

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2019] NZERA 378
3030032

BETWEEN WANDA DENSEM
 Applicant

AND CLEMENCE DRILLING
 CONTRACTORS LIMITED
 Respondent

Member of Authority: Helen Doyle

Representatives: Paul Mathews, Advocate for Applicant
 John Shingleton, Counsel for Respondent

Investigation Meeting: 21 March 2019

Submissions received: On the day

Further Information received: 26 March 2019

Determination: 26 June 2019

DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

- A Wanda Densem was disadvantaged by an unjustified action of Clemence Drilling Contractors Limited (Clemence Drilling).**
- B Clemence Drilling agree to pay in respect of that unjustified action the sum of \$2000 without deduction to Wanda Densem for compensation.**
- C Clemence Drilling is ordered to pay the sum of \$3,825 gross being reimbursement of lost wages for a period of sick leave found to be caused by that unjustified action.**

- D Wanda Densem was unjustifiably dismissed from her employment with Clemence Drilling.**
- E Clemence Drilling is ordered to pay to Wanda Densem for the unjustified dismissal:**
- (i) The sum of \$4,781.25 gross being reimbursement of lost wages.**
 - (ii) The sum of \$12,000 without deduction being compensation.**
- F The financial situation for Clemence Drilling is such that an order for payment by instalments of the total sum agreed or ordered to be paid of \$22,606.25 is appropriate over a period of six months. The first payment is to be made on 20 July 2019 and thereafter on the 20th of each month. Any payment missed will result in the full amount being due and payable.**
- G Costs are reserved and failing agreement a timetable for submissions has been set.**

Employment Relationship Problem

[1] Wanda Densem commenced employment with Clemence Drilling Contractors Limited (Clemence Drilling) on 28 November 2016 as an accounts administrator. Her employment ended for reason of redundancy following a two week notice period from 2 October 2017 during which Ms Densem was off on sick leave.

[2] Clemence Drilling is a duly incorporated company having its registered office in Kaiapoi and carrying on the business of well drilling. The sole director of Clemence Drilling is David Clemence.

[3] Ms Densem wants the Authority to resolve an employment relationship problem about her dismissal. She says that dismissal was unjustifiable because there was an ulterior motive and the redundancy was not genuine.

[4] The other employment relationship problem that she wishes the Authority to resolve is that she says she was unjustifiably disadvantaged in her workplace because she was marginalised and bullied, with the knowledge of her employer.

[5] For completeness a counterclaim by Clemence Drilling about a breach of good faith was not pursued.

[6] Clemence Drilling says in its statement in reply that Ms Densem was justifiably dismissed following a fair process, including consultation, and further that she was not unjustifiably bullied.

[7] Ms Densem seeks the following remedies:

- (a) Compensation of \$2,000 for alleged unjustified disadvantage in respect to bullying;
- (b) Reimbursement of lost wages for a period on sick leave from 4 September until 2 October 2017 attributed to the unjustified disadvantage in the sum of \$3,825 gross;
- (c) Compensation of \$22,000 for the alleged unjustified dismissal;
- (d) Reimbursement of lost wages due to the unjustified dismissal in the sum of \$4,781.25.

[8] After the Authority had heard evidence from Ms Densem, her husband, Daryl Densem and a previous employee of the company, Mr Shingleton advised that his client conceded the disadvantage claim and would pay the amount sought of \$2,000 for compensation but nothing further.

[9] The concession was about whether there were adequate steps taken by Clemence Drilling when Mr Mathews raised a personal grievance on 28 August 2017 and alleged that Ms Densem had been subjected to bullying behaviour setting out the issues of concern in some detail. One of the remedies sought was a full and fair investigation into the concerns.

[10] The remedy for payment whilst Ms Densem was on sick leave relates to the same disadvantage claim. The evidence relating to the response to Ms Densem's unjustified action grievance that she had been bullied will need to be traversed to assess any causal connection between that response and subsequent sick leave taken by Ms Densem up to the point she was provided with two weeks' notice of her redundancy.

