

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2013] NZERA Christchurch 141
5347532

BETWEEN MARK MANUERA
Applicant

A N D AMCOR PACKAGING (NEW
ZEALAND) LIMITED
Respondent

Member of Authority: Christine Hickey

Representatives: Greg Lloyd, Counsel for the Applicant
Richard Harrison, Counsel for the Respondent

Investigation meeting: 10 and 11 December 2012 at Christchurch

Submissions Received: 21 December 2012 and 5 April 2013 from Applicant
14 December 2012 and 6 March 2013 from Respondent

Date of Determination: 10 July 2013

DETERMINATION OF THE AUTHORITY

- A. Mark Manuera has a personal grievance for unjustified dismissal on 8 November 2010.**
- B. Amcor (NZ) Limited is to pay Mark Manuera \$3,776.50 in lost remuneration.**
- C. Amcor (NZ) Limited is to pay Mark Manuera \$2,000 in compensation.**

Employment relationship problem

[1] Mark Manuera was employed by Amcor on the afternoon/night shift from 29 November 2004. Amcor is a packaging manufacturer.

[2] Mr Manuera was a dispatch forklift operator and was dismissed on 8 November 2010 after an incident on 26 October 2010 during which he loaded an incomplete order.

[3] Mr Manuera was a member of the NZ Engineering, Printing & Manufacturing Union Incorporated (EPMU). After his dismissal his union representative, Alan Clarence, had discussions with Wolf Lorenz, the respondent's then general manager, about reinstating Mr Manuera.

[4] Mr Lorenz phoned Dave Maple, Amcor's Christchurch manufacturing manager, and asked if there was a position available on the day shift. He was told that there was. He spoke to Mr Clarence about reinstating Mr Manuera to a day shift position. Amcor considered that Mr Manuera needed more supervision and that would be available on the day shift.

[5] Mr Clarence understood that the outcome of the discussions was that if Mr Manuera apologised for his actions he would be reinstated to his role as a forklift driver but on the day shift. He would also receive a written warning, would not be paid for the time between his dismissal and recommencing on the day shift and his annual leave entitlement would start from nil.

[6] Mr Manuera wrote Amcor an apology which was forwarded to Mr Lorenz by Mr Clarence on 12 November 2010 attached to an e-mail in which Mr Clarence notified Mr Lorenz that Mr Manuera *will accept re-instatement on the basis of your offer to do so.*

[7] Amcor says that the possibility of reinstating Mr Manuera, subject to the conditions agreed with Mr Clarence, was dependant on a suitable day shift position being available. A production assistant's role, rather than a forklift driver position, in the day shift had been advertised but was verbally offered to a new employee on about 11 November 2010. That offer was conditional on the person passing a police check and a medical examination. He passed both checks and was employed. He signed an employment agreement on 22 November 2010.

[8] On 15 November 2010 the union was verbally notified that there was no vacant position for Mr Manuera. On 19 November 2010 Lyal Graham, Amcor's human resources manager, wrote to Mr Clarence stating that there was no day shift position available for Mr Manuera.

Mr Manuera's claims

[9] Mr Manuera claims that he was unjustifiably dismissed on 8 November 2010 and also claims that he was treated in a disparate way to another employee who had acted negligently.

[10] He claims that the unjustified dismissal of 8 November 2010 was resolved by way of an agreement to reinstate him. He claims that as a result of that agreement he became an employee again, being a person intending to work¹, however, he was then unjustifiably dismissed for a second time by Amcor deciding that he could not begin work on the day shift. Alternatively, Mr Manuera claims that in not honouring its agreement to reinstate him Amcor made him redundant.

[11] Mr Manuera also claims that Amcor failed to comply with its statutory good faith obligations to him under s.4(1A) of the Employment Relations Act 2000. He claims Amcor failed to comply with its own undertaking given by Mr Graham in a 19 November 2010 letter because it failed to discuss any future suitable opportunities for him.

[12] By way of remedy for the first unjustified dismissal Mr Manuera claims compensation of \$10,000 for humiliation etc. and compensation for the loss of any benefit.

[13] For the second unjustified dismissal Mr Manuera claims compensation of \$10,000 for humiliation etc. and compensation for the loss of any benefit.

[14] In the alternative, by way of remedy if Mr Manuera is found to have been made redundant he claims four weeks paid notice of redundancy and payment of redundancy compensation equivalent to 20 weeks wages.

[15] Mr Manuera also seeks legal costs.

