

EMPLOYER BULLETIN

20 February 2023

A Weekly News Digest for Employers

EMPLOYER NEWS

\$2 million support package for East Coast communities impacted by Cyclone Gabrielle

Minister for Emergency Management Kieran McAnulty has announced an initial contribution of \$2 million to disaster relief funds to support affected communities on the East Coast of the North Island.

“Cyclone Gabrielle has caused widespread damage across the East Coast and this contribution will make sure financial support can be given to affected communities as quickly as possible,” Kieran McAnulty said.

“The Government is making an initial contribution of \$1 million to each of the Tairāwhiti and Hawke’s Bay disaster relief funds.

“It’s too early to know the full cost of the damage, but we want to make sure these regions have the resources to get immediate support to those who need it.

“I’m anticipating more requests for support as the need across affected regions becomes clearer. We’re meeting requests as they come through.

“I’ve been on the ground in Tairāwhiti with the Prime Minister and Minister Allan to get a gauge of the impact first-hand, and plan to get to other affected communities in the next few days.

“We know we have a long recovery ahead of us and the Government is committed to supporting communities through this.

“The focus at the moment, for all those involved, is on continuing to respond to the emergency event. Central government continues to be available to support the local response teams as needed,” Kieran McAnulty said.

New Zealand Government [16 February 2023]

Easier access to finance for those affected by the floods

The Government is making it easier for people in financial difficulty as a result of the catastrophic flooding to get temporary credit.

A temporary exemption is being made to the Credit Contracts and Consumer Finance Act (CCCFA) to allow banks and other lenders to quickly lend money to affected consumers to address damage, replace property, provide for loss of income, and meet their everyday living costs. The exemption removes the requirement for extensive assessments for temporary credit of up to \$10,000.

“While the exemption does not cap interest rates or fees, I have asked the banking sector for assurances that interest rates will be at usual or possibly lower rates. So far, the response has been positive with one bank indicating their overdrafts will be interest-free,” said Duncan Webb.

All lenders who provide overdrafts or home loans are covered by the exemption, including banks, building societies, credit unions and other non-bank deposit takers.

New Zealand Government [16 February 2023]

Govt delivers support package for NGOs and community groups

- \$4 million for providers to ensure they can meet increased demand and support wellbeing of their staff and volunteers due to flooding and cyclone
- \$1 million to replenish stocks at food banks currently experiencing high demand
- \$2 million of grants for community groups to support flood response
- \$4 million expansion of the scope of Community Connectors to support Auckland and impacted regions' flood response efforts
- \$500,000 ring fenced funding to respond to the needs of disabled people

The Government has announced an \$11.5 million Community Support Package to help tens of thousands of people affected by the recent floods, and as regions prepare to respond to Cyclone Gabrielle.

“Community organisations, groups and iwi have mobilised quickly to support people and whānau who have been impacted and displaced as a result of the unprecedented flooding. However, it's clear that demand for support is exceeding funding available for these groups to respond quickly to needs in the community,” Minister for Social Development and Employment Carmel Sepuloni said.

“This support package will provide immediate relief for individuals and families, bespoke support for disabled people like transport assistance, as well as support for the voluntary sector who continue to be at the heart of their communities and our response.

“Over 25,000 people have been supported with food, clothing, shelter, bedding and medication. People have lost their homes and vehicles, families are facing additional challenges getting their children back to school and many families will be facing anxiety and distress from the significant disruption of the floods and impending cyclone.

New Zealand Government [13 February 2023]

NZ investors receive boost after US grants excepted status

New Zealand has been granted excepted foreign state investor status from the United States, making it easier for New Zealand investors to invest in the US and deepen ties with a key trade partner.

"This is a very positive outcome for New Zealand after being granted provisional excepted status in January 2022. We are one of only a few countries to be awarded this status," Grant Robertson said.

"New Zealand's inclusion in the excepted states list alongside Australia, Canada, and the UK will lower the barriers for New Zealand investors and support further growth in investment into the US and provide more options for diversification."

"New Zealand firms developing critical technologies or dealing with critical infrastructure such as renewable energy, as well as in personal data, stand to benefit. It also makes it easier for government investment vehicles like the NZ Super Fund to invest in the US in areas such as green technologies."

New Zealand Government [11 February 2023]

Food price index: January 2023

Monthly change

Food prices rose 1.7 percent in January 2023. After seasonal adjustment, they were up 0.3 percent.