The issues

[11] The Authority needs to determine the following issues:

- (a) What are the material provisions of the employment agreement?
- (b) Was Ms Densem's dismissal for reason of genuine redundancy or was there an ulterior motive?
- (c) Did Clemence Drilling follow a fair process in making Ms Densem redundant, including the provision of sufficient information and consultation?
- (d) Was there a causal link between the response to the personal grievance raising allegations with respect to bullying and the sick leave between 4 September and 2 October 2017?
- (e) If the dismissal was unjustified and/or a causal link is established between sick leave and the unjustified action causing disadvantage then what remedies should be awarded and are there issues of mitigation and contribution.

What are the material provisions of the employment agreement?

[12] Ms Densem was party to an individual employment agreement dated 10 November 2016.

[13] Clause 11 of the employment agreement is headed "Redundancy." Clause 11.1 provides:

In the event the Employee's employment is terminated on the basis of redundancy, the Employee shall be entitled to notice of termination of employment as specified in the termination clause, but shall not be entitled to any additional payment, whether by way of redundancy compensation or otherwise.

[14] Clause 4 provides that the employer shall act as a good employer in all dealings with the employee and deal with Ms Densem and her representative in good faith and take all practicable steps to provide Ms Densem with a safe and healthy work environment.

Was the dismissal for reason of genuine redundancy or was there an ulterior motive?

[15] The Court of Appeal in *Grace Team Accounting Limited v Judith Brake*¹ confirmed that the clear words of the justification test in s 103A required the Employment Court to determine on an objective basis whether what was done by the employer and how it was done were what a fair and reasonable employer would have done. The test that the Authority needs to apply now is whether the employer's actions and how it acted were what a fair and reasonable employer **could** have done.²

[16] The Court of Appeal in *Brake* emphasised the importance of addressing the genuineness of a redundancy and stated following on from statements about pre-s 103A case law:

[85] Having said that, however, we do not dismiss the importance of the Employment Court addressing the genuineness of a redundancy decision. If the decision to make an employee redundant is shown not to be genuine (where genuine means the decision is based on business requirements and not used as a pretext for dismissing a disliked employee), it is hard to see how it could be found to be what a fair and reasonable employer would or could do. The converse does not necessarily apply. But, if an employer can show the redundancy is genuine and that the notice and consultation requirements of s 4 of the Act have been duly complied with, that could be expected to go a long way towards satisfying the s 103A test. In the end the focus of the Employment Court has to be on the objective standard of a fair and reasonable employer, so the subjective findings about what the particular employer has done in any case still have to be measured against the Employment Court's assessment of what a fair and reasonable employer would (or, now, could) have done in the circumstances.

[17] This case also raises issues about whether there was an ulterior purpose that motivated the redundancy. If Clemence Drilling can establish that the decision to dismiss Ms Densem was for a genuine commercial reason and its process was fair then the dismissal will be justified. If the predominant or sole motive in dismissing Ms Densem was other than a genuine commercial decision then the dismissal will be unjustified³ because a fair and reasonable employer could not do that in all the circumstances.

¹ *Grace Team Accounting Limited v Brake* [2014] NZCA 541 at [84]

² Change to s103A inserted by section 15 of the Employment Relations Amendment Act 2010

³ *Forest Park (NZ) Ltd v Adams* [2000] 2ERNZ at p 322 [49] and [50]

[18] Ms Densem in her evidence considered two events before she was provided with a proposed redundancy letter on 18 August 2017 relevant to the genuineness of her redundancy.

[19] The first of those was on 11 August 2017 when Ms Densem as a result of feeling excluded from a shared luncheon with other staff approached Mr Clemence's personal assistant T. She told T that she felt she had a basis for a grievance about another employee, the office manager who I shall call X, if the behaviour that concerned her was going to carry on. Ms Densem was advised that T would have a talk with Mr Clemence. Ms Densem did not hear anything further from Mr Clemence.

