IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON

I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI Ā TARA ROHE

[2022] NZERA 117
3133615

	BETWEEN	BROOKE JONES Applicant
	AND	ALLIED INVESTMENTS LIMITED (T/A ALLIED SECURITY LIMITED Respondent

Member of Authority:	Sarah Kennedy
Representatives:	Dave Cain, advocate for the Applicant Nathan Williams, for the Respondent
Investigation Meeting:	3 November 2021 at Palmerston North
Submissions received:	29 November 2021 from Applicant 15 December 2021 from Respondent
Determination:	31 March 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Brooke Jones was employed by Allied Investments Limited, trading as Allied Security Limited (Allied) as a security guard until her employment ended in July 2020. Ms Jones claims her employment ended when she was dismissed (by reason of redundancy) and claims unjustified dismissal and/or disadvantage, penalties and costs.

[1] Allied Security says her employment ended by way of resignation and that if that is not the case, the employment ended by way of a redundancy which was substantively and procedurally justified.

The Authority's investigation

[2] For the Authority's investigation written witness statements were lodged from Ms Jones, James Broughton, E Tu representative, Dennis Roets, Regional Manager, Allied and Nathan Williams, Manager gave oral evidence. All witnesses answered questions under oath or affirmation from me and the parties' representatives.

[3] The investigation meeting was adjourned to facilitate provision of further information by Allied Security. At a later case management conference, both parties agreed there was no further relevant evidence that would assist the Authority and the parties filed written submissions.

[4] Having regard to s 174E of the Employment Relations Act (the Act), it has not been necessary to refer to all the information placed before the Authority in this matter. All material provided has, however, been considered.

[5] As permitted by 174C(4) of the Act, the Chief of the Authority has decided that exceptional circumstances exist to allow this written determination to be issued outside the three month timeframe required by s 174C(3) of the Act.

The issues

[6] The issues requiring investigation and determination were:

(a) Whether Ms Jones was dismissed (by reason of redundancy) or whether she resigned?

(b) If Ms Jones was dismissed, whether Allied Security had done what a fair and reasonable employer could have done, in all the circumstances at the time it decided to dismiss her on the grounds of redundancy, and in how it made and carried out its decision?

(c) Did Ms Jones suffer disadvantage in her employment, and if she did, then was it unjustified?

(d) If Allied Security's actions were not justified, is Ms Jones entitled to remedies?

(e) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Ms Jones that may have contributed to the situation giving rise to her grievance?

(f) Should penalties be awarded to Ms Jones?

(g) Should either party contribute to the costs of representation of the other party.

Background

[7] Ms Jones started work for Allied Security as a casual employee on 19 January 2020. She was placed at a supermarket distribution centre as a night security guard and worked approximately 30 hours per week. On 3 March 2020, she signed an individual employment agreement (employment agreement) that provided for permanent employment and a minimum of 40 hours work each week.

Removals

[8] Over the next four months, Ms Jones was removed from three different client sites, said by Allied to be based on complaints from clients. On each occasion the concerns were not raised with her nor was she given an opportunity to respond to those concerns until after she had been removed and not all were investigated before decisions were made.

[9] The most serious was an alleged "theft" which despite being purportedly resolved was revisited with Ms Jones on several occasions including at the final meeting when her employment was terminated. The CCTV footage on which the complaint was based on was never made available to Ms Jones. The other two complaints related to cell phone use at work and eating while on duty.

[10] Allied accepted at the investigation meeting that "removals" are now treated differently. The employee is no longer summarily removed before concerns are raised with them and they are notified in writing if a removal request is received. An investigation also is carried out before any final decisions are made about removal.

[11] The relevance of the removals is that Allied sought to justify Ms Jones' dismissal on these removals saying she could not return to those sites and therefore it had fewer options for placements for Ms Jones.

[12] On 1 May 2020, Ms Jones and James Broughton, E Tu representative, attended an investigation meeting with Caleb Riddick, Operations Manager, about the second removal which had occurred on 22 April because of a complaint she was on her phone during work.

[13] The letter inviting her to the 1 May meeting specified the issues to be discussed as the potential impact that removal from sites could have on her ongoing employment and one instance when she did not attend a rostered shift and did not provide notice within the required time frame.