In January 2023 compared with December 2022:

- fruit and vegetable prices rose 3.1 percent (down 0.8 percent after seasonal adjustment)
- meat, poultry, and fish prices rose 1.9 percent
- grocery food prices rose 1.8 percent (up 0.9 percent after seasonal adjustment)
- non-alcoholic beverage prices rose 2.1 percent
- restaurant meals and ready-to-eat food prices rose 0.7 percent.

Annual change

Food prices increased 10.3 percent in the year ended January 2023.

In January 2023 compared with January 2022:

- fruit and vegetable prices increased 16 percent
- meat, poultry, and fish prices increased 9.2 percent
- grocery food prices increased 11 percent
- non-alcoholic beverage prices increased 7.1 percent
- restaurant meals and ready-to-eat food prices increased 8.3 percent.

Statistics New Zealand [14 February 2023]

EMPLOYMENT COURT: ONE CASE

Application for judicial review unsuccessful

Mr Halse is an employment advocate who is able to take instructions in disputes, through his company CultureSafe, under section 236 of the Employment Relations Act 2000 (the Act). Mr Halse sought judicial review of a decision by the Employment Relations Authority (the Authority) which arose from steps taken after a settlement agreement was entered into on 5 March 2018.

Mr Halse was instructed to act for an employee in a dispute with their employer, Rangiura Trust Board (the Trust). The problem was resolved during mediation and a settlement agreement was completed by the Trust, its employee and Mr Halse.

The settlement terms included a clause committing the Trust and its former employee to not disparage each other, which was extended to encompass Mr Halse.

Mr Halse signed the settlement agreement. It was also signed by a mediator. Once signed by a mediator, settlement agreements become final and binding and cannot be canceled under the Contract and Commercial Law Act 2017.

Shortly after the agreement was signed, the Trust became concerned about comments Mr Halse made on social media platforms. They claimed the comments breached the settlement agreement.

The Trust lodged a claim in the Authority seeking to compel Mr Halse to comply with the settlement agreement. Mr Halse responded that the Authority did not have jurisdiction to make compliance and non-publication orders preventing him from commenting publicly about the Trust.

The Authority concluded it did have jurisdiction. Mr Halse and CultureSafe were ordered to comply with the settlement agreement and non-publication orders were made. Ultimately, ongoing breaches resulted in the Authority imposing financial penalties on them and they were ordered to pay costs.

Mr Halse unsuccessfully sought judicial review of the Authority determinations, and decisions of the Employment Court (the Court), in the Court of Appeal. A subsequent application for leave to appeal to the Supreme Court was unsuccessful.

The Supreme Court held that the Authority has exclusive jurisdiction over compliance orders made under section 137 of the Act, including issuing compliance orders where any person has not observed or complied with a settlement term or decision that section 151 provides may be enforced by such an order.

Mr Halse argued this did not include him. His submission was twofold. First, it referred to those involved in an employment relationship problem, meaning the employer and employee. Secondly, because he was not in an employment relationship with the Trust, any arrangement they made was not susceptible to enforcement in the Authority. The Court did not accept Mr Halse's submissions.

In *CultureSafe NZ Ltd v Turuki Healthcare Services Charitable Trust*, it was held that the absence of an employment relationship did not preclude the Authority from having jurisdiction. The Authority had jurisdiction to consider the Trust's application and to make orders requiring Mr Halse to comply with the settlement agreement.

The next issue the Court considered was whether the Authority had jurisdiction to make non-publication orders. Mr Halse argued that the Authority acted in a way contrary to his rights under the Bill of Rights Act 1990 (NZBORA), and that should be corrected. Mr Halse stated the Authority could not restrict his activities because his rights to freedom of expression were protected.

The Court found there was no merit to his submission. The right to express ideas, including those that might be unpopular, is a basic democratic right. The right, however, is not an absolute one and is subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Mr Halse voluntarily entered into an agreement not to make disparaging or negative remarks about the Trust and did not explain how this decision to restrict what he might say breached NZBORA. The Authority did no more than hold Mr Halse to the agreement he made, and that decision was entirely within its jurisdiction.

Mr Halse claimed the settlement agreement was void or illegal. His point was, presumably, that if the agreement had no legal effect the Authority would lack jurisdiction to deal with his subsequent conduct.