[20] The second was on 16 August 2017 when Ms Densem went to Mr Clemence to get some invoices signed off for payment. She said that he advised there was no money left to pay invoices because Ms Densem had "maxed" out the credit card by registering the vehicles that had fallen due for registration. Ms Densem said that Mr Clemence told her she should give all the invoices due for payment to his personal assistant and should start looking for another job as she was having difficulty fitting in with the team anyway. Mr Clemence when asked about this interaction agreed in his evidence that there had been a discussion about the maxing out of the credit card and that they needed to have the invoices checked. He denied saying that Ms Densem should look for another job or did not fit in with the team and said in his oral evidence that he said to her he would find her other jobs.

[21] On 18 August 2017 two days later, Ms Densem was provided with a letter from Mr Clemence advising that there had been a recent review by Clemence Drilling of its operational requirements and what they mean for her. He referred in the letter to it being a follow on from a verbal conversation on 17 August 2017. There was a proposal to make the role of accounts administrator redundant and have the decreasing workload spread over the remaining staff. A new role was not going to be created. The letter referred to the reason the role was being made redundant as being due to a sudden decrease in workload in the near future and projected workload looking forward and the significant impact on the company. The letter advised that if the proposal proceeded Ms Densem would be made redundant and receive her contractual entitlements and that Mr Clemence would like to meet with her on 21 August. She was advised that she could bring a support person with her to the meeting.

[22] Ms Densem said in her oral evidence at the Authority there had not been a verbal discussion on 17 August 2017 as stated in the letter and what the review that had been carried out was and what it concluded were never disclosed.

Meeting on 21 August 2017

[23] It is common ground that there was no meeting on 21 August 2017. Mr Clemence thought that the explanation was he was at the Doctors.

[24] Ms Densem said that on that day she noticed an advertisement from Clemence Drilling requesting a hydrologist full-time that stated due to expansion and continued growth a full-time hydrologist would be required and then a further advertisement along the same lines. She instructed Mr Mathews.

[25] Communication then took place between Mr Mathews and Mr Clemence. I will focus on the relevant aspects. There was no face to face meeting between the parties.

Communication between Mr Mathews and Mr Clemence in August 2017

[26] On 23 August 2017 Mr Mathews sent an email to Mr Clemence advising he was acting for Ms Densem. He referred in his email to the job advertisement for a hydrologist being inconsistent with a sudden decrease in work. Mr Mathews also wrote in that email that Ms Densem would be raising concerns about how she was treated by X. Mr Mathews wrote that he was not prepared to raise those concerns in the email he was sending at that time because he was told it would be checked by the person who is the subject of the complaint.

[27] On 28 August 2017 Mr Mathews sent a further email noting the lack of any response, an expectation for consultation and threatening legal action.

[28] On that same day 28 August 2017 Mr Mathews sent a separate grievance in respect of alleged bullying by X and the concerns were set out in some detail.

Communication between Mr Mathews and Mr Clemence in September 2017

[29] On 1 September 2017 Mr Mathews raised a personal grievance for unjustified disadvantage for the anxiety the proposed redundancy had caused which had not resulted in any action on the part of Clemence Drilling. It raised two concerns about the genuineness of the redundancy. One was that there were two positions advertised by Clemence Drilling on TradeMe referring to the business growing and expanding. Secondly only one position in the administrative team had been considered.

[30] Two responses were received from Clemence Drilling on 1 September 2017. The first was from Mr Clemence's personal assistant T. She advised that the company was still proceeding with the proposed redundancy.

[31] There was then an email from Mr Clemence apologising for the failure to respond earlier because of his personal situation. Having heard from Mr Clemence I accept that there was a sound reason for the delay in responding. His email is important as it refers to the rationale for the redundancy proposal and I will set out the elements below.

