IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE

[2021] NZERA 109
3096655

	BETWEEN	NICHOLAS TIMOTHY HAU Applicant
	AND	SA & AC LESTER LIMITED Respondent
Member of Authority:	David G Beck	
Representatives:	Nicholas Hau, for the Applicant Dean Kilpatrick, advocate for the Respondent	
Investigation Meeting:	20 January 2021	
Submissions Received:	20 January and 24 February 2021 from the Applicant 20 January and 25 February 2021 from the Respondent	
Date of Determination:	6 April 2021	

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Nicholas Hau worked for a family ran café in Christchurch for up to eight years, latterly as a manager and barista. The café was sold to SA & AC Lester Limited a company owned by Sam and Amy Lester as an ongoing business called the Cosy Café, with a settlement date of 13 November 2019. Despite a provision in the sale and purchase agreement that the purchaser had the "sole discretion" to engage existing staff "on terms no less favourable than those on which they are currently employed by the vendor" and SA & AC Lester offering ongoing employment to Mr Hau, the parties were unable to reach an agreement.

[2] Mr Hau's application to the Authority claims that SA & AC Lester unjustifiably dismissed him by engaging in unfair bargaining by offering ongoing employment that contained a trial provision and had no provision for continuity of accumulated service benefits. Then Mr Hau says that the Lesters withdrew the offer of employment after Mr Hau claims that he had orally accepted the terms of such. In the alternative, Mr Hau asserted that the Lesters ignored a representation that he was covered by Part 6A of the Employment Relations Act 2000 ('the Act").

[3] Section 69A of the Act, provides protection to "categories of employees" detailed in Schedule 1A including employees who provide: "food catering services," [1] where continuity of employment is affected by a restructuring. Section 69A specifies that if the employee so protected is deemed to be included in the aforementioned catering category, the protection conferred gives:

> (a) the employee a right to elect to transfer to the other person as employees on the same terms and conditions of employment; [2]

[4] The Lesters by contrast, assert that no employment relationship was entered into and that they bargained in good faith but were unable to reach a timely agreement before taking over the business and thus entitled to withdraw the offer made to Mr Hau. The Lesters further informed Mr Hau that he did not fall into the category of a protected worker entitled to continuity of employment as per Part 6A of the Act.

The Authority's investigation

[5] Pursuant to s 174E of the Act, I make findings of fact and law and outline conclusions to resolve the disputed issues and make orders but I do not record all evidence. I have likewise, carefully considered the helpful submissions received from both parties and refer to them where appropriate and relevant.

[6] Nicholas Hau, his sister Meagan Hau, father Nigel Hau, Sam Lester, Amy Lester and Michelle Counsell an existing café worker, gave evidence at the investigation meeting.

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[1] Schedule 1A, Employment Relations Act 2000 "Employees to whom subpart 1 of Part 6A applies"
[2] Section 69A Employment Relations Act 2000

Issues

[7] The issues I must determine are:

(a) Can Mr Hau be classified as falling under the protective provisions of s 69A of the Act as an employee engaged in the provision of "food catering services" as defined by Schedule 1 A of the Act?

(b) If I find that no protection exists under Part 6A – I need to determine whether the parties entered into a binding employment relationship prior to the withdrawal of the offer of ongoing employment?

(c) Can Mr Hau establish a benefit was conferred upon him as a term of the sale and purchase agreement sufficient to bring him within the ambit of Part 2 of the Contract and Commercial Law Act 2017 and be able to enforce that benefit through the doctrine of 'contractual privity'?

(d) Did the Lesters bargain in good faith with Mr Hau?

(e) If any of Mr Hau's claims are established, what remedies should follow?

(f) If Mr Hau is successful in all or any element of his claims should the Authority reduce any remedies granted as a result of any contributory conduct?

(g) An assessment of the level of costs to be awarded to the successful party.

What caused the employment relationship problem?

[8] Mr Hau worked for the Cosy Café for eight years until it was purchased by the Lesters with a settlement date of 13 November 2019.

[9] The Lesters initially resolved to employ all of the existing café staff as this was the first business they had purchased and neither had experience in the food service industry. As such, the Lesters met and interviewed Mr Hau on Tuesday 29 October 2019. The interview notes provided to the Authority and evidence of the Lesters and Mr Hau, disclosed an amicable interview with the Lesters seeming keen to ascertain what hours Mr Hau was available for and what tasks he had been undertaking for the previous owners. Mr Hau recalled that he was shown an ongoing staff roster with his name on it and that he had expressed no problems with such. The interview notes disclose a ninety day trial period was discussed.

