IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE

[2021] NZERA 450
3121173

	BETWEEN	IRISH RUSIANA Applicant
	AND	M & T BEAUTY LIMITED Respondent
Member of Authority:	David G Beck	
Representatives:	Ashleigh Fechney, advocate for the Applicant Jenny Beck and Ashleigh Mitchell, counsel for the Respondent	
Investigation Meeting:	27 July 2021 in Dunedin	
Submissions Received:	27 July and 9 August 2021 from the Applicant 27 July and 11 August 2021 from the Respondent	
Date of Determination:	12 October 2021	

DETERMINATION OF THE AUTHORITY

The employment relationship problem

[1] Ms Rusiana, who is from the Philippines, was employed by M&T Beauty Limited (M&T) as a Beautician in their South Dunedin Beauty Salon from 9 September 2018 until the position was disestablished during a restructuring process and Ms Rusiana's employment ended on 30 June 2020.

[2] Ms Rusiana claims that M&T Beauty unjustifiably dismissed her by effecting a redundancy process that was neither fair nor reasonable and could have been avoided or delayed.

[3] In the alternative, Ms Rusiana contends that actions M&T undertook during the redundancy process disadvantaged her and that M&T has not acted in a manner consistent with good faith obligations including unilaterally reducing Ms Rusiana's wages during a Covid -19 lockdown period when M&T were paid a government wage subsidy.

[4] As remedies, Ms Rusiana claimed compensation for distress, arrears and lost wages.

[5] By contrast, M&T contend that the restructuring process was initiated for genuine business reasons and that it was based upon Ms Rusiana's position being superfluous to the company needs against a backdrop of business and financial difficulties M&T experienced during the Covid-19 lockdown, and a perception that matters would not improve. M&T denied culpability for not paying Ms Rusiana's full wages during the lockdown subsidy period, citing unclear government guidance and extraordinary circumstances.

The Authority's Investigation

[6] The investigation took one day and I heard helpful evidence from Irish Rusiana, her partner Bruce Saxton and for M&T, the owners Tina Rodger and Matt Rodger.

[7] I received submissions from both parties' representatives and additional information during and following the investigation meeting. I have carefully considered the information provided and submissions. As permitted by s 174E of the Act I have not set out a full record of every event or matter of dispute between the parties. This determination is confined to making findings of fact and law necessary to dispose of Ms Rusiana's claims.

Issues

[8] The issues I have to resolve are:

i. Was Ms Rusiana unjustifiably dismissed and/or disadvantaged or was the employment relationship ended by reason of a genuine redundancy enacted in a procedurally and substantively fair manner, including questions of:

ii. Whether there were genuine business reasons for the restructure?

iii. Did M&T comply with the relevant provisions of Ms Rusiana's employment agreement in reducing her remuneration during the Covid lockdown?

iv. Did M&T breach any good faith obligations? and:

v. Is there any evidence that the restructuring was enacted for an ulterior motive or contrived?

vi. If an unjustified dismissal or disadvantage claim is established what remedies should be awarded?

vii. An assessment of the level of costs to be awarded to the successful party.

What caused the employment relationship problem?

[9] M&T initially engaged Ms Rusiana as a Beautician pursuant to an individual employment agreement. The agreement indicated Ms Rusiana's hours of work were a minimum of 37 per week between 9am and 7pm, Tuesday through to Sunday but Ms Rusiana's 'nominated' days were Tuesday, Wednesday, Thursday and Friday with the option of extra hours by mutual agreement. At the time the employment ended Ms Rusiana was being paid an hourly rate of $19.50.

[10] Ms Rusiana had commenced employment with the former salon owner in November 2016 and was primarily working as a nail technician (with previous industry experience). When M&T acquired the business in September 2018, they secured Ms Rusiana's ongoing employment. Initially, Ms Rusiana worked alongside M&T's co-owner Tina Rodger, who is from Vietnam but later Ms Rodger's sister was also engaged in the salon. The salon at the transition period was offering a nail service, waxing and eyebrow tinting. Later in the employment period, Ms Rodger decided to extend the business to offer eyelash extensions after she undertook training in such procedures (training not offered to Ms Rusiana). Ms Rodger then decided that she was not experienced enough to offer eyelash services to a sufficient standard and she engaged an additional employee, Hannah, from Vietnam, whose work visa M&T sponsored. Ms Rodger continued to work in the business full-time.