Proposal to make Ms Densem's position redundant confirmed

[32] Mr Clemence acknowledges in the 1 September 2017 email that it is proposed to make the position of accounts administrator redundant. In past years he writes the position has never been more than part time but during a boom the company chose to make this position full time as it was expected debtors and creditors would rise along with general administrative duties in the office.

Selection process

[33] Mr Clemence set out in the email that he has two other office staff, an office manager and personal assistant. He referred to their respective lengths of service. The office manager has been with the company for ten years and the personal assistant over two years. He noted that the company also employ a part time accountant who's been with the company for six years. He referred to a last on, first off basis being appropriate in the situation.

[34] The email also referred to several other issues or attributes taken into account in deciding who shall be made redundant. It was stated by Mr Clemence that there had been

several meetings regarding the fact there were to be no accounts paid until they were signed off by him. There was reference to Ms Densem “maxing out” his credit card with unauthorised payments whilst he was away during most of June and July with his mother’s unexpected illness and subsequent death. Mr Clemence wrote that when he learnt of this whilst overseas it caused concern, humiliation and stress and that he spoke to Ms Densem about this and she had “a blasé response” that they were not accounts.

[35] Further, it was stated that Ms Densem had been sending emails that went against the company from her work computer, her work email address and on work time. He also noted in the email that he did not wish to issue Ms Densem with a warning for her unprofessionalism but noted that there were suspicions Ms Densem “lied” about leaving work for a doctor’s appointment on 22 August at 2:40pm and instead went to see her advocate to go against the company. He further referred to six incidents where Ms Densem had attempted to claim more hours than worked and the issue had been brought to his attention today and would be investigated.

The advertisements

[36] There was also reference to the TradeMe advertisements and it was stated that the company had heard of potential tenders with ECan and advertised to see what the market was like. Mr Clemence noted in his email that the text in the body of the advertisements is unchanged and no new staff members have been rehired.

Profit and loss statements

[37] Credit/debtor and profit/ loss statements for the period from 1 June 2017 to 30 August 2017 showing a net loss for that quarter of \$109,088.47 were provided.

Ms Densem’s feedback

[38] Ms Densem was asked to provide feedback by return email on the redundancy proposal.

Response to 1 September email from Mr Mathews by email of the same date

[39] Mr Mathews responded to Mr Clemence by email of the same date. The start of his email was questions about timeframe, consultation, when the decision would be made and the

position end. He questioned what Ms Densem could give feedback on because it had been stated that her position is to be made redundant, the basis was “last in and first out” and there were the other reasons for choosing Ms Densem. He noted the provision of the financial statements but stated that without an intimate knowledge of the business and cash flow they do not provide a basis for any reasonable response. He asked what the company was trying to achieve and how the redundancy of Ms Densem’s position would help.

[40] He confirmed that Ms Densem did not meet with him on 22 August 2017 and that in fact they had never met in person.

2 September 2019

The letter responding to the personal grievance

[41] On 2 September 2017 there was a response to Mr Mathews about the personal grievance letter of bullying. The responses to the various concerns were made up of statements from Mr Clemence, X who Ms Densem alleged had bullied her and T. Additionally at the start of the email there was reference to concerns that Ms Densem was making personal phone calls during the work day, reference to suspicions that Ms Densem was sending emails in work time that were said to go against the reputation of the company and then some dates of actual emails sent during work time to Mr Mathews. There was a statement that provided:

It is blatantly obvious that Wanda is attacking this company due to the possible redundancy of her position. Wanda has been made redundant multiple times in the 18 months prior to starting work with Clemence Drilling. It is clear that Wanda is upset about previous redundancy situations and is now choosing to attack her employer.

[42] There were various references in the statements responding to Ms Densem’s concerns about her competence, work abilities, describing at least one of her concerns as “lies” and/or that she has told “untruths”.

[43] One aspect to the letter that Ms Densem said in her evidence was particularly challenging was a response at the end of the letter:

Why has she only chosen to attack this company and it’s [sic] staff now? If she was hurt and humiliated since she started with this company why stay here and wait til[sic] a redundancy proposal is made to make these accusations?