[10] At the conclusion of the interview, the Lesters indicated that they would provide Mr Hau an employment agreement for his consideration. Mr Hau recalled receiving a letter of

offer and an individual employment agreement on the afternoon of Tuesday 5 November and seeking advice on it from a family lawyer.

[11] The cover letter of the proposed agreement indicated that the starting date for employment was 13 November 2019 and "This offer remains open until 8/11/2019". The letter also indicated Mr Hau had the right to seek independent advice and that he would be given sufficient time to obtain such. It however, then went on to state "in the event that the documentation supplied has not been returned by the date set out, this offer will be automatically withdrawn on that date". The letter concluded "if you have any queries concerning this offer please do not hesitate to contact us". The attached draft employment agreement contained a ninety-day trial period clause but otherwise essential terms, including the pay rate and job description remained the same as Mr Hau's then employment.

[12] Mr Hau requested a meeting to discuss the employment agreement and met with the Lesters on Friday 8 November at the café. This meeting was the subject of a dispute on whether the parties concluded an agreement. It was accepted by all parties that the ninety-day trial period was discussed, the lack of continuity of accumulated sick leave, the notice period and staff access to free food and drink whilst working. Both parties agreed that consent was reached on the ordinary notice period being reduced from two weeks to one week and the staff food/drink concession continuing. It was agreed that the meeting ended with all parties 'shaking hands'.

[13] At this point in time (8 November), the Lesters said their expectation was Mr Hau would sign the agreement the next day. The Lesters say that they assumed Mr Hau would make the change relating to the notice period that was contained in an individual schedule attached to the agreement. Mr Hau indicated that he believed all outstanding matters had been resolved during the discussion of 8 November and Sam Lester in giving evidence concurred with this view.

[14] The next day (a Saturday), Sam Lester arrived at the café to collect the signed employment agreements and he was approached by Nigel Hau (the applicant's father and former owner of the café). Nigel Hau forcefully expressed a view that the employment agreements given to staff could not legally contain ninety-day trial periods as the transferring employees were deemed 'vulnerable employees' and that his children (Nicholas and Maegan Hau) would not be signing the agreements as presented.

[15] I make the observation, that although I was convinced Nigel Hau had sought 'informal' legal advice on this matter the premise that his son and daughter were categorised as vulnerable workers is a moot point that was not adequately explored, instead events transpired as follows.

The alleged dismissal

[16] At mid-morning on Monday 11 November, Amy Lester rang Nicholas Hau to ascertain if he would be signing the employment agreement. Mr Hau indicated that he wished to have a further discussion on 13 November and that he had engaged a lawyer to assist him in this and that it was his belief that the Lesters were not acting in good faith.

[17] Mr Hau gave evidence that he did not indicate what specific matters he wished to discuss. On being pressed, Mr Hau could not articulate what he thought was outstanding at this point in time that required a further meeting and, when Mr Kilpatrick put to him "was it because you had not accepted the offer and wanted to negotiate further", Mr Hau said "no". I however, found this response without any alternative explanation, to be less than convincing. Likewise, Amy Lester admitted that she did not inquire as to what the issue/s were and simply refused to meet on 13 November; indicating that this was inconvenient as it was the day they took over the business.

[18] Amy Lester said she then sought legal advice and then emailed Mr Hau around noon the same day withdrawing the offer of employment for both Mr Hau and Maegan Hau. In written evidence, Amy Lester indicated that "we decided to withdraw the offer as Nick had not signed and returned the contract by the date stated on his employment offer". Amy Lester further said at the investigation meeting, that she assumed that Mr Hau was adhering to his father's view of the situation.

[19] Mr Hau raised a personal grievance on 12 December 2019 referring to his belief that he fell into the category of being a vulnerable worker for the purpose of Part 6A of the Act's and therefore entitled to continuity of employment.

Part 6A – continuity of employment

[20] Part 6A of the Act provides that specific categories of employees considered vulnerable, are statutorily able to maintain the choice of continuity of employment on the

same terms and conditions when a business is sold as an ongoing concern. [3] The categories of employees protected are set out in Schedule 1A of the Act and include employees who provide "food catering services" in "specified sectors, facilities or places of work". [4]

Was Mr Hau engaged in the provision of food catering services whilst working in the café?

