IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE

[2019] NZERA 86
3030672

	BETWEEN	TERRY COYLE Applicant
	A N D	GAVIN LADBROOK trading as SANDBLASTING AND SPRAYPAINTING SERVICES Respondent

Member of Authority:	Peter van Keulen
Representatives:	Robert Morgan, advocate for the Applicant Timothy Jackson, counsel for the Respondent
Investigation Meeting:	30 October 2018
Submissions Received:	8 November and 23 November 2018 from the Applicant 14 November 2018 from the Respondent
Date of Determination:	19 February 2019

DETERMINATION OF THE AUTHORITY

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[1] Terry Coyle worked for Gavin Ladbrook, trading as Sandblasting and Spraypainting Services (S&S Services) for almost seven years. He worked as a sandblaster doing sandblasting and associated tasks.

[2] It appears that Mr Coyle's employment with S&S Services was turbulent. Mr Coyle says that he was prepared to confront management over work issues, such as machinery not being safe or not working correctly. And, he says that when he did S&S Services would accuse him of being aggressive.

[3] S&S Services says Mr Coyle was a difficult employee as he had a temper, was aggressive and intimidated staff. It says that during his employment Mr Coyle received thirteen warnings for aggressive behaviour - a mixture of verbal, written and final warnings.

[4] This all came to a head on Friday, 4 August 2017, when Mr Coyle confronted management over what he thought were unsafe work practices, resulting in two exchanges in which, Mr Coyle says, he was told to leave.

[5] Mr Coyle says that the second time S&S Services told him to leave this amounted to a dismissal and S&S Services confirmed this in writing in a letter he received after the weekend on Monday, 7 August 2017.

[6] S&S Services says it did not dismiss Mr Coyle on 4 August 2017. Rather, it says it told Mr Coyle to leave because he was angry and needed to calm down. Then S&S Services invited Mr Coyle to attend a meeting on 7 August 2017 to discuss the 4 August events. Mr Coyle did not turn up for the meeting on 7 August and consequently his employment ended.

[7] S&S Services' position on why Mr Coyle's employment ended on 7 August 2017 has been equivocal. I have reviewed S&S Services' statement in reply, evidence and submissions of counsel and I believe there are essentially three alternative propositions advanced:

(a) Mr Coyle abandoned his employment by walking out on 4 August 2017.

(b) S&S Services terminated Mr Coyle's employment because he had walked out on 4 August 2017 and then failed to attend the 7 August 2017 meeting.

(c) S&S Services terminated Mr Coyle's employment because of his ongoing poor behaviour, culminating in the events of 4 August 2017 - the decision to terminate was made after Mr Coyle failed to turn up to the 7 August 2017 meeting, thus failing to provide any explanation for his behaviour.

Issues

[8] The first issue for Mr Coyle's unjustified dismissal claim is did S&S Services dismiss Mr Coyle?

[9] The second issue is, if S&S Services did dismiss Mr Coyle, was the dismissal:

(a) carried out through a fair process, particularly in light of the requirements in ss 4(1A) and 103A of the Employment Relations Act 2000 (the Act); and/or

(b) substantively justified?

[10] If S&S Services did unjustifiably dismiss Mr Coyle then I will need to consider the remedies he is entitled to receive, including compensation and reimbursement. If I award Mr Coyle any remedies, I will then need to consider if he contributed to his grievance in such a way that the remedies awarded should be reduced and if so by how much.

Dismissal

[11] Whether S&S Services dismissed Mr Coyle involves an analysis of the four proposed scenarios:

(a) Did S&S Services dismiss Mr Coyle on 4 August 2017?

(b) Did Mr Coyle abandon his employment on 4 August 2017?

(c) Did S&S Services dismiss Mr Coyle on 7 August 2017 because he walked out on 4 August 2017 and then failed to attend the 7 August meeting?

(d) Did S&S Services dismiss Mr Coyle on 7 August 2017 for poor behaviour, including the events of 4 August 2017?

Did S&S Services dismiss Mr Coyle on 4 August 2017?

[12] On Friday, 4 August 2017, Mr Coyle was working with the blast pot, part of which he says would not close properly and he had to stand on a drum to fill it. Mr Coyle became concerned and agitated about this faulty equipment. It appears to me that his anxiety and anger over these conditions were intensified by his view of S&S Sandblasting's poor compliance with its health and safety obligations.