My personal thought is money, because it is easy for an employee to fabricate the truth and play hard done by.

[44] Ms Densem said that she was very upset by what was said in the response to her concerns about how she had been treated at work and who said it. She was already on sick leave but attended the doctor and was placed on further sick leave.

[45] On any objective assessment this letter and its contents responding in this manner to serious concerns about bullying was not the action of a fair and reasonable employer as indeed Mr Clemence has properly conceded. Although not every response was in the nature of an attack or criticism responding to the concerns in this manner was not a step that provided Ms Densem with a safe and healthy work place. It was a breach of the obligations of fair dealing and good faith at the heart of every employment relationship.

[46] There was another email sent that day to Mr Mathews from Mr Clemence asking him how would like to move forward about the redundancy. The email referred to feedback being welcome, the proposed redundancy being one way of reducing costs and the notice period in the employment agreement which is two weeks.

After the response to the personal grievance

[47] Emails continued to go back and forth between Mr Mathews and Mr Clemence. Nothing particularly productive came from the communication. Mr Clemence continued to welcome feedback. Mr Mathews asked for information most of which Mr Clemence considered had already been provided or was confidential and/or unnecessary. The only new information provided that I could ascertain was contained in an email from T on 8 September 2017 to Mr Mathews. Amongst other matters it provided “we have descaled by the number of staff this year by 25, including 7 in the last three months who have either been made redundant or left on their own accord.” Finally there was confirmation from Mr Clemence that the notice period for Ms Densem of two weeks commenced on 2 October 2017.

[48] Ms Densem said that she tried to think of feedback to provide but found that she could not as the reason for her redundancy she felt were about her personally and not about her role.

Conclusion about the genuineness of the redundancy

[49] Mr Shingleton submits Clemence Drilling was justified in considering the restructure and in fact it had no choice but to make Ms Densem's position redundant because of what he described as the "dire situation" facing the company. Mr Clemence in his evidence said that since December 2016 a total of 38 employees have had to have been made redundant. Limited information about the financial situation of the company was provided to Mr Mathews in 2017 and no clear information provided about the redundancies or resignations of other employees to provide any overall picture. I accept that Ms Densem was unaware of the redundancies that took place amongst those undertaking the drilling work.

[50] Mr Shingleton also places weight on the fact that Mr Clemence did not have human resource or legal assistance. The Authority will weigh that.

[51] I accept there were some financial concerns facing Clemence Drilling at the time of Ms Densem's redundancy. The evidence however has failed to satisfy me that commercial reasons were the primary motive for the decision to dismiss Ms Densem at the time the decision was made.

[52] Ms Densem had shortly before the proposal for redundancy raised concerns about X. Shortly thereafter the payment of the registration for company vehicles had displeased Mr Clemence because it "maxed out the credit card." That matter was referred to by Mr Clemence as an issue taken into account in deciding who was to be made redundant in his 1 September 2017 letter to Mr Mathews. I prefer Ms Densem's evidence as more likely that Mr Clemence told her to look for other jobs on 16 August 2017 rather than as he explained in his oral evidence advised her he would find her other jobs. I find it less likely that Ms Densem simply fabricated or misunderstood that exchange. Two days later she was handed the redundancy proposal and her position was the only one being considered at that time.

[53] There are issues about the letter dated 18 August 2017. A degree of accuracy and care could be expected with a significant document with the potential for the loss of a job even without advice of experts. No information or paper trail was ever provided about the "recent review" Clemence Drilling stated in the proposal had been carried out. Although the letter states there was a verbal discussion between Ms Densem and Mr Clemence the day

before the proposal letter was provided I prefer Ms Densem's evidence that there was no such discussion. No meeting took place on 21 August 2017 which date was referred to in the letter notwithstanding Ms Densem was in the office that day.