[16] Amcor resists all claims and in particular says that Mr Manuera was justifiably dismissed on 8 November 2010, and that there was no binding agreement to reinstate him.

¹ Section 6(1)(b)(ii) of the Employment Relations Act 2000

[17] Amcor also says that while a personal grievance was raised in relation to the 8 November 2010 dismissal none was raised in relation to the subsequent discussions about reinstatement and the claimed failure to reinstate Mr Manuera.

Issues

[18] The issues the Authority needs to determine are:

- (a) Whether Mr Manuera was unjustifiably dismissed on 8 November 2010.
- (b) Whether the second personal grievance was raised within 90 days; OR
- (c) Whether Amcor had reached a binding settlement agreement to reinstate Mr Manuera.
- (d) Whether Amcor breached its duty of good faith under s.4(1A).
- (e) Whether Mr Manuera is entitled to any remedies.

The procedural background

[19] Jo McLean, an organiser with the EPMU, raised a personal grievance of unjustified dismissal arising out of the 8 November 2010 dismissal on 23 November 2010 in a letter to Mr Maple.

[20] On 18 April 2012 the applicant lodged the first statement of problem alleging that the failure of Amcor to comply with the alleged agreement to reinstate Mr Manuera amounted to unjustified dismissal and in the alternative that Mr Manuera was reinstated and then made redundant. There was no claim made that the 8 November 2010 dismissal was unjustified.

[21] The respondent's first statement in reply was lodged on 8 May 2012. It denied the claims but did not raise the issue of whether or not a personal grievance had been raised within 90 days. I note the statement in reply was prepared by Mr Harrison.

[22] On 17 July 2012 after a telephone conference between the parties and the Authority the date for the investigation meeting was set for 25 September 2012. Both parties filed their evidence as timetabled and appeared at the investigation meeting.

[23] At that meeting Mr Harrison, for the respondent, raised the question of whether a personal grievance had been raised within 90 days in relation to the alleged failure to re-instate the applicant. He apologised for the lateness of raising the question but said that it had occurred to him at home over the weekend while he was preparing for the investigation meeting.

[24] I adjourned the investigation meeting and granted leave to Mr Manuera to amend the statement of problem. A second statement of problem was filed on 29 October 2012 alleging unjustified dismissals on 8 November and 15 November 2010. The respondent's second statement in reply was filed on 13 November 2012.

[25] The investigation meeting took place on 10 and 11 December 2013. Written submissions were lodged later.

Was Mr Manuera unjustifiably dismissed on 8 November 2010?

[26] On 26 October 2010 Mr Manuera discovered that not all the pallets that he needed to load for a Talley's order were stacked at the appropriate place as he expected them to be. The computer system and the whiteboard in the office indicated that the product had been pulled out and was ready to load.

[27] Mr Manuera subsequently discovered the other pallets required for the load at the end of another row at about 11.30 p.m. He estimates it would have taken him about 10 minutes to pull the product out and put it onto the truck. There was also some further *computer work* to be done. He would have had time but he did not load the pallets onto the truck before finishing his shift.

[28] Mr Manuera's evidence was that when he discovered that the product was not placed where it should have been he *spat the dummy* and *threw my hands up in despair*.

[29] The following day when he got to work the dispatch administrator, Bronwyn, told him the dispatch team leader, Derek Neill, would be ringing to talk to him. Mr Neill spoke to Mr Manuera by phone at about 4 p.m. on 27 October 2010 and told him that they were concerned that he did not load three pallets on to the Talley's truck which caused later delivery of the order.

[30] Mr Manuera replied that he had found the pallets at the back of row F7 but that *he didn't want to go the extra mile to get these out and load*. Mr Manuera also said that *the company does nothing for him so why should he go the extra mile*.²

[31] On 28 October 2010 Dave Maple, Amcor's Christchurch manufacturing manager, held a meeting to investigate what had happened. Mr Manuera, Mr Maple and Anthony Inwood, Mr Manuera's shift supervisor, were present. Mr Manuera's explanation for why he had not loaded the pallets was³:

- *Not enough pallets to fill order found in F7 decided not prepared to do this – not sure of time around 11.30pm ish information on board not correct*
- *Could not be bothered getting stuff out maybe 6 pallets*
- *Not in mood to fix it*
- *Don't like doing other people's work*

[32] When Mr Inwood asked Mr Manuera why he did not let the supervisor know he said that *other people get paid more than me*.