[13] Mr Coyle then confronted the floor manager, Doug Bisdee, over the working conditions at S&S Services. It is reasonably clear that there was a robust exchange of views between Mr Coyle and Mr Bisdee over this issue. This culminated in Mr Bisdee telling Mr Coyle "if you do not like it you know what you can do."

[14] Mr Coyle left S&S Services' premises and went home. When he was at home Mr Coyle called the S&S Services manager, Greg Craig, and asked him if he had been fired. Mr Craig told Mr Coyle to come back to work.

[15] When Mr Coyle returned to S&S Services' premises, there was a second confrontation, this time between Mr Coyle and Mr Craig. Mr Coyle says Mr Craig swore at him and threatened him. Mr Craig says Mr Coyle was aggressive and yelled at him. Then Mr Craig demanded Mr Coyle's keys to the S&S Services' premises and told Mr Coyle to go home.

[16] Mr Coyle then left the premises and when he was at his home, he had a text exchange with Mr Bisdee. In this exchange, he asked if he had been fired. Mr Bisdee responded asking Mr Coyle to come back to S&S Services' premises to "talk this through". Mr Coyle's response was that he did not want to come in to be "screamed at by [Mr Craig] again" and he offered to meet with Mr Bisdee and Mr Ladbrook.

[17] Mr Ladbrook then visited Mr Coyle at his home later that afternoon on 4 August 2017. Both agree that they discussed what had occurred that morning at S&S Services. Mr Ladbrook says Mr Coyle was still angry at Mr Bisdee and Mr Craig and was threatening to "do them". Mr Ladbrook says he told Mr Coyle that he would discuss what happened with Mr Bisdee and Mr Craig and that he would meet Mr Coyle at 7:30 am on Monday, 7 August 2017 at S&S Services' premises to discuss further. Mr Coyle agrees that there was a discussion about what had occurred that day and that Mr Ladbrook said he would get back to Mr Coyle and they would meet to discuss things further. However, Mr Coyle says Mr Ladbrook did not set a time and place for the meeting; rather Mr Coyle expected to hear back from Mr Ladbrook on Monday before he went in for the proposed meeting.

[18] Whether a time was agreed or not it is clear that Mr Ladbrook told Mr Coyle that he would investigate what occurred and there would be a meeting to discuss this on Monday, 7 August 2017.

[19] Based on these events, I am satisfied that by the end of the day on Friday, 4 August 2017, S&S Services had not dismissed Mr Coyle.

[20] Dismissal is the termination of employment at the initiative of the employer[1]. It requires an unequivocal act, which amounts to an actual dismissal or a constructive dismissal. In the case of an actual dismissal, the unequivocal act will be a statement amounting to a sending away or sending apart[2].

[21] In most cases of actual dismissal, an employer's statement of termination is straightforward and the issue of dismissal is not in dispute. However, there are cases where the employer may say it did not intend to dismiss an employee but the language used in an exchange with an employee can still be unequivocal and amount to a dismissal[3]. There are two points that arise in these circumstances. First, the assessment of whether the employer's

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[1] *Wellington Clerical Union v Greenwich* [1983] ACJ 965 (AC).
[2] *Wellington Clerical Union v Greenwich* [1983] ACJ 965 (AC) at 976.
[3] See for example, *No 1 Autohaus Ltd v Wrigley* EmpC Auckland AEC75/97, 18 July 1997 where the words "Good God, look at you, you can just go" were held to be a dismissal.

statement is an unequivocal sending away is a question of fact based on an analysis of not just the statement but also the circumstances giving rise to it. Second, if the employer does not intend to dismiss an employee but the employee believes they have been dismissed and the employer becomes aware of this misunderstanding then the employer must correct that misunderstanding[4] - this is so even where the employer's statement is equivocal and does not amount to a dismissal.

[22] These legal considerations are relevant to four sets of events that occurred on 4 August 2017, which inform Mr Coyle's claim that S&S Services dismissed him. These events are Mr Coyle's altercation with Mr Bisdee, the altercation with Mr Craig, the two exchanges with S&S Services where Mr Coyle asks if he has been dismissed and the meeting with Mr Ladbrook. Each of the sets of events is relevant in my analysis of the question of whether S&S Services dismissed Mr Coyle on 4 August 2017.

[23] In the altercation between Mr Coyle and Mr Bisdee, Mr Bisdee's response to Mr Coyle's complaints about working conditions was "if you do not like it you know what you can do". Mr Bisdee says this was a reference to doing something about the issues Mr Coyle had and not just complaining. Irrespective of Mr Bisdee's intention it is my view that this statement cannot amount to a dismissal, as it is not an unequivocal sending away by the employer.