[54] The response to the bullying letter written by Mr Clemence and two employees in the administrative area whose positions were not selected for redundancy on 2 September 2017 lends support to a finding that there was an ulterior motive for the redundancy of Ms Densem's position.

[55] The predominant reason I find for the decision about the redundancy of Ms Densem's position was other than for genuine commercial reasons. It was more likely I find for reasons that she had indicated she was to raise bullying concerns about X and Mr Clemence had become annoyed about the payment of the vehicle registration on the business credit card.

Procedural fairness

[56] Given the above findings I am not satisfied that the process was carried out in good faith and therefore it was not a fair process. Ms Densem was unable to comment in good faith and meaningfully about the proposal. Mr Shingleton was critical of the failure of Ms Densem to provide feedback. I have however found as indeed Ms Densem believed at the time that there was an ulterior motive for her redundancy. In those circumstances she cannot be criticised for not providing feedback and there was insufficient information about the proposal on which feedback could be supplied.

[57] There was a breach of the obligation to deal in good faith by Clemence Drilling.

Conclusion about genuineness and procedural fairness of the redundancy

[58] I have found that Ms Densem's dismissal was unjustified because the genuine redundancy of her position was not the predominant motive for her dismissal. That was not what a fair and reasonable employer could have done in all the circumstances.

[59] Ms Densem has made out her grievance that she was unjustifiably dismissed. She is entitled to consideration of remedies.

Was there a causal link between the response to Ms Densem's bullying concerns and her sick leave from 4 September to 2 October 2017?

[60] This is the remaining claim under this head of unjustified action causing disadvantage after Clemence Drilling agreed to pay \$2000 compensation.

[61] Ms Densem seeks lost wages when she was on sick leave from 4 September until 2 October 2017. Ms Densem was already on sick leave when she saw the reply to her concerns about bullying. Highly distressed by the content of the letter she went to her doctor who put her off work until 18 September 2017. Ms Densem said that she phoned X to tell her she would not be back to work and X hung up on her. X denied that in her evidence. I prefer Ms Densem's evidence as more likely. Ms Densem went again to her doctor on 14 September 2016 and was off work until 2 October 2017. Ms Densem received no payment for the entire period she was on sick leave having already exhausted her entitlement to sick leave.

[62] The actions of Clemence Drilling in allowing the person alleged to have bullied Ms Densem to respond to her concerns along with and clearly supported by T were unjustified and caused disadvantage to Ms Densem. Ms Densem was already on sick leave when she received the letter because she said that she had been confronted by Mr Clemence on 25 August 2017 about taking out a grievance. Mr Clemence denied that.

[63] Having heard the evidence I accept there was a causal link between Ms Densem's treatment after she raised concerns about bullying and her sick leave. The reply to her bullying concerns on 2 September 2017 was directly causative of her attending her Doctor on 4 September and being placed on sick leave until 18 September and then until 2 October 2017.

Remedies

Unjustified action causing disadvantage

[64] Ms Densem seeks to be reimbursed for lost wages during her period of sick leave from 4 September until 2 October 2017. I have found that period of sick leave was caused by an unjustified action of Clemence Drilling in how it dealt with her concerns about bullying.

[65] Ms Densem's usual hours with Clemence Drilling taking unpaid meal breaks into account were 42.50 hours per week. Her hourly rate was \$22.50. 42 hours multiplied by \$22.50 is \$956.25. The period from 4 September to 2 October is four weeks. \$956.25 multiplied by 4 is \$3,825 gross.

[66] Clemence Drilling Contractors Limited is ordered to pay to Ms Densem the sum of \$3,825 gross being reimbursement of lost wages for a period of sick leave.

Contribution towards the unjustified disadvantage grievance

[67] Ms Densem did not contribute to the situation that gave rise to the personal grievance.

Unjustified dismissal

Lost wages

[68] Ms Densem obtained new employment on 20 November 2017. She seeks reimbursement of lost wages from the date her employment ended on 13 October 2017 until 20 November 2017. That is a period of five weeks.