The Court determined that the settlement agreement was a reasonably conventional one. It was an agreement that was binding on the parties and plainly was not void.

None of the questions asked in the statement of claim could be pursued in a judicial review proceeding. Some were not amenable to review because they posed questions more suited to appeals on a question of law. Others purported to dispute the Authority's clear jurisdiction and the remainder were an abuse of process.

Each of the Authority's determinations dealt in one way or another with breaches by Mr Halse of the settlement agreement, non-publication and compliance orders. The Authority had jurisdiction to make those decisions. If Mr Halse was dissatisfied with them his avenue to seek to overturn them was to file a challenge.

Finally, the Court considered the questioning of the Authority's action in accepting the Trust's claim and processing it. The claim about processing the Trust's application is misconceived and not a matter subject to judicial review.

The application seeking to strike out Mr Halse's statement of claim was successful, and it was struck out accordingly. Mr Halse's application for judgment by default was unsuccessful and was dismissed. The Trust was entitled to costs.

Halse v Employment Relations Authority [[2022] NZEmpC 167; 13/09/2022; Smith J]

EMPLOYMENT RELATIONS AUTHORITY: TWO CASES

Employee constructively dismissed after resigning in response to employer's breach of duty

Mr Dobbs was employed by Taniwha Retail Limited (Taniwha) as a System Design Consultant from July 2018 until he resigned in May 2020. He worked in the Listening Post in Hamilton, a business owned and operated by Taniwha, and raised several claims including a personal grievance related to various actions he said were unjustified.

The Employment Relations Authority (the Authority) said the matters were, at their core, the product of a complex and difficult professional working relationship between Mr Dobbs and Mr Ede, who was the equivalent of the CEO of the Listening Post. However, that relationship became too fractious, and in response, Mr Dobbs resigned. The fallout of that resignation led to the claims and counterclaims in the Authority.

Taniwha's claim against Mr Dobbs was for breach of his employment agreement by soliciting one of its employees, Mr Jurisich, to work for his new employer, Switch Electrical. Taniwha also made a claim against Mr Jurisich and Switch Electrical that they aided and abetted Mr Dobbs' breach of his employment agreement in soliciting Mr Jurisich.

The two claims were set down for separate investigation meetings with the intention that they would be investigated separately but resolved jointly.

Taniwha said Mr Dobbs had taken more annual leave than he had accrued and, as a result, he owed Taniwha \$2,476.28 in overpayments. His final pay for hours worked was deducted from the overpaid annual leave and it withheld transferring his mobile telephone number to him. It said he was not owed any money for his notice as he did not work the notice period and he still owed Taniwha money for speakers he had purchased during his employment.

The Authority considered whether there was any money owed between Mr Dobbs and Taniwha at the end of his employment. The Authority concluded it was straightforward that Mr Dobbs had a contractual right to the return of his mobile telephone number and made an order for compliance. Mr Dobbs said his car was damaged when he was on work business, however, the Authority found the evidence was inconclusive so was not persuaded that Mr Dobbs was owed any money for damage to his car. In relation to the stereo speakers, the Authority accepted Mr Dobbs' evidence on the matter and concluded that he did not owe any money for speakers purchased from Taniwha.

The Authority was satisfied that Mr Dobbs had been overpaid some of his annual leave. The quantum was not clear on the evidence and the Authority believed a non-technical approach based on the substantial merits of the situation was best. The Authority concluded that Taniwha could retain the final wages owed to Mr Dobbs and not pay him for any notice period as an offset against what it may be owed.

Mr Dobbs' personal grievance related to various actions by Mr Ede that Mr Dobbs claimed were unjustified. They included various exchanges in late 2019 with Mr Ede that Mr Dobbs said were aggressive and critical of him. The Authority was satisfied that the events complained of did occur. The Authority was not satisfied that it was a deliberate attempt by Taniwha to make Mr Dobbs resign, nor was it meant to be bullying. It was, however, unjustified in as much as it was unnecessarily aggressive and based on assumptions or conclusions that had not been properly articulated and discussed with Mr Dobbs. The unjustified actions were a breach of duty Taniwha owed to Mr Dobbs to not, without proper cause, act in a manner calculated to, or likely to, destroy or seriously damage the relationship of trust and confidence. Mr Dobbs resigned as a result of the breach of duty, and it was foreseeable that he would resign in the circumstances. That meant Mr Dobbs was constructively dismissed by Taniwha and the dismissal was not justified. The Authority ordered Taniwha to pay Mr Dobbs \$8,000 in compensation for the loss suffered due to hurt and humiliation.