[21] The Act provides no specific guidance on what a food catering service employee is and the Authority and Employment Court has not yet addressed this matter in the specific context of an employee of a food business dealing directly with the general public such as here, in a café.

[22] The Employment Court decision *Lend Lease Infrastructure Services (NZ) Ltd v Recreational Services Ltd* which involved proceedings removed to the Court under s 178 of the Act, provides useful guidance on approaching the matter, albeit that this case involved determining whether identified workers fell into a category of providing cleaning services as an ancillary component of their main jobs. Judge Inglis, after traversing the statutory scheme of s 6A, initially approached the matter by commenting:

> The term "cleaning services" is not defined in the Act. Nor has it been considered by the Court in the context of Sch 1A.
>
> Counsel for the defendant made the point that none of the potentially affected employees were described as cleaners. While a label may be a useful indicator, I accept Mr Drake's submission that the title attached to a particular role is not determinative. It is the nature of the services actually provided by an employee that is relevant for the purposes of Sch 1 A. This requires a factual assessment.
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> Each of the employees described their work as involving cleaning. Again, the label attached to a particular activity is not decisive. Whether or not the description the employees adopted is apt requires analysis. [5]

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[3] Part 6A, s 69A (3) Employment Relations Act 2000.
[4] Schedule 1A (f) Employment Relations Act 2000.
[5] *Lend Lease Infrastructure Services (NZ) Ltd v Recreational Services Ltd* [2012] NZEMPC 86, at [42] - [44].

[23] Whilst this is a question of factual interpretation, I do have regard as did Judge Inglis in *Lend Lease*, [6] to Section 5 of the Interpretation Act 1999 that requires I first examine the text and purpose of the statutory provision under scrutiny and take heed that the Supreme Court has indicated even if the meaning of the text may appear plain in isolation of the purpose, that meaning should always be cross-checked against the purpose in order to observe the dual requirements of s 5. [7]

[24] *The Shorter Oxford English Dictionary*[8] defines "cater' as a verb, to "provide food and drink at a social event" and *The New Zealand Oxford English Dictionary* [9] defines the noun caterer as "a person who supplies food for social events, esp. professionally." A further Google search of the term "catering services" had a useful top result of:

> A caterer provides, transports, and prepares food for clients, particularly for special events such as conferences, weddings, celebrations, or large gatherings. Responsibilities, may include not only providing and preparing food but also serving it and cleaning up afterwards. [10]

[25] I believe the above denotes what can be regarded as the ordinary common usage of the term catering worker, being someone who provides food for an event and that this can ordinarily be distinguished from an employee working in a café where the provision and preparation of food are common tasks. I am however, aware that over time, roles develop and the economy and social mores change where businesses adapt to wider opportunities. For example, it is not uncommon for small cafés to also engage in small scale catering work competing with more traditional larger corporate catering companies.

[26] To assist with my analysis of whether it is reasonable to include Mr Hau's position at the Cosy Café within the protective framework of Part 6A of the Act I now turn to the object of s 6A, which is expressed at 69A (1) as: "to provide protection to specified categories" of employees.

[27] Judge Inglis in *Lend Lease* observed that:

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[6] At [45].
[7] *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] NZSC 36; [2007] 3 NZLR 767.
[8] (6th ed Oxford University Press, Oxford, 2007)
[9] (1st ed Oxford University Press, 2005).
[10] www.livecareer.com

> Schedule 1A is focussed on the nature or type of service provided by the potentially affected employee. This suggests a need to consider the overall nature of the employee's role in the context of the total work activity, rather than engaging in a minute dissection of individual components of the employee's work and whether they might be independently described as "cleaning", "*food catering*", "orderly", "caretaking" or "laundry" functions.
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> The point is reinforced by s 237A, which sets out the criteria that the Minister is to apply in recommending to the Governor-General that an amendment be made to Sch 1A to "add to, omit from, or vary the categories of employees." The criteria are (now s 69A (3)(b) of the Act):
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> (a) whether the employees concerned are employed in a sector in which the restructuring of an employer's business occurs frequently:
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> (b) whether the restructuring of employers' businesses in the sector concerned has tended to undermine the employees' terms and conditions of employment:
>
> (c) whether the employees concerned have little bargaining power. Again, the focus is on the nature of the work as a whole. [11]

Submissions

[28] After my investigation meeting concluded I invited the parties to address the issue of whether as alleged in his personal grievance letter, Mr Hau could fall under the category of an employee who provides "catering services".

