

The Advocate

A regular newsletter for clients of MGZ Employment Law

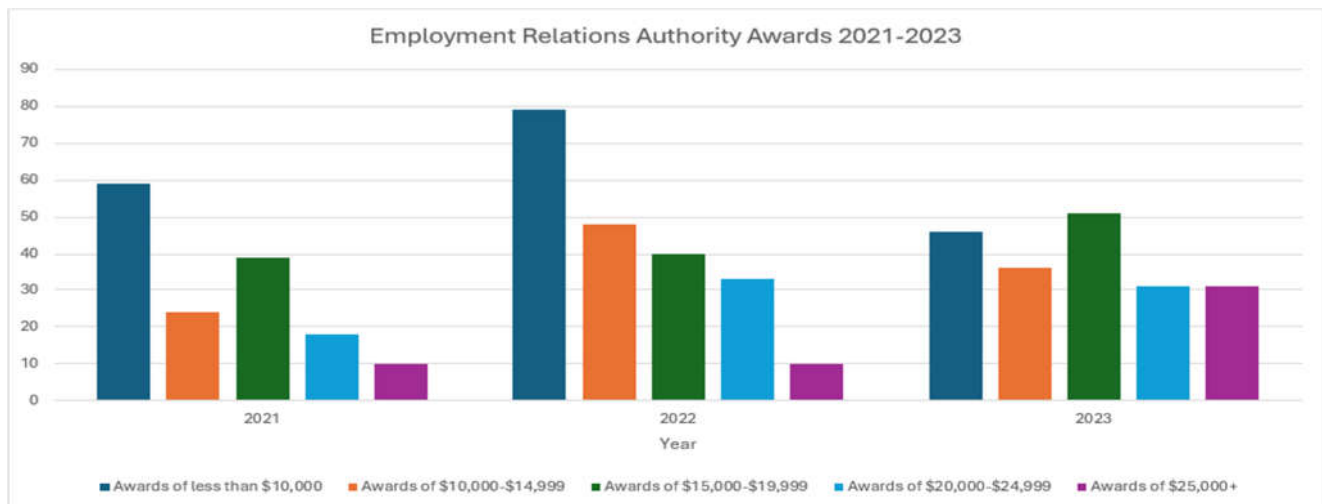


Compensation Awards and Settlement Agreements

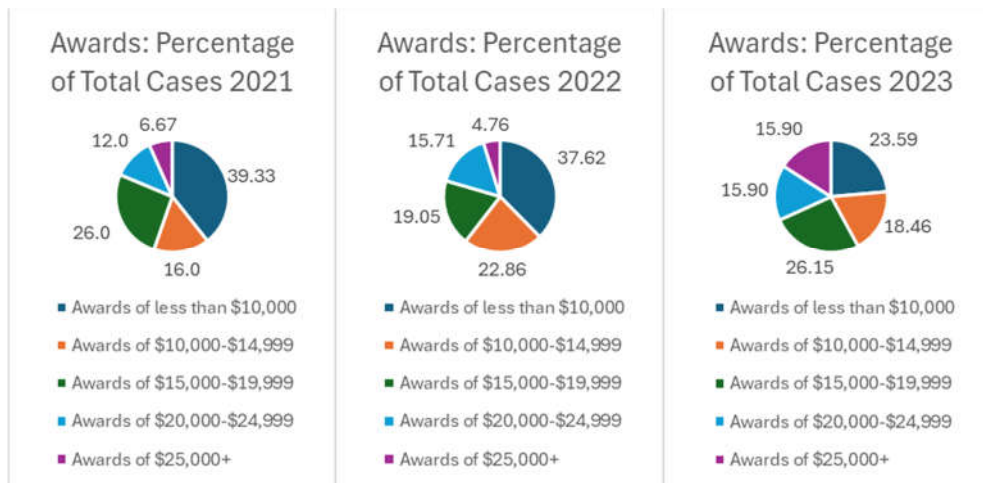
We have previously written about the increase in the bands of compensation under section 123(1)(c)(i) of the Employment Relations Act 2000 – compensation for humiliation, loss of dignity and injury to feelings. In *GF v Comptroller of Customs* [2023] NZEmpC 101, the Court viewed that the bands of compensation should be increased for inflation as follows:

- Band 1, involving low level loss/damage: \$0-\$12,000; and
- Band 2 involving mid-range loss/damage \$12,000-\$50,000; and
- Band 3 involving high level loss/damage over \$50,000.

