1)(c)(i) of the Employment Relations Act 2000.

⁶ *Xtreme Dining Ltd v Dewar* [2016] NZEmpC 136.

⁷ Employment Relations Act 2000, s 124; and applying *Xtreme Dining Ltd v Dewar* [2016] NZEmpC 136.

(b) Pay Mr Roweth \$5,400 (subject to normal employee deductions) for lost remuneration pursuant to sections 123 and 128 of the Employment Relations Act 2000.

[44] MT Outdoors failed to pay MR Roweth his correct notice entitlement. MT Outdoors must pay Mr Roweth \$1,800 for an additional two weeks' notice.

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, Mr Roweth 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 MT Outdoors 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.⁸

Peter van Keulen

Member of the Employment Relations Authority

⁸ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1