[24] In the next altercation between Mr Coyle and Mr Craig, Mr Craig's statement telling Mr Coyle to go home and demanding Mr Coyle's keys was not an unequivocal statement of dismissal. It was in one sense a sending away as Mr Craig told Mr Coyle to leave and demanded the S&S Services' keys. However, there are aspects of context that are relevant:

(a) The instruction to go home was made in the context of the heated exchange between Mr Coyle and Mr Craig.

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[4] *New Zealand Cards Ltd v Ramsay* [2012] NZEmpC 51.

(b) Also, earlier that day Mr Coyle had been angry with work issues and had left S&S Services' premises. This anger and frustration over work issues culminating in an outburst and Mr Coyle leaving work happened occasionally with Mr Coyle and was often resolved by him leaving work and then returning later when he had calmed down.

(c) The request for the keys was prompted by Mr Craig's concern over Mr Coyle's level of anger and his belief that Mr Coyle might return in the weekend and cause some damage.

[25] In the context described, Mr Craig's instruction to go home was an instruction to go home and cool off not a direction to go home and not come back because the employment was at an end. Further, the act of requesting keys was of itself not a dismissal given the context outlined[5]. Finally, in the context described, even combining the two statements - demanding the keys and telling My Coyle to go home – Mr Craig's statements were not a dismissal.

[26] After both altercations when Mr Coyle had left S&S Services' premises, he asked if he had been dismissed. On both occasions, he was invited to return to S&S Services for a meeting. Whilst, the invitations to return to S&S Services were not clear and explicit reassurances that S&S Services had not dismissed Mr Coyle they were consistent with there not being a dismissal and they were not unequivocal statements that could be construed as dismissals. By inviting Mr Coyle to return to discuss the prior events S&S Services was not dismissing Mr Coyle and if he believed he had been dismissed then the invitations should have remedied that misunderstanding.

[27] Lastly, Mr Ladbrook did not dismiss Mr Coyle when he met with him on 4 August 2017. Whilst there may have been a miscommunication about the meeting that Mr Ladbrook says he proposed for the morning of Monday, 7 August 2017, the invitation to meet was

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[5] See also *Auckland etc Shop Employees etc IUOW* v *JR Keenan Limited (t/a Paulls Fashions)* [1984] ACJ 189, where the act of requesting keys in the context of the employee's actions was not a dismissal.

enough that Mr Coyle should have understood that at that stage S&S Services had not dismissed him. So, to the extent there is any suggestion that S&S Services attempted to benefit from Mr Coyle's misunderstanding about any dismissal by not remedying any misunderstanding, this does not hold.

Did Mr Coyle abandon his employment on 4 August 2017?

[28] Counsel for S&S Services submits that Mr Coyle abandoned his employment when he walked out of work on 4 August 2017, leaving without permission and in breach of his employment obligations.

[29] Mr Coyle denies abandoning his employment. Mr Coyle says he left work on 4 August 2017 because he had been told to leave; firstly by Mr Bisdee telling him "if you don't like it you know what you can do" which he took to mean leave; and secondly by Mr Craig telling him to leave and demanding his work keys.

[30] Judge Inglis (as she was then) summarised the concept of abandonment of employment from a practical and legal perspective in *Stephen Cross v Onerahi Hotel Limited*[6] at [32]:

> An employee may be deemed to have abandoned their employment if they fail to attend work for a consecutive number of days without good cause or communication with his or her employer. In such circumstances, the employee has essentially terminated the employment agreement and there is no dismissal.

[31] So, in order for me to conclude that Mr Coyle abandoned his employment I need to be satisfied that Mr Coyle :

(a) had been absent for a consecutive number of days; and

(b) did not have a good reason for this absence; or

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[6] *Stephen Cross v Onerahi Hotel Limited* [2016] NZEmpC 26.

(c) did not speak to S&S Services about his absence.

[32] As I have already set out Mr Coyle left S&S Services' premises during the morning of 4 August 2017 after the altercation with Mr Bisdee. Mr Coyle returned later that morning but then left again after the altercation with Mr Craig. Mr Coyle then failed to turn up for the meeting that Mr Ladbrook says was scheduled for 7:30 am on Monday, 7 August 2017.

