

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 554
3246599

BETWEEN OLEKSANDR ZHURAVEL
Applicant

AND WAIRAU DETAILING
CENTRE LIMITED
Respondent

Member of Authority: Alex Leulu

Representatives: Steven Westwood, advocate for the Applicant
Aidan McDougall and Sofiya McDougall for the
Respondent

Investigation Meeting: 2 and 4 September 2024 and 8 July 2025

Submissions: 15 July and 25 July 2025 from the Applicant
22 July 2025 from the Respondent

Determination: 5 September 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] On 27 January 2000 Oleksandr Zhuravel started work for Nanoshine Limited (Nanoshine) as a vehicle wrap specialist. Whilst still working in the same role, his employer changed to Ceramic Pro Limited on 1 June 2023. On 17 June 2023 Ceramic Pro Limited changed its name to Wairau Detailing Centre Limited (WDCL) and will be referred to as such throughout this determination.

[2] On 10 July 2023 WDCL dismissed Mr Zhuravel from his employment after several allegations were made against him for alleged dishonest behaviour. Mr Zhuravel disputed WDCL's decision and applied to the Authority to investigate his claims against WDCL.

[3] WDCL disputed Mr Zhuravel's application claiming its actions in dismissing him were those of a reasonable employer.

The Authority's investigation

[4] Mr Zhuravel raised his claims with the Authority on 21 August 2023. His claims included an application for interim reinstatement which was determined by the Authority on 12 February 2024.¹ Both his interim reinstatement and substantive claims were lodged against both Nanoshine and WDCL.

[5] During the first two days of the investigation meeting in September 2024, evidence was heard for claims against both respondent companies. After the September 2024 investigation meeting, arrangements were made for further evidence to be heard in January 2025. However due to a change in representation for the respondents, the matters were rescheduled to resume in July 2025.

[6] On 26 May 2025 Nanoshine went into liquidation. In accordance with the Companies Act 1993 a person cannot proceed with claims against a company in liquidation unless consent is granted either from the assigned liquidator or by court order.² Neither type of consent has been submitted to the Authority and accordingly, Nanoshine was removed as a respondent for this matter.

[7] For the Authority's investigation written witness statements were lodged from Mr Zhuravel and Artem Khlopin. For WDCL, witness statements were lodged by Sofiya McDougall and Aidan McDougall. All witnesses answered questions under oath or affirmation from me and the parties' representatives. The representatives also gave written closing submissions.

[8] 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.

¹ Zhuravel v Nanoshine Limited & Ceramic Pro Limited [2024] NZERA 76.

² Companies Act 1992, s 248.

The issues

[9] Due to the liquidation of Nanoshine, a significant number of Mr Zhuravel's originally lodged claims were withdrawn. Of the remaining claims, the following issues were identified for investigation and determination:

- (a) Was Mr Zhuravel unjustifiably dismissed from his employment with WDCL?
- (b) If so, is Mr Zhuravel entitled to:
 - (i) an award for lost wages; and
 - (ii) compensation for hurt and humiliation?
- (c) If any remedies are awarded, should they be reduced (under s 124 of the Act) for blameworthy conduct by Mr Zhuravel that contributed to the situation giving rise to his grievance?
- (d) Should either party contribute to the costs of representation of the other party?

Context

The start of Mr Zhuravel's employment

[10] WDCL and Nanoshine were businesses which specialised in the supply and installation of vehicle protective coatings and finishings. WDCL operated out of a site based in Grey Lynn while Nanoshine operated out of a North Shore site. Ms and Mr McDougall were the directors for both companies.

[11] Mr Zhuravel is a Russian migrant who was contacted by Ms McDougall to come to New Zealand to work for Nanoshine in 2019. Mr Zhuravel agreed and arrived in New Zealand in January 2020 to start work as a vehicle wrap specialist. As part of his role Mr Zhuravel was responsible for surface detailing of customer vehicles.

[12] On 1 June 2023 Mr Zhuravel was moved from the Wairau site to the Grey Lynn site. As a result, he signed a new employment agreement with WDCL. As part of his new employment arrangement, the parties agreed for Mr Zhuravel's service-related entitlements like annual holidays and sick leave to continue from his previous employment.