[33] Mr Maple decided that it was appropriate to begin a disciplinary process and called a meeting for 3 November 2010. At the beginning of the meeting Mr Manuera was asked if he wanted a support person and he declined. Mr Maple told him that if at any stage he wanted to stop and get a support person he was able to do so.

[34] Mr Maple said that Amcor was *taking it to the next level*⁴ and that the purpose of the meeting was to ensure the notes of the previous meeting were correct. He read back to Mr Manuera the notes taken of Mr Manuera's responses from the previous meeting. Mr Manuera also said:

Size of customer should not make any difference to quality of service.

One reason didn't do what was expected was lack of resource in dispatch.

Major dummy spit – a factor why product not sent.

Working environment forced to work in at the moment

² Notes taken and annexed to Dave Maple's witness statement as DM1

³ Notes taken and annexed to Dave Maple's witness statement as DM2

⁴ Notes taken and annexed to Dave Maple's witness statement as DM3

*Feels does not have same opportunities as others got i.e. vacancies on notice board, competitive wages/training etc.*⁵

[35] Mr Maple discussed his concerns about Mr Manuera's actions on 26 October 2010 with Lyal Graham, Amcor's human resources manager. He and Mr Graham decided that Mr Maple would hold a further disciplinary meeting with Mr Manuera.

[36] On 4 November 2010 Mr Maple wrote to Mr Manuera asking him to attend a disciplinary meeting on Monday 8 November 2010. Mr Maple informed Mr Manuera that Amcor viewed his actions as serious misconduct that could result in the termination of his employment:

The company finds your actions as unacceptable and an act of indolence, which places undue demands on our customer relationship with Talleys, our second largest customer.

Because of the seriousness of this situation, I strongly urge you to bring along representation.

[37] Mr Manuera attended the meeting with Ross Lamond, an EPMU union delegate. Mr Maple and Mr Inwood attended the meeting for Amcor. Mr Manuera was asked if he wished to add anything further to the explanations he had already given. He said that he had nothing further to add. Mr Maple then said that if no-one had anything further to add he would go away and review the information and get back to Mr Manuera.

[38] Mr Maple discussed the situation with Mr Graham and Euan McLeish, the New Zealand manufacturing manager. He says that he made the decision himself but before doing so tested his view about whether Mr Manuera should be dismissed with them.

[39] He says that his view was that there was no good reason for Mr Manuera not having completed the order and the fact that he had consciously decided not to complete the order destroyed the trust and confidence Mr Maple needed to have in him.

[40] Mr Maple says that he gave consideration to whether or not a warning would be appropriate but because he had seen no remorse he decided that Mr Manuera had

⁵ Notes taken and annexed to Dave Maple's witness statement as DM3

not learnt from the experience therefore he had *no reason to believe this would be a one-off episode*.

[41] Mr Maple came back to the meeting and told Mr Manuera that Amcor had decided to terminate his employment immediately because of serious misconduct. Mr Manuera was escorted from the premises.

[42] An amendment to section 103A of the Employment Relations Act 2000 (the Act) came into force on 1 April 2011. Mr Manuera was dismissed on 8 November 2010. His dismissal pre-dated the commencement of the 2011 amendments. It is well established that legislation is presumed not to have retrospective effect. The test for justification under s.103A that applied at the time of his dismissal is the test I need to apply.

[43] At the time of the dismissal section 103A read:

*For the purposes of section 103(1)(a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer **would** have done in all the circumstances at the time the dismissal or action occurred.*

[44] In the Employment Court case of *Air New Zealand v Hudson*⁶ Judge Shaw found that:

The first element of this section confirms expressly that justification for dismissal must be determined on an objective basis. This means that the matter must be viewed from the point of view of a neutral observer. This element of objectivity is expanded on in the second part of the section. To decide whether the employer's actions were what a fair and reasonable employer would have done in all the circumstances the Court must judge all the circumstances objectively.

Was Mr Manuera's conduct capable of being classified as serious misconduct?

[45] Mr Manuera was employed under a collective employment agreement which incorporates Amcor's House Rules.

[46] Although during the disciplinary process Amcor did not tell Mr Manuera which House Rule he was alleged to have breached the House Rules are relevant. Before the dismissal Ms McLean asked Mr Maple for a copy of page 4 of the rule

⁶ [2006] ERNZ 415, at paragraph 113.

book and asked whether Mr Manuera had any warnings in place. Mr Maple told Ms McLean that as far as he was aware Mr Manuera had no prior warnings in place.