[33] When Mr Coyle did not turn up on the morning of 7 August 2017, Mr Ladbrook and Mr Craig decided to terminate his employment. Mr Ladbrook says they decided to dismiss Mr Coyle because he had not turned up and therefore had abandoned his work as of 4 August 2017. Mr Craig says they decided to dismiss Mr Coyle because of his actions on 4 August coupled with similar previous poor behaviour at work for which S&S Services had given Mr Coyle numerous verbal and written warnings. Mr Craig recorded this in a letter dated 7 August 2017, which he dropped into Mr Coyle's home letterbox around 1:00 pm on 7 August.

[34] Based on this evidence, there are two problems with S&S Services' abandonment argument:

(a) At best Mr Coyle was absent from work for just over two half days, which is in my view insufficient for abandonment. In addition, when Mr Coyle spoke to Mr Ladbrook on the afternoon of 4 August 2017, after the act that Mr Ladbrook says was abandoning employment, Mr Coyle explained what had occurred and why he left. On this basis it cannot be said that Mr Coyle was absent without good reason or without discussing matters relating to his absence with S&S Services.

(b) S&S Services did not act in a manner consistent with abandonment. It did not treat Mr Ladbrook as having abandoned his employment but rather invited him to attend a meeting – not to discuss Mr Coyle walking out and abandoning his employment but rather to discuss his behaviour and the two altercations generally. Then it purported to dismiss him when he did not turn up. These

> actions can be interpreted as S&S Services consenting to the absence, albeit that the absence formed part of the disciplinary issues that may have been discussed in the meeting[7].

[35] Based on this it is clear that Mr Coyle did not abandon his employment. I do not accept the S&S Services' position as expressed by its counsel.

Did S&S terminate Mr Coyle's employment?

[36] As S&S Services did not terminate Mr Coyle's employment on 4 August 2017 and as Mr Coyle did not abandon his employment on 4 August, he was still employed on the morning of 7 August 2017. It follows then that the letter of 7 August 2017 was a dismissal – it was an unambiguous statement by S&S Services sending Mr Coyle away.

[37] The only issue to resolve in respect of the dismissal is the basis for it.

[38] I do not accept Mr Ladbrook's explanation for the reason for dismissal - because Mr Coyle had walked out on 4 August 2017 and then not shown up for the meeting on 7 August 2017. It is not consistent with Mr Craig's explanation nor is it consistent with the contemporaneous documentation, being the letter of 7 August 2017 and a record in S&S Services' HR log, which recorded the incidents on 4 August and that after investigation "[Mr Coyle's] contract was terminated".

[39] In conclusion, on the issue of dismissal I find that S&S Services dismissed Mr Coyle for misconduct or poor behaviour at work, including abusive and aggressive behaviour on 4 August 2017 and other incidences of similar behaviour for which it had previously issued warnings to Mr Coyle.

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[7] *Adams Sawmilling Co Ltd v Patrick* EmpC Christchurch CEC25/95, 9 June 1995.

Justification

[40] Having accepted that S&S Services dismissed Mr Coyle the onus shifts to S & S for it to establish that the dismissal was justified. As I have set out in the issues this means S&S Services must prove that:

(a) The decision to dismiss was arrived at through a fair process, particularly in light of the requirements in ss 4(1A) and 103A of the Employment Relations Act 2000 (the Act); and/or

(b) The decision to dismiss was substantively justified in all of the circumstances.

[41] Based on the evidence I have heard and my conclusions expressed above about what occurred on 4 and 7 August 2017 I conclude that S&S Services did not conduct a fair process when dealing with the issues of Mr Coyle's alleged misconduct. S&S Services did not adequately investigate the allegations; it did not raise the allegations clearly with Mr Coyle; it did not provide Mr Coyle with sufficient information about the allegations or even the proposed meeting; it did not give Mr Coyle an opportunity to respond to the allegations; and obviously it did not consider what Mr Coyle said about the allegations as it had not heard from him[8].

[42] Put simply, in conducting the disciplinary process, S&S Services did not act in a manner that a fair and reasonable employer could have acted in the circumstances.

[43] However, it does not follow that this flawed process means that S&S Services' decision to dismiss Mr Coyle was substantively unjustified. It is clear from the evidence I heard that Mr Coyle was involved in two altercations on 4 August 2017 with his managers, which occurred because of his anger at his perception of poor working conditions and that anger then manifested in aggressive and abusive behaviour.

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[8] Applying the test for justification set out in section 103A of the Employment Relations Act 2000.

[44] It is also clear that Mr Coyle had been warned on thirteen separate occasions for this type of conduct and the last warning had been a final written warning, meaning any further incidence of aggressive and abusive behaviour at work would likely result in S&S Services dismissing Mr Coyle.