The Authority considered the evidence of what occurred in relation to Mr Jurisich applying for, and accepting a role at, Switch Electrical. The Authority concluded that it preferred the evidence of Mr Jurisich and Switch Electrical and found Mr Dobbs did not solicit Mr Jurisich from Taniwha or encourage him to leave Taniwha to take up a role with Switch Electrical. It followed that Mr Jurisich and Switch Electrical could not have aided or abetted any breach by Mr Dobbs. Taniwha's claims against Mr Dobbs for breaching the restraint clause and against Mr Jurisich and Switch Electrical for aiding and abetting such a breach were dismissed.

Dobbs v Taniwha Retail Limited [[2022] NZERA 455; 12/09/2022; P van Keulen]

Unjustified constructive dismissal established

Mrs Patterson was employed by Mane Hair Design (Mane) from 6 April 2021 until she resigned on 25 November 2021. Mrs Patterson claimed to be unjustifiably constructively dismissed and unjustifiably disadvantaged in her employment. She sought to recover contractual entitlements, statutory entitlements, arrears of wages, compensation and penalties against the Respondents.

Mrs Patterson was training in cosmetic tattooing. Ms Hawley, the sole director and shareholder of Mane, was interested in cosmetic tattooing too. Ms Hawley committed to supporting and facilitating Mrs Patterson's ongoing training. They both decided that they would enter into an employment relationship with a longer-term view of an eventual business partnership.

The terms of Mrs Patterson's employment were recorded in writing. These terms included that Mrs Patterson would be paid \$29 per hour for 40 hours per week, paid weekly. Mrs Patterson was to provide her own equipment and would be paid 25 percent commission on all sales. Mrs Patterson paid \$10,000 to complete training and for the purchase of equipment. She had also introduced clients from her own beauty business to Mane's business.

Over time, Mrs Patterson experienced indecisiveness and procrastination from Ms Hawley. Ms Hawley had no business plans, marketing plans, sales plans, nor any budgets, or performance targets that were apparent to Mrs Patterson. This caused Mrs Patterson to become increasingly more frustrated and dissatisfied. She found Ms Hawley's decision-making erratic. Additionally, there were no weekly

meetings and Mrs Patterson's commissions were not being paid.

Then, there was the COVID-19 lockdown and, Mrs Patterson was unable to contact Ms Hawley. Her many voice messages for Ms Hawley to call her went unanswered. Ms Hawley communicated only by brief vague and cryptic text messages. For the most part, she responded she was too busy to deal with Mrs Patterson.

Mrs Patterson became stressed by the lack of contact and direction from her employer. She elected to do online courses and took the initiative to upskill herself. As the lockdowns began to ease, Mrs Patterson continued to call, email and text Ms Hawley. Ms Hawley failed to engage in any meaningful way.

In late November 2021, Ms Patterson reflected on the situation. The complete lack of engagement from her employer was unsatisfactory and caused considerable stress for Mrs Patterson. She felt that due to Ms Hawley's actions, she had no alternative other than to resign her employment. On 25 November 2021, Mrs Patterson wrote a resignation email.

On 25 November 2021, Mr Patterson wrote by email to Ms Hawley advising her that Mrs Patterson had instructed him to act for her in negotiations relating to settling her exit, final wages, annual leave owing and commissions. Ms Hawley responded with emails thereafter which included false accusations against Mrs Patterson of stealing, an allegation she had entered premises without authority, accusations she had tampered with equipment and that she had behaved fraudulently. There were threats that she would go to the Police, force a disciplinary meeting, and lodge a claim with the Disputes Tribunal.

On the final day of Mrs Patterson's notice period, the employer's property was returned by courier and signed as received by Ms Hawley herself. Ms Hawley responded by sending an abusive email to Mrs Patterson. Mr Patterson intercepted it and refused to allow his wife to see it.