[47] Mr Maple says that he sent a copy of page 4 of the rule book to Ms McLean. Ms McLean's records were lost in the Canterbury 2011 earthquakes so it is not clear what was sent to her that Mr Maple may have had in mind at the time. However, in the letter inviting Mr Manuera to the 8 November 2010 meeting Mr Maple wrote that Mr Manuera's actions were:

...unacceptable and an act of indolence, which places undue demands on our customer relationship with Talleys...

[48] Page 20 of the House Rules sets out the Disciplinary Procedure and says:

Unsatisfactory work performance or less serious misconduct, disobedience or breach of your Employment Contract will be subject to the following warning procedure:

- *Verbal counselling will be given which will be recorded in writing. Retraining, when necessary, will be undertaken.*

- ***Any First Occasion (1st written warning)***

A first written warning will be given in private before a witness. Retraining, where necessary, will be undertaken.

- ***Any Second Occasion (2nd written warning)***

A second written warning referring to any previous written warning and its date will be given. This second written warning will make a clear statement that any further unsatisfactory work performance may result in termination.

- ***Any Third Occasion (3rd written warning)***

Termination.

[49] The Rules also say:

in cases of serious misconduct, disobedience or serious neglect of duty an employee may be instantly dismissed.

[50] On 7 December 2010 Ms McLean asked for a copy of the termination letter and Mr Maple replied saying that none had been given to Mr Manuera.

[51] At the investigation meeting Mr Maple said that he considered that Mr Manuera breached rule 10 of the part of the House Rules headed Serious Misconduct:

Refusal to perform lawful work or to follow the reasonable instructions of a Supervisor/Team leader, or walking off the job.

[52] Mr Manuera produced a copy of a first warning letter given to another Amcor employee which he says establishes that he was dealt with in a disparate manner, and more harshly, than the other employee. He considers his behaviour to have been comparable to that of the other employee.

[53] The letter dated 14 October 2010 concluded that the employee had failed to comply with best operating procedures and had not completed all quality checks resulting in *1100 rejects of Moa Breweries due to print defects*. Amcor concluded that the employee had been aware of and capable of completing the quality checks but failed to do so. Amcor notified the employee that he was expected to improve his performance immediately and that any further misconduct or insufficient improvement in his performance was likely to lead to a second written warning.

[54] Mr Manuera says that his behaviour had the potential to lead to loss for the company but did not actually cause loss and so was less serious than the printing errors caused by the other employee.

[55] Mr Maple disagrees and says that the other employee had been trying to increase production for the company and while he made an error he did so with good intentions. The employee is not working for Amcor any longer and was unable to give evidence for these proceedings.

[56] Mr Manuera knowingly failed to use his initiative and failed to complete the loading of an order. Under the House Rules his failure to load the missing pallets once he found them was clearly unsatisfactory performance of his duties that could have led to a written warning. However, Mr Manuera did not refuse to perform lawful work or to follow the reasonable instructions of his supervisor or team leader. He was not given a specific instruction to load the pallets found at the end of F7 that night. I consider that a neutral observer taking into account Amcor's House Rules and Mr Manuera's behaviour would not have considered that in all the circumstances his behaviour amounted to serious misconduct.

[57] Mr Manuera's behaviour was a lack of acceptable performance and Amcor should have acted in line with its own House Rules and consistently with how it had treated other instances of unacceptable performance, such as the employee who caused 1100 rejects, by issuing a written warning to Mr Manuera.

[58] I consider that Amcor did not deal with Mr Manuera in line with its own House Rules and failed to carry out the agreed disciplinary process related to inadequate performance. For that reason I consider that Amcor made a decision that a fair and reasonable employer would not have made in all the circumstances.

Was a fair process followed?

[59] Mr Maple appears to have relied on rule 10 of the House Rules without putting to Mr Manuera that he considered him to have breached that Rule. It is a fundamental requirement of a fair process that an allegation is put to an employee to allow them to address it by giving an explanation which is then taken into account by the employer in deciding whether the allegation is proved and what the consequence should be.

[60] In this case the facts of what happened were not disputed and Mr Manuera had an opportunity to give an explanation for why he acted as he did. However, it was never put to him that his behaviour amounted to a refusal to perform lawful work or follow reasonable instructions.

[61] I have some other areas of concern. First, after the initial investigation discussion that Mr Neill held with Mr Manuera over the telephone Amcor held a further meeting on 28 November 2010 with Mr Manuera without offering him the opportunity to be represented or to bring a support person. Mr Maple characterises the meeting on 3 November 2010 as being the beginning of the disciplinary process and the 28 October meeting as part of the investigation. However, the 28 October meeting was a disciplinary meeting in that it was Mr Manuera's opportunity to give his explanation for what had happened in front of two Amcor managers.