[45] In the circumstances, no matter what the explanation would have been from Mr Coyle I believe a fair and reasonable employer could have concluded that Mr Coyle had been abusive and aggressive and given that he was on a final written warning for this type of behaviour, dismissal was the appropriate sanction.

[46] In conclusion then, S&S Services' dismissal of Mr Coyle was unjustified from a procedural perspective but it was substantively justified.

Remedies

[47] As Mr Coyle was unjustifiably dismissed, I may award any of the remedies provided for under s 123 of the Act; Mr Coyle seeks compensation and reimbursement.

Reimbursement

[48] Mr Coyle seeks reimbursement for the earnings he has lost as a result of his unjustified dismissal pursuant to s 123(1)(b) of the Act.

[49] If I am satisfied that Mr Coyle has a personal grievance and he has lost remuneration as a result of that grievance, then pursuant to s 128 of the Act I must award him the lesser of the lost remuneration or three months ordinary time remuneration.

[50] The question of whether Mr Coyle lost remuneration because of his grievance is not straightforward because I have determined that the dismissal was substantively justified.

[51] In some cases where a dismissal is unjustified for procedural reasons only, i.e. the dismissal was substantively justified, no award has been made for reimbursement[9]. However, in my view this does not mean that in every unjustified dismissal grievance where the dismissal is substantively justified there should be no award for reimbursement. The question to be answered, notwithstanding substantive justification, remains has the employee, who has a grievance, lost remuneration as a result of the grievance. If there is lost remuneration the second question then becomes, how I quantify lost remuneration when the dismissal was substantively justified.

[52] When making this assessment I have been guided by two Court of Appeal decisions, *Waitakere City Council v Ioane*[10] and *Telecom New Zealand Ltd v Nutter*[11]

[53] In *Ioane*, William Young J (as he was then) said:

> [23] It is likely, to say the least, that a fair process would have resulted in Mr Ioane's justifiable dismissal. The approach adopted by the Chief Judge made no allowance for this possibility and this seems to me to be contrary to the principles which underlie the fixing of compensation.
>
> [24] If a fair process would unquestionably have resulted in Mr Ioane's justifiable dismissal, the Council's "unfair" process was not causative of any significant loss of remuneration
>
> [25] If such an outcome (ie justifiable dismissal) was likely but not inevitable, some conceptual difficulty arises, see for instance *Benton v Miller and Poulgrain Ltd* CA118/03 15 June 2004 at paras [43] – [52] and [103].
>
> [26] I favour a loss of chance approach in this situation. This would recognise the possibility or probability of justifiable dismissal amongst the contingencies which would have affected Mr Ioane's likely future employment had he not been unjustifiably dismissed. In this regard I refer to *Telecom New Zealand Ltd v Nutter* CA 127/03, 21 July 2004 at para [81].

[54] In *Nutter* the Court of Appeal said:

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[9] See for example, *Waterford Holdings Limited v Nathan Morunga* [2015] NZEmpC 132.
[10] *Waitakere City Council v Ioane* [2004] 2 ERNZ 194
[11] *Telecom New Zealand Ltd v Nutter* CA 127/03, 21 July 2004

> [81] For instance, where a dismissal is regarded as unjustifiable on purely procedural grounds, allowance must be made for the likelihood that had a proper procedure been followed the employee would have been dismissed. In this regard we draw attention to the English jurisprudence reviewed in 16 *Halsbury's Laws of England* (4th ed, reissue) at para [529].

[55] Both of these passages indicate that when assessing the amount of lost remuneration, if any, I must not simply consider the employee's actual loss. Actual loss is normally calculated by taking the total amount an employee would have earnt, in the employment he or she was unjustifiably dismissed from, up until the investigation or determination, less any amount the employee earned in that period in any new employment.

[56] The problem with actual loss is that it assumes that without the unjustified dismissal the employee would have remained employed in his or her employment up until the investigation or determination, which in some cases can be a significant period.

[57] What the Court of Appeal is saying in both *Ioane* and *Nutter* is that lost remuneration should take account of the possibility that had the employee not been unjustifiably dismissed he or she may have been justifiably dismissed or resigned at some later point before the investigation or determination date. Therefore, lost remuneration may be less than the actual loss.