[69] I am satisfied that Ms Densem having suffered a significant blow to her self-esteem attempted to mitigate her loss and should be awarded reimbursement of lost wages for that period. I have used the same weekly amount of \$956.25 as assessed for the unjustified action claim and multiplied that by five weeks to arrive at the amount for lost wages.

[70] Clemence Drilling Contractors Limited is ordered to pay to Ms Densem the sum of \$4781.25 gross being reimbursement of lost wages.

Compensation

[71] Ms Densem seeks \$22,000 for compensation for her unjustified dismissal. Mr Shingleton questioned Ms Densem at length about the fact that she had been made redundant from other businesses before Clemence Drilling. Ms Densem confirmed that she had been made redundant twice before she commenced her employment at Clemence Drilling however she stated in her evidence that she was treated well at those other times. She contrasted that with her treatment by Clemence Drilling. I find that the redundancy experience with Clemence Drilling was quite different for Ms Densem than those that had

occurred previously. Whilst I accept it may have had some bearing on the impact again of a redundancy I do not find it was to the degree submitted by Mr Shingleton.

[72] The most significant effect from the evidence given by Ms Densem and her husband was the loss of confidence and self-esteem. There were also issues with sleeping, depression and some social withdrawing. There were some financial concerns and there was some stress between Ms Densem and her husband because Ms Densem felt that she could only share her issues with him. Significantly Ms Densem says even at the date of the investigation meeting she has difficulty trusting her co-workers for fear that they have ulterior motives.

[73] I find that Ms Densem is entitled to an award that reflects the impact of the dismissal. I do however have to weigh that some of the impact on Ms Densem at the time of her termination flowed from concerns about how X had treated her for quite some time and Clemence Drilling has agreed to pay compensation for that. I also weigh that Ms Densem, no doubt because of her ability in the area that she works in, was able to find a job within a few weeks.

[74] Weighing all matters I am of the view that a suitable award for compensation is the sum of \$12,000.

[75] Clemence Drilling Contractors Limited is ordered to pay to Ms Densem the sum of \$12,000 without deduction being compensation.

Contribution

[76] I am not satisfied that Ms Densem contributed in any blameworthy manner to the situation that gave rise to her unjustified dismissal grievance and the above awards are not therefore reduced.

Payment by instalment

[77] In light of the current financial situation facing the company Mr Shingleton has asked the Authority to make order for payment of any awards by instalment over a period of 12 months. The Authority has been provided with details of balances in accounts, credit card balances and loan amounts. I accept that the financial position of the company is grim.

[78] The Authority is empowered under s 123 (2) of the Employment Relations Act 2000 to order payment to the employee by instalment but only if the financial position of the employer requires it. There can be little doubt that it does in this case.

[79] I am not however minded to make the order for payment over 12 months. I am prepared to make an order for payment by instalment over six months.

[80] The amounts agreed to or ordered to be paid to Ms Densem are as follows.

\$2,000 without deduction – agreed to be paid for compensation for an unjustified action.

\$3,825 gross being reimbursement of lost wages for a period of sick leave caused by that unjustified action.

\$4,781.25 gross being reimbursement of lost wages after dismissal.

\$12,000 without deduction for compensation for unjustified dismissal.

[81] Clemence Drilling agrees to pay or has been ordered to pay to Ms Densem a total of \$22,606.25. The amount will need to be adjusted by any cost award but that can be dealt with at the time an award for costs is made or is agreed to.

[82] I order Clemence Drilling Contractors Limited to pay the amount owing to Wanda Densem in six equal payments by the 20th day of each month starting on 20 July 2019. A failure to make any monthly payment in full will result in the full amount being due and owing to Ms Densem.

Costs

[83] I reserve the issue of costs. Failing agreement being reached as to costs Mr Mathews has until 10 July 2019 to lodge and serve submission as to costs and Mr Shingleton has until 24 July 2019 to lodge and serve submissions in reply.

Helen Doyle
Member of the Employment Relations Authority