Mr Zhuravel actions

[13] In June 2023, Mr Zhuravel was involved with three different situations which led to disciplinary action against him. Firstly on 19 June 2023 Mr Zhuravel was working on a customer's vehicle. While doing so, he removed a compressor from the vehicle without anyone's knowledge and without the customer's consent. He then placed the compressor into his own vehicle. The vehicle was returned back to the customer the following day without the compressor.

[14] Secondly on 21 June 2023, Mr Zhuravel returned the compressor which prompted WDCL to investigate further as to where the compressor had come from. In doing so WDCL observed CCTV footage confirming Mr Zhuravel's actions. However, the footage also showed Mr Zhuravel entering the vehicle of another worker without their consent on 20 June 2023.

[15] In a separate incident on 22 June 2023, Mr McDougall asked Mr Zhuravel whether he had carried out polishing work on the roof of another customer's vehicle. Mr Zhuravel assured him he completed the work. Given the state of customer's vehicle, Mr McDougall was not convinced and in turn checked the CCTV footage. Upon review of the footage, it showed Mr Zhuravel had not carried out the work which he claimed he had done.

WDCL's disciplinary action

[16] On 27 June 2023 WDCL sent Mr Zhuravel a letter informing him of three dishonesty allegations against him (the disciplinary letter). The allegations against Mr Zhuravel were for:

- (a) removing a tyre inflation device (or the compressor) from a customer's vehicle and placing it in his own vehicle;
- (b) unauthorised access to another vehicle without good reason on 20 June 2023;
and
- (c) not carrying out work on another customer's vehicle and informing Mr McDougall he had completed the work.

[17] The disciplinary letter invited Mr Zhuravel to attend a disciplinary meeting on 3 July 2023. WDCL also suspended Mr Zhuravel from work up until his disciplinary meeting.

[18] On 5 July 2023 Mr Zhuravel attended the disciplinary meeting with Mr McDougall. Mr Zhuravel attended the meeting with his representative, Mr Westwood. Mr Zhuravel admitted the allegations and explained his actions in respect of each allegation.

[19] On 10 July 2023 WDCL sent Mr Zhuravel a disciplinary outcome letter (the outcome letter). The outcome letter acknowledged Mr Zhuravel's admissions but concluded that Mr Zhuravel's actions were dishonest and amounted to serious misconduct. As a result, WDCL dismissed Mr Zhuravel from his employment effective from 10 July 2023.

[20] On the same day, Mr Zhuravel responded to WDCL's outcome letter by email. In his email, Mr Zhuravel disputed WDCL's decision and its recollection of the disciplinary meeting.

Unjustified dismissal claim

The applicant's arguments

[21] As a result of his dismissal, Mr Zhuravel claimed WDCL's actions were not those of a fair and reasonable employer because its actions were both substantively and procedurally flawed. In respect of his own actions leading to his dismissal, Mr Zhuravel claimed he was not dishonest and for various reasons his actions were justified.

[22] In terms of the compressor, he accepted he took the compressor from the customer's vehicle for his personal use. He said he intended to return the compressor and when he attempted to do so, the vehicle was returned to the client. As a result he said he then took full responsibility for his actions and claimed he proactively raised the issue with his supervisor. He denied blaming another employee for taking the compressor.

[23] Further to the issue with the compressor, Mr Zhuravel said the allegations relating to his entry into another employee's vehicle was also linked to his search for a compressor. Again he did not deny his actions and described his actions as an error of judgment.

[24] Mr Zhuravel also did not dispute the allegations against him for incorrectly saying he applied roof polish on a customer's car. To justify his actions, he said he was

under a significant amount of pressure to complete his work. As a result he explained he made a simple error while working in a high-pressure work environment.

[25] Mr Zhuravel also said WDCL's disciplinary process was carried out unreasonably and it was unclear to him who was investigating the allegations against him. At the time the allegations were raised, he claimed both Mr and Ms McDougall were separately inquiring with him about the allegations. The inference being this approach by WDCU led to his unnecessary confusion as to the next steps of the disciplinary process.

[26] Mr Zhuravel also claimed he was treated unfairly when he requested for an interpreter to be present during his disciplinary meeting and was not provided with one. In his evidence, Mr Zhuravel claimed he had an interpreter available by phone, but Mr McDougall declined to proceed on the basis he could not be satisfied of the interpreter's independence.