[29] Mr Hau did not provide a submission specific to the question I posed, instead he provided further statements from his parents Nigel and Katherine Hau the previous owners. I record I have not found these helpful and have given such no weight as Mr Kilpatrick rightly pointed out they were unsworn statements and not the subject of cross examination and basically could be viewed as an attempt to lead further evidence. I however, attribute no ill motive to Mr Hau in providing such as he was not legally represented.

[30] What Mr Hau did provide that was of relevance and persuasive, was a list of catering work the café undertook across a variety of settings both onsite and offsite (for 20 clients) from community groups, schools, businesses and more traditional catering work being undertaken for weddings, birthdays and funerals. Whilst I had no analysis of how much of

[11] *Land Lease* above n5 at [50] – [51].

the business this work encompassed and over what time period or the value and scope of such, I am prepared to accept Mr Hau's submission that he contributed to the work undertaken by engaging in baking and food preparation and delivery of product to clients.

[31] Mr Kilpatrick by contrast, submitted that when the Act's section 6 was in Bill form, the select committee report discussed the scope and reach of what was considered "food catering services". In support of it being limited to exclude "those working in more general food services such as restaurant chefs who would not be considered vulnerable employees, while food "food catering services" restricts the scope to those involved in the preparation of food to third parties for consumption in a catering situation". [12]

[32] Mr Kilpatrick then cited authorities (including *Tan v LSG Sky Chef*s New Zealand Ltd and *Matsuoka v LSG Sky Chefs New Zealand* Ltd) to support an assertion that Schedule 1A only applies to employees "involved in the preparation and delivery or serving of food to third parties". Further, Mr Kilpatrick cited an Authority decision *Lewis v Gateway Motel Limited* where the Authority ruled that "a barman/waiter [sic]" in a restaurant did not come within the scope of Schedule 1A on the basis that there was "no evidence the restaurant in which Mr Lewis was employed provided food catering services". [13]

[33] Mr Kilpatrick suggested that including a café employee who prepared and served food and drink to customers was stretching the meaning of a food catering worker and thus beyond the scope and intent of the legislation envisaged by the select committee.

Discussion

[34] I do not consider Mr Kilpatrick's submission 'closes the door' to a café worker such as Mr Hau, who was involved in food preparation and catering provision being deemed to being engaged in food catering services. Whilst suggesting Mr Hau as a café worker could not fit into the aforementioned definition, Mr Kilpatrick did not suggest the Café was not involved in the business of catering to third parties or was intending to forgo such future opportunities. Two incidental definitional issues arise:

(i) whether the term 'food catering" is a traditionally restrictive one; and

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[12] https//www.parliament.nz.en/pb/sc/reports/document/47DBSC H SCR2881 1/employment-relations-law-reform-bill-92-2 #Related Anchor.
[13] *Lewis v Gateway Motel Limited* AA 468/09.

(ii) what is meant by "serving food to third parties".

[35] The case law Mr Kilpatrick cited partially assisted me but was not exactly on point. The two *Sky Chef* cases cited (*Tan* and *Matsuoka*) [14] turn on whether employees in supervisory/delivery roles in a corporate food services company qualify as catering workers and the Authority decision *Lewis v Gateway Motel Limited* involved an employee not directly engaged in food preparation (only service). The cases cited however, were said by Mr Kilpatrick, to restrict the scope to those involved in the preparation and delivery or serving of food to third parties for consumption. I find that too sweeping a statement, as in *Matsuoka,* Judge Travis did find that Mr Matsuoka was a food catering worker even though he took no part in the production of food - he was only involved in the organisation and delivery of food (for part of his working day). However, I do acknowledge that Judge Travis would have considered that the company Mr Matsuoka worked for, was a specialist catering company supplying food to airlines.