Recently there has been a general increase in compensation awarded by the Authority, including some exceptionally high compensation awards. The Ministry of Business, Innovation and Employment’s compensation award statistics show a general increase in the number of cases with higher compensation awards in the Authority (awards higher than \$15,000), as well as a general decrease in the lower awards (awards of less than \$10,000).



We have also seen a significant increase in compensation awards of \$25,000 or higher. As can be seen below, the percentage of total cases where \$25,000 or higher compensation was awarded significantly increased from 2022 (4.76% of cases) to 2023 (15.9% of cases). To put the statistics into context, we discuss some recent case examples below.



In *Oswald v Pridewear Limited* [2024] NZERA 142, Ms Oswald was awarded \$18,000 in compensation (in addition to lost wages) for being unjustifiably dismissed. Ms Oswald had taken multiple short-notice absences due to family issues and was dismissed and trespassed via text message without any process. The Authority determined that Pridewear Limited did not raise its concerns with Ms Oswald prior to dismissing her, and Ms Oswald was not given the chance to explain that she thought her absences were approved. Another example is *Perry v The Warehouse Group Limited* [2023] NZERA 773 where Mr Perry was awarded \$25,000 in compensation. This case was featured in *The Advocate* in February this year (Issue 347).

We are also seeing the Authority award separate compensatory amounts for different personal grievances, whereas previously they might award a global sum for all grievances. In *Parker v Magnum Hire Limited* [2024] NZERA 85, Mr Parker was awarded compensation totalling \$105,000 for three separate grievances.

Mr Parker brought multiple claims against Magnum Hire Limited (“**Magnum**”), including claims for unjustified disadvantage as well as a claim for unjustified (constructive) dismissal due to bullying by Magnum’s director, Liam Field.

Mr Parker said that Mr Field bullied and psychologically abused him, which caused severe panic attacks, depression, anxiety, posttraumatic stress symptoms and other health issues. The Authority found that, among other things, Mr Field:

- Verbally abused Mr Parker and regularly accused Mr Parker of not doing his job; and
- Would “play the nice guy” on some occasions yet other occasions become angry and defensive, shouting at Mr Parker, and stonewalling him; and
- Threatened Mr Parker’s job security and said he would review/cut Mr Parker’s salary; and
- Referred to when Mr Parker was “going to die” and how his duties would need to be covered.

Mr Parker was ultimately awarded (among other remedies):

- \$50,000 compensation for unjustified disadvantage related to the bullying by Mr Field; and
- \$50,000 compensation for unjustified dismissal; and
- \$5,000 compensation for unjustified disadvantage for an unjustified suspension.

This is an extreme case, however it is a good example of when the Authority considers an award of Band 3 compensation appropriate.

These cases are often reported in the media. The increase in high compensation awards (and subsequent media reporting) appears to be impacting on employees’ expectations with regard to exit negotiations and/or settlement of personal grievances, including at mediation.

Unfortunately for employers, because of these higher awards, it is becoming more cost-effective and generally more appealing for employees to pursue cases in the Authority. This means that, generally, higher settlements should be expected going forward. This highlights the importance of seeking legal advice prior to disciplining or dismissing employees (including in restructuring) in order to manage legal risk appropriately.

Disclaimer:

This newsletter is not intended as legal advice but is intended to alert you to current issues of interest. If you require further information or advice regarding matters covered or any other employment law matters, please contact **Dean Kilpatrick, Jane Taylor, Deborah Hendry or Jane Jarman.**