Covid-19 Level 4 Lockdown

[11] In early 2020, as Covid-19 emerged as an issue, Ms Rodger acknowledged the salon was very busy but from 23 – 25 March as a level 3 then level 4 lockdown was imposed, the business could not operate. M&T applied for, and was granted (on 26 March), the government wage subsidy that was in place for a total of twelve weeks. During this period, M&T paid Ms Rusiana the full wage subsidy until she physically returned to work on 28 May. M&T communicated this by text to Ms Rusiana:

> Hi Irish as you're aware you we are closed due to the Government closure. We have applied for the wage subsidy and when working out your pay we will be passing on the full subsidy onto you (As its greater than 80%), for as long as we can operate.

[12] The impact of this was instead of being paid $721.50 per week for 37 hours as per her employment agreement, Ms Rusiana was paid $585.80 per week - the government subsidy rate. Ms Rusiana says she did not agree to this reduction in pay and M&T claim unclear guidance from government led to their decision to only pay the subsidy.

The redundancy proposal

[13] As the lockdown levels decreased, Ms Rusiana returned to work on Thursday 28 May 2020 and it was accepted by both parties that the salon experienced an initial post-lockdown busy period. Ms Rodger's sister took early parental leave and was not available to assist which left Ms Rusiana, Ms Rodger and Hannah to cope with the rush of work.

[14] The return to work also led to an immediate dispute between Ms Rusiana and Ms Rodger, over whether it had been appropriate to not pay Ms Rusiana's full wages during the lockdown. The tension escalated because Ms Rusiana's partner Mr Saxton, had pursued this issue with Mr Rodger rather than with Ms Rodger (although Mr Rodger, who did not work at the salon, oversaw payroll and administration issues).

[15] Ms Rusiana said Ms Rodger was uncommunicative on the day she returned to work (Tuesday) and the next day (Wednesday 3 June) Ms Rodger handed her a sealed envelope. This

contained a letter indicating M&T was considering a "potential company restructure". Various general reasons for proposing a restructuring were advanced including:

- The New Zealand economy taking a "significant downturn" impacting on their "year to date and projected sales" (note: no documentation was disclosed to support this assertion).
- The specific impact of Covid on M&T (effectively no income during lockdown).
- That measures to mitigate the situation had already been undertaken including: a negotiated rent reduction (50%), a focus on H&S to attract clients, applying for the wage subsidy, asking Ms Rodger's sister to take early parental leave, deferred tax payments and spending on social advertising.
- That notwithstanding the above: "Unfortunately the economic downturn has increased in pace and we therefore need to take further action to ensure that we remain a viable business".

[16] M&T then signalled they needed to reduce staff to "align better with customer demand" and that the impact on Ms Rusiana could be potential "Redundancy" due to a perception they would in the future not have enough work for "3 full time staff" and:

> The reason for yourself is if we need to go down to two staff both staff need to be able to perform eyelash treatment as well as nail treatment. With Hannah/Tina both having the qualifications and experience that are needed to perform both jobs. We do not take any decisions like this lightly and will always want to hear your thoughts and feedback on it.

[17] The above 'proposal', although not explicitly stated, did not include Ms Rodger's sister who had commenced parental leave and envisaged Hannah and Ms Rodger as the remaining staff members. The letter suggested a meeting on 10 June.

Wednesday 10 June meeting

[18] The meeting was attended by Ms Rusiana, Mr Saxton, Ms Rodger and Mr Rodger. Ms Rusiana recalled Mr Rodger leading the meeting and indicating that M&T were considering making her redundant due to uncertainty over whether they would qualify for ongoing government assistance and that they had lost a lot of money during lockdown.

[19] Ms Rusiana said she suggested they were being premature and that they should wait at least until the current wage subsidy ran out and then see how business was thereafter for a couple of months. Ms Rusiana also suggested methods of expanding the business including trialling discounts for loyal and first time customers. Ms Rusiana said, after asking if Hannah was also being considered for redundancy, Mr Rodger confirmed only her role was under scrutiny as Hannah did nails and eyelashes and that flexibility was important for the business going forward. Ms Rusiana said this appeared to not make sense as Ms Rodger could also do eyelashes and Ms Rusiana could be kept busy doing nails with her existing client base. Mr Saxton said Ms Rodger kept telling Ms Rusiana she could not do eyelashes and would not work weekends. Ms Rodger confirmed in written evidence that the latter factor played a part in M&T's decision-making.