[36] An interesting Authority decision not alluded to but nearer to this matter in dispute, is *Hughes v Upper Hutt Cosmopolitan Club* (cited with approval in *Matsuoka*) [15] where the Authority had to consider whether a couple operating a restaurant in a club provided food catering services sufficient to bring them within the scope of Schedule 1A. The Authority took a more expansive approach after determining that whilst not vulnerable employees or required to be, the couple involved being an executive chef and a restaurant manager, did provide "those services provided to the Club so that its catering needs were met" and thus fell within the scope of Schedule 1A. [16] I note that this decision envisaged that the provision of catering services was not confined to a traditional catering company or 'off-site' catering context. The Authority, in rejecting an assertion that the Hughes' were not vulnerable, noted that "Parliament has chosen through a considered process to cover certain categories of work, not certain categories of employees".

[37] The Supreme Court subsequently clarified the situation in *Service and Food Workers Nga Ringa Toa Inc OCS Limited* by stating: "We reach the conclusion ….. by reference to s

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[14] *Matsuoka v LSG Sky Chefs New Zealand Ltd* [2011] ERNZ 56 at [68] and *Tan v LSG Sky Chefs New Zealand Ltd* [2013] ERNZ 426.
[15] At [67] – [68].
[16] *Hughes v Upper Hutt Cosmopolitan Club* WA120/08, 17/9/2008 Member Wood at [20]-[21].

237A that subpart 1 is designed to protect vulnerable employees…" [17] Chief Judge Inglis perhaps put it more succinctly in *Lend Lease* by stating:

> It is evident from the foregoing that Parliament's purpose was to protect limited categories of employees in sectors subject to frequent restructurings, who are generally unskilled, and who lack bargaining power.

[38] Having regard to case law guidance and applying s 69A of the Act to Mr Hau's situation I find he fell 'between two stools' – he did not occupy a role akin to a restaurant waiter or bar staff and he did not objectively have the bargaining power of a restaurant chef. To go further: Mr Hau, a relatively low paid worker, prepared food in a service based setting that included an element of 'traditional' catering work in the sense that food was at times prepared on site and taken offsite to clients for specific occasions.

[39] Overall, I do not find that the term "food catering" is always restricted to a business solely focussed upon providing food for events or special occasions. Food catering in the modern economy has a much wider provider base and has arguably a wider meaning and is now closer to the simple provision of food services that may be consumed off the premises in a variety of formal and informal settings.

Finding

[40] I find that Mr Hau's position due to the comprehensive nature of the service the café provided was capable of being included in the definition of an employee providing "food catering" services and that this category is capable of being understood in a wider sense in the modern economy. The catering work he undertook was not incidental to his usual tasks it was actually of a largely identical nature (excluding any delivery obligations). This aspect distinguishes the finding in *Lend Lease Infrastructure* that was a case involving employees claiming to provide cleaning services were the cleaning was found as "incidental, preliminary or merely preparatory" [18] to their occupational roles.

[41] I find that for the protective purposes of s 6A of the Act Mr Hau was also not in a strong bargaining position and he falls in a category of employees vulnerable in a situation when the employer changes and a new employer wishes to retain the employee's services but on altered terms and conditions. I find that a fair and reasonable employer would have

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[17] *Service and Food Workers Union Nga Ringa Tota Inc v OCS Ltd* [2012] 3 NZLR, [2012] ERNZ 182, at [54].
[18] At [66].

carefully considered the issue rather than as occurred here, merely withdraw the offer and try and rely upon a strict contractual approach when further exploration of relatively easily resolvable issues was warranted.

[42] As a protected employee Mr Hau should have been offered continued employment on the same terms and conditions he had with his former employer. I stress that this is not a finding that would necessarily extend to all café workers.

[43] I do not need to determine the issue of whether the parties entered into an employment relationship or bargained in good faith. However, I will explore below a further issue of whether Mr Hau can enforce a term in the sale and purchase agreement even though he was not a party to such.

Does the Contract and Commercial Law Act apply?

[44] As I was only provided with a copy of the sale and purchase agreement during the investigation I noted that the Authority has jurisdiction under s 162 of the Act on the law applying to contracts and that includes consideration of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017 ("CCL Act"). Section of the 10 CCL Act sets out a simple premise:

> The purpose of this subpart is to permit a person who is not a party to a deed or contract to enforce a promise made in it for the benefit of that person.

[45] In the above context I invited further submissions on the issue of whether the sale and purchase agreement term: that the Lesters have a discretion to offer employment "on terms and conditions no less favourable than those on which they are currently employed by the vendor" could be enforced by Mr Hau even though he was not a party to the sale and purchase agreement.