[58] Based on this, there are two ways of assessing lost remuneration. One is to assess the likelihood of the employee losing his or her job at some stage before the investigation or determination and apply a percentage reduction, reflecting this chance, to the actual loss. The other is to calculate lost remuneration based on an estimate of the time the employee would have remained employed. The second method of calculation seems to be more appropriate for those rare cases where the dismissal was substantively justified, because the estimate of time that the employee would have remained employed will reflect the time it would have taken the employer to get the process right.

[59] Applying this second method to Mr Coyle's case I determine that had S&S Services followed a fair and correct disciplinary process it would have taken it one week to carry this out. That is, one week to conduct an investigation, provide the material to Mr Coyle and invite him to a disciplinary meeting, hear what Mr Coyle had to say and then consider it and make a decision. However, I will allow one further week in my estimate of time to allow for additional contingencies, such as Mr Coyle seeking legal advice and representation at any disciplinary meeting and this meaning further time would be required.

[60] There is one additional aspect to lost remuneration. Any decision to dismiss should have been on notice, so Mr Coyle is also entitled to another week's remuneration to reflect this loss.

[61] Mr Coyle worked an average of 40 hours per week at S&S Services and was paid $22.50 per hour for that work, so he earned $900.00 (gross) per week. Three weeks wages is therefore $2,700.00 (gross).

[62] Mr Coyle is entitled to $2,700.00 (gross) representing my calculation of his lost remuneration, which is less than three months ordinary time remuneration.

Compensation

[63] I can award compensation for humiliation, loss of dignity and injury to feelings pursuant to s 123(1)(c) of the Act. This is about compensating Mr Coyle for the humiliation, loss of dignity and injury to feelings he suffered because of the unjustified dismissal, specifically the flawed disciplinary process.

[64] What I must consider is the effect of the flawed process on Mr Coyle – i.e. identify the harm caused to him and the loss he suffered as a result. Then I must quantify that harm and loss by assessing where that sits on the spectrum of harm and loss suffered by those that have

been unjustifiably dismissed, and then where that corresponds to the spectrum of quantum awarded as compensation[12].

[65] Mr Coyle's evidence shows that as a result of the way he was treated:

(a) He was frustrated at not having the opportunity to address what had happened;

(b) He felt let down by S&S Services after seven years of work there;

(c) He was devastated by losing his job;

(d) He felt stress and panic when he received the termination letter;

(e) He was anxious about his finances because of losing his job; and

(f) He was worried about finding another job.

[66] So, Mr Coyle is entitled to compensation for the loss and harm caused by the loss of dignity, humiliation and injury to feelings described above, insofar as the loss and harm relates to the grievance, being the flawed process. Of the list above the loss and harm set out at sub-paragraphs (a), (b) and (d) relate to the process and are compensable.

[67] When assessing where that compensable loss and harm sits on the spectrum of loss and harm, and the spectrum of compensation, I have considered the recent decisions of the Employment Court, which provide guidance on the assessments[13].

[68] I assess the level of harm and loss to be at the lower end of the spectrum and consequently the compensation also to be at the lower end of the spectrum. I quantify the compensation payable to be $4,000.00.

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[12] *Richora Group Ltd v Cheng* [2018] NZEmpC 113.
[13] *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.

Contribution

[69] As I have awarded remedies to Mr Coyle, I must now consider whether he contributed to the situation that gave rise to his grievance.[14]

[70] When assessing if Mr Coyle's actions contributed to the situation that gave rise to his grievance I am looking for a causal link between his actions and the situation that gave rise to the unfair process, being his grievance. If I am satisfied that there is a link, then I must consider whether the behaviour was culpable or blameworthy, which would require a reduction in remedies.[15]

[71] I do not accept that Mr Coyle's actions contributed to the unfair process. Therefore, there is no contributory behaviour and no reduction in remedies.

Conclusion

[72] S&S Services unjustifiably dismissed Mr Coyle.

[73] In satisfaction of this grievance S&S Services must pay Mr Coyle the following amounts:

(a) $4,000.00 for compensation pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000; and

(b) $2,700.00 (gross) for lost remuneration pursuant to s 123(1)(b) and s 128 of the Employment Relations Act 2000.

Costs

[74] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

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[14] Section 124 of the Act.
[15] *Xtreme Dining Ltd v Dewar* [2016] NZEmpC 136

[75] If they are not able to do so and a determination on costs is needed, any party seeking an order for costs may lodge and serve a memorandum on costs within 28 days of the date of this determination. The other party will then have 14 days from the date of service of that memorandum to lodge and serve any reply memorandum.

Peter van Keulen
Member of the Employment Relations Authority