[20] At the close of the meeting, Mr Rodger indicated he wanted to wait until the following weekend before making a decision. M&T explained at the time that they did not apply for the wage subsidy extension believing they failed to meet the criteria.

Communication of decision

[21] The morning of the following Tuesday (16 June), Ms Rusiana returned to work to be confronted by Mr and Ms Rodger who advised their decision was to make her redundant effective from that day with two weeks' pay in lieu of notice. The next day by way of a letter M&T confirmed the decision, indicating in part:

> When we looked at the sales data it was never going to be viable continuing with the same business model of 3 staff that we had before. That is why we unfortunately had to make the decision of making you redundant.
>
> (I note the "data' referred to above was not shared with Ms Rusiana).

Aftermath issues

[22] M&T ended their business premises lease and moved using money they had borrowed to re-brand and taking up a lease on premises at an alternative location on 1 July 2020. Mr Rodger said this opportunity came up over a weekend and they fortuitously were at the end of their old lease. M&T acknowledged the business became immediately busy. M&T

claimed they did not approach Ms Rusiana to return to work as they understood she was setting up on her own account.

[23] On 2 September 2020, M&T posted a private Facebook advert on a site "Working Holiday New Zealand of Vietnamese" seeking a full time and a part-time nail technician with no experience necessary with training being offered to the right candidate. Mr Rodger acknowledged the new premises brought a cheaper rent and the business has subsequently recovered.

[24] Ms Rusiana raised a personal grievance on 11 September 2020 claiming she had been made redundant for effectively an improper motive and not genuine business reasons. Ms Rusiana advanced an allied claim that M&T had failed to properly explore extending the employment period to coincide with the full wage subsidy term and had also unreasonably failed to apply for an available wage subsidy extension (factors Ms Fechney elaborated upon in submissions). During the investigation meeting Ms Rusiana expanded on the improper motive claim, suggesting that Ms Rodger had taken against her after she raised the issue of the shortfall between the wage subsidy and her normal pay and that Ms Rodger preferred to employ Vietnamese workers, perceiving them to be more compliant and flexible.

[25] Following the employment ending, Ms Rusiana says she was unable to secure another position in the same industry and she decided the only option was to commence trading with her own business ("Nails and Beauty by Irish") on 14 September 2020 (having foreshadowed such a move in Facebook post of 29 August) sharing business premises with an allied service. Despite having a restraint of trade provision in their favour M&T chose to not pursue enforcement of such.

The Employment Agreement

[26] Ms Rusiana's employment agreement at clause 14.2 under the heading "Redundancy" briefly indicated:

> Redundancy is when an employee's role is no longer needed.
>
> If after following a good faith restructuring process the employee is made redundant they will be given notice as set out in Ending employment. They will not receive redundancy compensation or other redundancy entitlements.

[27] The above provision has no defined process requirements. There is no statutory definition of redundancy but it has long been established in common law that a redundancy arises where a specific position is superfluous to the needs of an employer's business to establish an abstract construct that it is the position and not the person that is redundant. [1] However, this is only an overarching definition that does not necessarily address the spectrum of how a redundancy arises and in what context.

[28] M&T's brief redundancy provision does allude to a fair process including a requirement for "consultation". In the context of a redundancy situation in the Employment Court decision *Stormont v Peddle Thorp Aitken Ltd*, Chief Judge Inglis outlined key consultation principles as:

> Consultation involves the statement of a proposal not yet finally decided on, listening to what others have to say, considering their responses, and then deciding what will be done. Consultation must be a reality, not a charade. Employees must know what is proposed before they can be expected to give their view on it. This requires the provision of sufficiently precise information, in a timely manner. The employer, while quite entitled to have a working plan already in mind, must have an open mind and be ready to change and even start anew. [2]

[29] Where the agreement's provision is also relevantly deficient, is in not detailing that an employer has a good faith obligation to amongst other requirements, share economic information. [3]

[30] The employment agreement is thus of limited assistance, so to determine whether its expressed purpose of fairness was met, I must apply statutory considerations of justification and good faith.