[46] Mr Kilpatrick whilst conceding the Authority has jurisdiction in this matter, suggested that the Lesters had discharged their obligations contained in the sale and purchase agreement by offering terms no less favourable to Mr Hau being substantially the same as the employment agreement prevailing prior to the time of purchase. Mr Kilpatrick suggested that Mr Hau's employment agreement with Cosy Café contained a trial period provision that made it the "same" as what the Lesters offered.

[47] Putting aside the fact that Mr Hau had clearly been employed well beyond 90 days by the previous owners and in examining the previous Cosy Café agreement, it had no trial period specified that would have met the requirement s of s 67A of the Act as it only made a passing reference to the right to instantly dismiss within 90 days and confusingly in a schedule to Mr Hau's agreement reference is made to a "6 weeks trial period'. In assessing the Lesters' submissions I find otherwise, as I fail to see how an agreement that contained a trial period and no provision for accumulated sick leave could meet the criterion of it being "no less favourable" than what prevailed.

Finding

[48] I find that Mr Hau can enforce the provisions of the sale and purchase agreement to the extent that it confers a benefit on him and that benefit was the a promise to provide him with an employment agreement on terms no less favourable than prevailed. I find that SA & AC Lester did not fulfil this term by attempting to impose an agreement with a ninety-day trial provision.

Remedies

[49] Having established that he should have been afforded ongoing employment and that he could rely on a term in a sale and purchase agreement essentially providing the same right to ongoing employment on previous terms, Nicholas Hau is entitled to remedies for what amounted to an unjustified dismissal.

Lost wages

[50] Section 123(1)(b) of the Act provides for the reimbursement of the whole or any part of wages lost by Mr Hau should I find that he has established a personal grievance and s 128(2) mandates that this sum be the lesser of a sum equal to his lost remuneration or three months' ordinary time remuneration

[51] I have found that Mr Hau was unjustifiably dismissed. Mr Hau claimed eleven weeks lost wages until he secured an alternative position at a café in mid-February 2020 but he did not advance sufficient evidence of how he had acted to mitigate his loss other than registering with employment agencies that offered temporary work that he apparently did not follow up.

[52] I find that it is equitable in all the circumstances to award Mr Hau a total of four weeks lost earnings ($4,000) based on $25 per hour for a 40 hour week.

Section 123(1)(c)(i) compensation

[53] Mr Hau gave evidence of the impact of his dismissal and the humiliation this caused him after he had assured long-time customers that he was continuing in employment. Whilst he found an alternative position in a reasonably short period of time he suffered financial hardship in the interim and he says the manner by which his employment ended caused him to be anxious and depressed.

[54] I am convinced that Mr Hau suffered humiliation, loss of dignity and injury to feelings but for a relatively short period.

[55] Taking into account the circumstances and awards made by the Authority in similar cases, I consider Mr Hau evidence warrants a modest compensatory amount, I fix that sum at $8,000 under s 123 (1)(c)(i) of the Act.

Contribution

[56] Section 124 of the Act states that I must consider the extent to what, if any, Mr Hau's actions contributed to the situation that gave rise to his personal grievance and then assess whether any calculated remedy should be reduced. To assess whether the remedy should be reduced I have considered the relevant factors recently summarised by the Employment Court in *Maddigan v Director General of Conservation.* [19]

[57] In these circumstances, I could find Mr Hau's failure to identify issues with the employment agreement just prior to the offer being withdrawn may have contributed to the situation that gave rise to his grievance but I must balance this against the fact that the offer was peremptorily withdrawn when Mr Hau was legitimately exercising his right to be represented.

[58] In the circumstances, I find no reduction in Mr Hau's remedy is warranted.

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[19] *Maddigan v Director General of Conservation* [2019] NZEmpC 190 at [71] – [76].

Outcome

[59] Overall I have found that:

a. **Nicholas Hau was unjustifiably dismissed from his employment with SA & AC Lester Limited.**

b. **SA & AC Lester Limited must pay Nicholas Hau the sums below:**

   i. **$4,000 gross lost wages;**

   ii. **$8,000 pursuant to s 123(1)(c)(i) of the Act without deductions.**

Costs

[60] Whilst I have found in favour of Nicholas Hau, he represented himself and did not incur any legal costs but I order SA & AC Lester to pay to Mr Hau his Authority application fee of $71.56.

David G Beck
Member of the Employment Relations Authority