The Authority said it had no doubt that Mrs Patterson's resignation came at the instigation of her employer. She resigned because her employer did not communicate with her. The thought of having to return to work after four months of no communication from her employer made Mrs Patterson physically sick. Her employer failed to pay her the wages it had contracted to pay her. Mrs Patterson was forced to make repeated inquiries about her pay and made requests for Ms Hawley to pay her what was due. The employer failed to provide her with a signed employment agreement.

The Authority found that Mane breached its duty of good faith owed to Mrs Patterson. It failed to be active, communicative, and responsive with her. It also breached the duty not to do anything calculated or likely to undermine or destroy the relationship of trust and confidence.

The Authority found that Mrs Patterson's resignation was reasonably foreseeable due to the breach of duty by her employer. Mrs Patterson was held to be unjustifiably constructively dismissed.

The Authority accepted that when Mrs Patterson resigned, Ms Hawley responded with highly abusive texts and emails containing threats and defamatory accusations against Mrs Patterson. Mrs Patterson continued to experience panic attacks as a result of the way her employment ended and Ms Hawley's refusal to return her personal property. The Authority found there to be no blameworthy conduct on Mrs Patterson's part that would require a reduction in any remedies to be provided to her.

The Authority was not persuaded that Mrs Patterson suffered any unjustifiable disadvantage separate and distinct from her claim of unjustifiable constructive dismissal.

The Authority awarded Mrs Patterson wage arrears of \$8,013.91 and outstanding holiday pay of \$3,155. If Mane was unable to pay, Mrs Hawley was ordered to make the payment. Mane was further ordered to calculate and pay interest on the above sums. Mane was ordered to pay three months lost wages of \$13,920 to Mrs Patterson. Mrs Patterson was further awarded \$15,000 in hurt and humiliation. A penalty of \$5,000 was ordered to be paid by Mane to the Crown. Costs were reserved.

Patterson v Mane Hair Design [[2022] NZERA 499; 4/10/2022; L Robinson]

LEGISLATION

Note: Bills go through several stages before becoming an Act of Parliament: Introduction; First Reading; Referral to Select Committee; Select Committee Report, Consideration of Report; Committee Stage; Second Reading; Third Reading; and Royal Assent.

Three Bills are currently open for public submissions to select committee.

- [International Treaty Examination of the Side Letter to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership \(CPTPP\) to exclude Investor-State Dispute Settlement \(ISDS\) between New Zealand and Chile \(22 February 2023\)](#)
- [Thomas Cawthron Trust Amendment Bill \(24 February 2023\)](#)
- [Therapeutic Products Bill \(5 March 2023\)](#)

Overviews of bills-and advice on how to make a select committee submission-are available at:
<https://www.parliament.nz/en/pb/sc/make-a-submission/>

The purpose of the Employer Bulletin is to provide and to promote best practice in employment relations.

If you would like to provide feedback about the Employer Bulletin, contact: comms@businesscentral.org.nz or for further information, call the **AdviceLine** on **0800 800 362**



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AdviceLine is your link to first-rate employment relations advice. Business Central understands the difficulties employers can have with managing employees, so supports you with dedicated employer advisors.



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Our training team provide you with practical training solutions across various employment topics to help upskill your staff, giving your business a competitive edge.



OCCUPATIONAL HEALTH AND SAFETY CONSULTANTS

Health and Safety and the well-being of your employees should be of paramount importance to any employer. To help you along the way, we have a friendly and knowledgeable Health and Safety Consultant.



EMPLOYMENT RELATIONS CONSULTANTS

Employment Relations can be a difficult area to navigate. When you need close guidance on employment matters, you can rely upon our seasoned ER Consultants to be there to help.



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When employees test the waters with a personal grievance, Business Central Legal are here to help. We offer representation in all employment law matters.

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ADVICELINE

AdviceLine is your link to first-rate employment relations advice. Business Central understands the difficulties employers can have with managing employees, so supports you with dedicated employer advisors.

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Adrienne has extensive experience with helping companies navigate Health and Safety requirements. She understands companies need to see sound return on investment for their well-being initiatives. Adrienne offers full support with compliance issues such as induction training and hazard identification and management. Additionally she can help with preparation for ACC 'Workplace Safety Management Practices'.

EMPLOYMENT RELATIONS CONSULTANTS

Employment Relations can be a difficult area to navigate. When you need close guidance on employment matters, you can rely upon our seasoned ER Consultants to be there to help.

Having someone equipped to help you do the work can take the stress out of a tricky situation.

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