Justification

[31] In order to justify termination of employment or an employer's actions, including in a redundancy situation, M&T must meet statutory requirements set out in s 103A of the Act

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[1] *GN Hale & Sons Ltd v Wellington Caretakers IUOW* [1990] 2 NZILR 1079 (CA) affirmed as still applicable law in *Grace Team Accounting v Brake* [2015] 2 NZLR 494.
[2] *Stormont v Peddle Thorp Aitken Ltd* [2017] ERNZ 352 at [54].
[3] *Jinkinson v Oceania Gold (NZ) Ltd (No2)* [2010] NZEMPC 102.

commonly referred to as the 'justification test'. In *Stormont* in the context of a redundancy case the court indicated:

> In order for a redundancy to be justified, an employer must demonstrate that the dismissal was what a fair and reasonable employer could have done in all of the circumstances at the time the dismissal occurred. The Court must consider whether the employer met the minimum standards of procedural fairness outlined in s 103A of the Act and whether it made a decision to terminate the employment relationship on substantively justified grounds.[4]

Good faith

[32] To ensure a redundancy is enacted in a procedurally fair manner, good faith obligations also apply as set out in s 4 of the Act - these include a positive disclosure obligation enabling employee access to all relevant information supporting the reason for the redundancy and detail of how it will be implemented. Further and crucially, a fully informed employee must be afforded an opportunity to comment on any redundancy proposal prior to a decision being finalised and once the decision has been made, redeployment options should be explored.

[33] The Court of Appeal in *Grace Team Accounting v Brake* [5], has ruled that an employer claiming to be in a redundancy situation is only entitled to justifiably end an employment relationship for valid and demonstrable commercial reasons and when looking at applying s 103A, O'Regan J said:

> 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. [6]

[34] In essence, the above requires the Authority to determine first if the redundancy was genuine (an assessment that has to exclude any ulterior motive) and then whether it was enacted in a procedurally fair manner.

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[4] [2017] ERNZ 352 at [52].
[5] *Grace Team Accounting Ltd v Brake* [2015] 2NZLR 494 (CA) at [85].
[6] At [85].

Ulterior motive?

[35] I first deal with the central claim advanced that the restructuring process was enacted for an ulterior motive – a premise Ms Rusiana says was based upon Ms Rodger taking a personal dislike to her because she got her partner to approach Mr Rodger to challenge her being paid incorrectly during lockdown and a general preference to employ Vietnamese nationals (as evidenced by the targeted job advert shortly after Ms Rusiana left).

[36] M&T say the redundancy was genuine and deny that they were influenced by extraneous factors claiming nothing was untoward in the relationship other than Ms Rodger being irritated that Ms Rusiana did not first approach her over her pay issues. In essence, the young couple who ran the business (Mr & Ms Rodger) were inexperienced in running a business and say they essentially panicked about the impact of Covid on a business that was 'face to face' with clients and were overcome with worry about the impact upon their financial situation and commitments. They claim they openly discussed their needs on going forward and that included having an employee working weekends and Ms Rusiana did not indicate she would change her working days to accommodate this need.

Assessment

[37] In determining whether the process adopted 'masked' an ulterior motive, I am conscious that this is close to an allegation that this was 'sham' process being akin to an allegation of fraud and that it "should not be lightly made" as "those engaging in a sham are in reality seeking to deceive others as to the true nature of what they have agreed and are intending to achieve"[7]. The advocate for Ms Rusiana did not develop an 'ulterior motive' argument in submissions.

Finding

[38] In carefully assessing the explicit and inferential factors above, I am inclined to view the restructuring process and particularly its timing as coincidental to the issue of the dispute over the wage subsidy. The suggestion that employees from Vietnam being at issue does not persuade as this arose after the employment ended. Whilst there was a claim of an ulterior

[7] Wylie J applying Richardson P's statement of the law concerning shams in *NZI Bank Ltd v Euro-National Corporation Ltd* [1992] 3 NZLR 528 at [57].

motive being ‘at play’, Ms Rusiana provided no evidence of a previous breakdown in the relationship with M&T other than understandable tension over her not making herself available during weekends (with no evidence that this had previously been a huge issue).

[39] The restructuring proposal has to be set against the prevailing extraordinary economic times and impact upon the economy that few economists predicated as rosy. This was a small emerging business that had many vulnerabilities including a lack of cash reserves and ongoing financial commitments. I find that the restructuring was logical for genuine business reasons and feedback was sought and considered; the decision was not rushed. Mr Rusiana had two issues that inevitably led to her position being identified – her reluctance to work weekends and lack of skill in eyelash work. I am convinced these two legitimate considerations drove the redundancy and no ulterior motive was present.

Procedural fairness and good faith factors

[40] Given the finding that an ulterior motive did not drive the decision to make Ms Rusiana redundant I need to go through the impact of any procedural fairness issues and whether any lack of adherence to such, greatly impacted on Ms Rusiana and assess such against factors set out in s 103A of the Act.