The respondent's arguments

[27] WDCL opposed Mr Zhuravel's arguments claiming its decision and approach leading to his dismissal was justified. It said, Mr Zhuravel's actions were not technical mistakes or isolated lapses in judgment but instead were actions which showed a clear pattern of dishonest conduct.

[28] In response to Mr Zhuravel's rationale for his actions leading to his dismissal, WDCL submitted his conduct went beyond human error and were clear acts of dishonesty. It also disputed whether Mr Zhuravel had appropriately accepted accountability of his actions alleging he only admitted the truth after being presented with evidence.

[29] WDCL also submitted its process was fair and reasonable given it formally notified Mr Zhuravel of the allegations, invited him to respond, and acknowledged he was represented by an advocate throughout its process.

[30] It disputed whether Mr Zhuravel asked for an interpreter (and whether such a request was declined) at his disciplinary meeting. It also disputed whether Mr Zhuravel needed an interpreter claiming he consistently communicated around the workplace in English. This included him receiving and following instructions, participated in meetings, and submitted job-related updates and reports all in English.

The Authority's assessment

[31] There was no dispute between the parties as whether Mr Zhuravel carried out the actions leading to the start of WDCL's disciplinary process for these actions. His actions were sufficiently serious enough to warrant WDCL's decision to formally invite him to a disciplinary meeting.

[32] It was difficult to understand why Mr Zhuravel believed his actions leading to his dismissal were not dishonest. The evidence showed he had taken the compressor and entered another employee's vehicle without consent. He did not acknowledge his actions until he was contacted by WDCL.

[33] These actions together with Mr Zhuravel's actions relating to the car polishing impacted the obligation of trust and confidence between him and WDCL. His actions also exposed WDCL to both a reputation risk and a potential loss of trust of its clients. A disciplinary outcome leading to his dismissal was well within the realms of possibility.

[34] In addressing Mr Zhuravel's actions, WDCL's disciplinary process was relatively sound given it formally raised the allegations with him and it provided him with an opportunity to respond.

[35] Although there was a factual dispute as to whether he requested (and was denied) the assistance of an interpreter during the disciplinary meeting, Mr Zhuravel was represented by an advocate throughout his disciplinary process. His advocate was also present and spoke on his behalf at the disciplinary meeting. It should be noted Mr Zhuravel's issue regarding access to an interpreter at his disciplinary meeting was raised relatively late in the Authority's investigation.

[36] Stepping back and assessing the circumstances leading to Mr Zhuravel's dismissal and WDCL's response to Mr Zhuravel's actions, I accept WDCL's actions were those of a reasonable employer. Accordingly, Mr Zhuravel's unjustified dismissal claim was unsuccessful and no orders for remedies are made in his favour.

Costs

[37] WDCL sought a contribution to its legal costs of \$11,500 based on the Authority's tariff for a three-day investigation.³ It also sought a further \$8,000 in preparation costs incurred for legal drafting and procedural engagement.

[38] Mr Zhuravel opposed WDCL's claims for costs for several reasons. Firstly, WDCL provided no evidence to support its claims for additional preparation costs. Secondly, Mr Zhuravel referred to an earlier communication from the Authority which acknowledged initial delays in investigating his claims because WDCL (and at the time Nanoshine) failed to comply with an Authority direction to attend mediation.

[39] The investigation into Mr Zhuravel's claims were prolonged and complicated for several reasons which included:

- (a) delays to the Authority's investigation resulting from WDCL's actions which included its failure to cooperate with the Authority's directions;
- (b) Mr Zhuravel's initial unsuccessful claim for interim reinstatement; and
- (c) the removal of Nanoshine as a respondent party to these matters.

[40] WDCL and Nanoshine were represented by a lawyer at the initial investigation meeting of which only Mr Zhuravel's witnesses gave sworn evidence. The continuation of the investigation was delayed because WDCL and Nanoshine had decided to change legal representation. However, once the second investigation meeting commenced, WDCL was self-represented.

[41] Considering the nature of the change of both the respondent parties and representatives associated with this case, and the fact WDCL was self-represented at the second investigation meeting, it is appropriate for costs in this matter to lie where they fall. Accordingly, the Authority makes no order for costs for this matter.

Alex Leulu
Member of the Employment Relations Authority

³ See www.era.govt.nz/determinations/awarding-costs-remedies.