[62] The second area of concern is that Mr Manuera was not offered the opportunity to get a support person until the beginning of the 3 November 2010 meeting, rather than in advance of it. However, on 3 November 2010 Mr Manuera was not aware of the potential consequence of loss of his job and declined to have a support person. A fair and reasonable employer would have ensured that Mr Manuera

was aware of a potential outcome being dismissal and ensured that he was aware he had an opportunity to bring a support person or representative.

[63] The third area of concern is that Amcor reached a decision that Mr Manuera's *act of indolence* was serious misconduct after the 3 November 2010 meeting and before the 4 November 2010 meeting which was the first time Mr Manuera had been advised to bring a representative.

[64] I consider that when taken together these procedural shortcomings contribute to a process that a fair and reasonable employer would not have undertaken.

[65] I have also decided that a fair and reasonable employer would not have characterised Mr Manuera's lapse on 26 October 2010 as serious misconduct and would have followed its own disciplinary procedure leading to a warning. Mr Manuera has a personal grievance that he was unjustifiably dismissed on 8 November 2010.

Did the parties reach a binding settlement agreement that Mr Manuera should be reinstated?

[66] The question of whether or not there was a settlement between the parties by an enforceable agreement is the correct analysis of the disagreement between the parties on whether or not Amcor reneged on an agreement to reinstate Mr Manuera.

[67] It is clear from the November 2010 discussions between Mr Clarence and Mr Lorenz that there was a dispute about whether Mr Manuera had been fairly dismissed on 8 November 2010 and discussions were underway to settle that employment relationship problem.

[68] Amcor says that there was not a meeting of the minds, and so no concluded settlement agreement, between Mr Lorenz and Mr Clarence to reinstate Mr Manuera because not all essential conditions had been agreed. It says that is evidenced by Mr Clarence's 12 November 2010 e-mail to Mr Lorenz saying that he had told Mr Manuera that he would ring him on Monday 15 November *with more detail after talking further with you on Monday*. Amcor says that the discussion on Monday 15 November 2010 was not just about detail but about important conditions of the agreement such as what position Mr Manuera would be working in and what a start date would be.

[69] Amcor says that it withdrew from settlement discussions with Mr Clarence before a binding agreement was reached.

[70] Amcor also says it would only have agreed to reinstate Mr Manuera if a suitable position was available. It says that there was no suitable position available for him. I find it is more likely that not that Mr Lorenz did not have that condition in mind when discussing reinstatement with Mr Clarence nor did he convey that to Mr Clarence.

[71] At the investigation meeting Mr Lorenz said that if the position on day shift had still been available Mr Manuera could have applied for it but he needed to be suitably qualified for it. In his discussions with Mr Clarence Mr Lorenz never said, and probably never intended, that Mr Manuera could only be re-employed if he applied for the available position and was considered suitably qualified for it.

[72] Mr Maple's evidence was that at the time Mr Lorenz rang him to ask if a position was available on day shift Mr Lorenz did not ask if it was a suitable position for Mr Manuera. Mr Maple says he was probably aware at that stage that Mr Lorenz was asking because he was considering reinstating Mr Manuera. Mr Maple did not tell Mr Lorenz at that stage that the available role was not suitable for Mr Manuera.

[73] However, I accept that Amcor never intended to create a role for Mr Manuera on the day shift. That is consistent with Mr Lorenz confirming the availability of a vacancy on the afternoon shift with Mr Maple before offering to reinstate Mr Manuera on the conditions of an apology, annual leave beginning from nil and no pay for the period between dismissal on 8 November 2010 and whatever start date might be agreed.

[74] Mr Clarence and Mr Manuera believed that the proposal was to reinstate him to the day shift as a forklift driver. However, at the investigation meeting Mr Clarence conceded that the actual position was not discussed with Mr Lorenz. I accept that Amcor did not have a vacancy for a forklift driver on the day shift.

[75] Amcor also says that Mr Manuera was not qualified for the role that was available which was as a machine operator on an Emboa flexo folder gluer⁷. However, Mr Manuera says that he would have been able to do the role. In fact, whether or not Mr Manuera was qualified to undertake the available position had never been part of the settlement discussions.