[41] Initially I find M&T has largely complied with procedural steps set out in s 103A in terms of explaining the reasons for the restructuring process, allowing Ms Rusiana time to obtain representation and considering her responses to a proposal.

[42] The key deficiency process wise is that M&T failed to disclose any economic information that they based their decision upon. A simple disclosure of profit, loss and liabilities or correspondence from the accountant they were using would have better explained the situation to Ms Rusiana. A failure to disclose such is a specific breach of s 4(1A)(i) of the Act and although no penalty is sought I need to consider whether this failure to be transparent with economic information disadvantaged Ms Rusiana in the sense of preventing her from making an informed submission during the consultation phase of the restructuring.

[43] However, I was persuaded during the hearing that M&T made a fair and reasonable assessment of their current and projected financial situation at the time and the genuineness of

the decision to reduce staff was made out. I have taken account of the fact that although legally advised M&T is a small employer with limited resources. I do not find that the failure to disclose economic information significantly caused Ms Rusiana to be treated unfairly.

Finding

[44] In regard to the application of s 103A of the Act I find that M&T has sufficiently established compliance in all the circumstances.

Failure to properly utilise wage subsidies available: disadvantage claim

[45] I was initially less persuaded that M&T properly utilised the wage subsidy for the purpose it was intended (including that some of it was simply not applied – Mr Rodger conceded he applied for four workers but did not utilise all of this) and had this been so Ms Rusiana's employment may well have been extended albeit for a temporary period. Whilst I heard evidence that M&T sought accountancy advice on eligibility for the extended subsidy and their worry about the liability this would create on top of other debts, I was not convinced that this decision (to not apply) was ill-motivated or not one open to a reasonable employer in all of the circumstances.

[46] I have viewed the relevant declaration Work and Income issued and it only mandates a recipient of the subsidy that "you agree you will, using best endeavours, retain the employees named in your application in employment" for the "period of the subsidy". [8] In the latter respect, I have to consider the financial circumstances known at the time and I have concluded M&T has made out a genuine redundancy but I have to balance that up with contextual factors that would have enabled M&T given the subsidy, to defer the decision.

[47] The first wage subsidy period had not expired when Ms Rusiana was made redundant and other options such as asking her to take leave were not explored. In this context, I find Ms Rusiana was unjustifiably disadvantaged as had her employment continued there was the possibility that it could have been ongoing, at least until the new lease opportunity arose

[8] *Declaration – COVID-19 Wage Subsidy* www.workandincome.govt.nz/online-services/covid-19/wage-subsidy-declaration.html

(1 July). By this time, as evidenced by M&T advertising for one and a half new positions within a very short time period, there was the chance that Ms Rusiana could have been retained on an ongoing basis (although her reluctance to work weekends may have still been at issue).

[48] However I reject the claim advanced that M&T was obligated to apply for the extended wage subsidy extension or acted unreasonably in not doing so, or that an obligation to consult arose as an alternative to redundancy. As was observed by Member O'Sullivan in *Single v Idea Services Ltd* there is no legal requirement that an employer apply for an available wage subsidy and it is a decision of an employer to "consider whether or not it felt it met the criteria and as to when and if it wished to apply for a wage subsidy". [9] Further the evidence demonstrated that M&T did explain their reluctance to apply for the extended wage subsidy and the reasons why they chose not to.

Findings

[49] Overall, I have not found in all of the circumstances, that Ms Rusiana was unjustifiably dismissed or that a fair and reasonable employer in the circumstances, would have awaited the end of the first subsidy period before terminating (on further notice) the employment relationship.

The potential breach of paying only 80% wage subsidy

[50] Ms Beck advanced a submission that the question of whether an employer was entitled to effectively unilaterally reduce an employees' wages to the 80% subsidy level during the March 2020 Covid-19 lockdown was initially unclear. Ms Beck cited her client obtaining advice from the local Chamber of Commerce and the wording of the first Covid-19 Work and Income "Declaration" that employers were agreeing to retain employees "on at least 80 percent of their regular income for the period of the subsidy". [10]

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[9] *Single v Idea Services Ltd* [2021] NZERA 306 at [19].
[10] *Declaration – COVID-19 Wage Subsidy* www.workandincome.govt.nz/online-services/covid-19/wage-subsidy-declaration.html

[51] Notwithstanding the above factors, Ms Rusiana's employment agreement contained an obligation that the employer must offer a minimum of 37 hours each week for which Ms Rusiana is to be remunerated.

[52] CJ Inglis initially pointed to the following threshold question and then the "widely understood common law rule" in *Gate Gourmet v Sandu* that:

> The relevant question is not whether the employee is actually performing work at the particular point in time a claimed unlawful deduction is made, but rather whether their terms and conditions would have them do so; and
>
> …. where there are agreed hours of work cancelled by the employer, wages remain "payable" provided that the employee was ready and willing to work those hours. [11]

[53] Ms Rusiana gave evidence that she did not concur with only being paid 80% of her agreed remuneration and a unilateral variation of an employment agreement is only permitted by s 63(2) of the Act by "mutual agreement" - here none was evidenced. In addition, s 4 Wages Protection Act 1983 (WPA) provides that where wages become payable the entire amount must be paid to the worker without deduction. Section 5 of the WPA provides deductions are permitted only by mutual consent.

Finding

[54] I find the reduction of wages to a level of 80% was a breach of both Ms Rusiana's employment agreement and the WPA and that she is entitled to recover wages owed as a remedy for this breach. A finding, Member Urlich also recently made in *Raggett v Eastern Bays Hospice Trust* that: "Any short pays outstanding at the applicants' final pay remain due and owing". I also find that the omission to pay Ms Rusiana her full wages caused her to be unjustifiably disadvantaged.

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[11] *Gate Gourmet v Sandu* [2020] ERNZ 561 at [57] and [60].

What remedies should Ms Rusiana be awarded?

Lost wages

[55] Having found that Ms Rusiana's employment ended due to a genuine redundancy no reimbursement of lost wages falls due under s 123(1)(b) of the Act.

[56] However, I have found that arrears of wages are due for the period of twelve weeks when the wage subsidy was paid to M&T being the difference between the wage subsidy paid ($7,029.60) and the amount due under Ms Rusiana's employment agreement ($8,658) in the amount of $1,628.40. In addition I find that holiday pay is due on the latter amount of $203.50 and Kiwi saver contributions of $281.40.

Compensation for humiliation, loss of dignity and injury to feelings

[57] I heard from Mr Rusiana about the impact of the decision to not pay her full wages during the Covid lockdown and how that spilled over into the workplace and her partner gave evidence describing how upset Ms Rusiana was. I have also found M&T breached good faith obligations in not disclosing financial information during the restructuring process that impliedly would have made Ms Rusiana less distressed if such had been revealed.

[58] In all of the circumstances, I consider Ms Rusiana's level of distress due to the impact of the actions and omissions I have found, amount to an unjustified disadvantage warranting a moderate amount of compensation. I fix that amount at $4,000 pursuant to section 123(1)(c)(i) of the Act.

Contribution

[59] Section 124 of the Act indicates that I must consider the extent to which, if at all, Ms Rusiana's actions in asserting her contractual rights, contributed to the situation that gave rise to her personal grievance and assess whether any calculated remedy should be reduced. In these circumstances, I can find no cogent reason to reduce the remedies awarded above.

[60] I find Ms Rusiana was not engaged in any wrongful action and she did not act in a blameworthy or culpable manner that gave rise to her grievances occurring so no reduction in any of the remedies awarded is warranted.

Outcome

[61] **Overall I have found that**:

a. **The circumstances of Irish Rusiana's employment ending did not amount to an unjustified dismissal.**

b. **Irish Rusiana was unjustifiably disadvantaged by the actions and omissions of M&T Beauty Limited in not paying her full wages during lockdown and failing to share sufficient information in the process of disestablishing Ms Rusiana's position.**

c. **M&T Beauty Limited must pay Irish Rusiana the sums below within 28 days of this determination being issued:**

   i. **$1628.40 gross arrears of wages;**

   ii. **$203.50 gross arrears of holiday pay; and**

   iii. **A $281.40 (net) Kiwisaver scheme contribution.**

   iv. **$4000.00 compensation for unjustified disadvantage.**

Costs

[62] Costs are at the discretion of the Authority. The parties are encouraged to make an agreement on costs that needs to take into account that the Authority, whilst having discretion to assess costs, must be persuaded that circumstances exist to depart from the normal application of scale costs.

[63] If no agreement is achieved, Irish Rusiana has fourteen days following the date of this determination to make a written submission on costs and M&T Beauty Limited has a further

fourteen days to provide a response. I will then on receipt of submissions, determine what costs are appropriate.

David G Beck
Member of the Employment Relations Authority