[76] I accept that there was not a vacant position on the day shift for a forklift driver at the relevant time. I consider the issue of what role it was proposed Mr Manuera would undertake on the day shift was a fundamental term of the agreement that had not been agreed. There is no certainty that Mr Manuera would have accepted the actual vacant role on day shift had it been offered to him. There was also no agreement about what a possible start date would have been. That was also a fundamental term of a settlement agreement because Mr Manuera was being asked to agree that he would not be paid for the time between 8 November 2010 and whenever he was re-employed on the day shift. I conclude that the lack of certainty about fundamental terms means there was no concluded settlement agreement. Therefore, Amcor cannot be said to have breached the agreement.

[77] It follows that Mr Manuera did not become an employee as a 'person intending to work' so was not dismissed a second time or made redundant.

Did Amcor act in breach of its obligation to treat Mr Manuera in good faith?

[78] Mr Manuera was not an employee at the time of the settlement discussions as he had been dismissed. The statutory obligation of good faith does not survive the termination of employment.

[79] It follows that when Mr Graham gave an undertaking to consider re-employing Mr Manuera in any roles that became vacant in the future Amcor was not bound by any statutory duty of good faith. Therefore, Amcor did not breach its duty of good faith to Mr Manuera.

⁷ Dave Maple's witness statement, paragraph 28.

Remedies

Lost wages

[80] Mr Manuera has claimed lost wages as a consequence of his unjustified dismissal from Amcor. He says he has found it difficult to get permanent employment because of his dismissal however he has had reasonably regular temporary work through employment agencies.

[81] Section 123(1)(b) of the Act allows me to provide for the reimbursement by Amcor of the whole or any part of wages Mr Manuera lost as a result of his grievance. Section 128(2) of the Act provides that I must order Amcor to pay Mr Manuera the lesser of a sum equal to his lost remuneration or to 3 months' ordinary time remuneration. Since Mr Manuera obtained work through Coverstaff in the three months after his dismissal I need to award him his actual lost remuneration for the thirteen weeks after his dismissal.

[82] In addition, s.128(3) gives the Authority discretion to order an employer to pay an employee a sum of lost remuneration greater than is compulsory under s.128(2); that is, for more than thirteen weeks.

[83] In the year ending 31 March 2011, which was 20.5 weeks after his dismissal, Mr Manuera earned \$7,553 less than the average amount he earned at Amcor in the 2009 and 2010 tax years. In all the circumstances I consider this amount to be a reasonable amount of compensation for his remuneration lost as a result of his personal grievance. That covers the first thirteen weeks after his dismissal and a further 7.5 weeks.

Compensation

[84] Section 123(1)(c)(i) allows the Authority to award compensation for humiliation, loss of dignity and injury to the feelings. Mr Manuera has applied for compensation of \$10,000 for humiliation, loss of dignity and injury to his feelings as a result of his unjustified dismissal.

[85] He says that he suffered profound stress as a consequence of his unjustified dismissal on 8 November 2012 and further stress as a result of Amcor's decision not to reinstate him. He says that the post-dismissal period was a:

...difficult and depressing period of my life which left me feeling very uncertain about my employment future, and created considerable strain on my marriage.

[86] At the investigation meeting Mr Manuera said that he *doesn't really do humiliation* however, his written evidence outlines that when he has applied for permanent jobs he has had to tell prospective employers that he was summarily dismissed by Amcor. He has found this very difficult.

[87] Given that I have found that there was not a concluded settlement agreement between Amcor and Mr Manuera I cannot take into account his disappointment and stress from not being reinstated as he had hoped to be. However, I consider that there has been a loss of dignity and injury to Mr Manuera's feelings as a result of his unjustified dismissal and consider that compensation of \$4,000 is fair compensation.

Contribution

[88] Having determined Mr Manuera has a personal grievance under s.124 of the Act I must now consider whether he contributed to the situation which gave rise to his dismissal and if so reduce remedies accordingly.

[89] Mr Lloyd made a very proper concession that, if I found a personal grievance proved, Mr Manuera had contributed to the situation that gave rise to the personal grievance by 25% to 50%. I agree that Mr Manuera's actions contributed to the situation which gave rise to the personal grievance and I find his actions were blameworthy. I consider that the remedies should be reduced by 50% to take Mr Manuera's contribution into account.

Costs

[90] Costs are reserved. Mr Manuera as the successful party is entitled to a reasonable contribution towards his actual legal costs, if there are any. The parties are encouraged to resolve costs themselves. However, if that is not possible, then Mr Manuera has 28 days from the date of this determination within which to file a costs memorandum and Amcor has 14 days within which to respond.