[14] Confusingly, the letter did not refer specifically to phone use at the second site or any specific conduct concerns other than taking leave without notifying her employer in sufficient time. Her explanation regarding that, was a family emergency that the cell phone use was connected with, and that explanation appears to have been accepted because that was not raised with her again.

[15] Ms Jones said she told Mr Riddick at the meeting that she agreed in principle it was not appropriate to text while at work, but this was a one off and would not happen again because it was a family emergency. She received a verbal warning and remained removed from that work site.

[16] Ms Jones says Mr Riddick, also raised the March theft allegations again. He told her there was CCTV footage to support the allegation. Ms Jones requested to see the footage and says her request was initially denied and then at some stage, Ms Jones says Allied admitted there was no CCTV footage and the theft allegations were then dropped.

[17] The final outcome letter setting out the findings and the warning after the 1 May meeting did not refer to any outcome in relation to the allegation that removals might impact on her ongoing employment or about the theft allegations.

[18] Ms Jones had been placed at another supermarket and worked there until 29 April when she was removed for a third time because a complaint that she was eating on duty had been made by the client.

[19] Allied say this was actually a second complaint about cell phone use. However, Mr Broughton confirmed Ms Jones' evidence that the complaint was about eating on duty. Ms Jones says she was walking back from her car in the supermarket car park having had a break and was finishing off eating something as she walked. Neither of Allied's witnesses (at the investigation meeting) were involved and Mr Riddick was no longer employed by Allied, in which case I prefer the evidence of Ms Jones in relation to this incident.

Reducing hours

[20] In early June 2020, Mr Roets, Regional Manager, became involved because he was following up on expired Certificates of Approval (COA) and Ms Jones' COA had expired. It is the employee's responsibility to maintain these certificates and without them, Allied say, the guards are not able to work.

[21] Ms Jones said she was told in March, by the operations manager at the time, not to worry about keeping her COA current because of Covid-19.

[22] Mr Roets was led to believe Ms Jones had not competed the required workbook, but after talking to her, Mr Roets discovered she had met all the requirements. The issue she faced by then was not being able to afford to pay the annual fee because her hours and pay were already reduced. Mr Roets arranged for the COA fee to be paid.

[23] There is no dispute in the evidence that Ms Jones hours were reduced because Allied mistakenly thought she had not completed the requirements for the COA.

[24] On or about 4 June 2020, after being removed from site three, Mr Roets placed Ms Jones at a fourth site, JB HiFi, working 20 hours per week. She was initially told she could not be placed at that site because her COA had expired in early March.

[25] On review of the records, during the 18-week period, between 19 March and 25 July, there were 13 weeks when Ms Jones' hours than less than 40 hours per week and her wages varied accordingly.

[26] At this point in time, Ms Jones says she was still a full-time permanent employee, and she was frustrated by the removals being repeatedly raised and wanted her employment agreement honoured. Her hours continued to be reduced and she was having great difficulty coping financially.

[27] Mr Roets accepted that Ms Jones came to him on 2 July regarding the issue of minimum hours and he raised that with Mr Riddick the following day. He says he met with Ms Jones and her union representative on 13 July to discuss the issue of hours. Ms Jones said they met on 8 July.

[28] Regardless of when they met, they agreed in principle that Ms Jones was owed 102.75 hours in unpaid wage arrears due to the COA issue. In reaching this conclusion Allied must have accepted it was not entitled to have made deductions from Ms Jones wages.

[29] Mr Roets also said in evidence that at some point he instructed the operations managers to offer Ms Jones 40 hours of work but if she did not take it then she was to be paid for the hours worked which is consistent with Ms Jones' evidence that Allied continued to reduce her hours and wages even after it was agreed she was owed arrears following the COA issue.

Redundancy

[30] Then Mr Roets became aware that JB HiFi was ending its relationship with Allied. On 10 July, Mr Roets telephoned Ms Jones and raised redundancy with her. She recorded her recollection of that call in an email she sent to her union representative on 11 July as follows:

> "Here are the points Dennis said to me over the phone yesterday afternoon:
>
> - had been in the office all day and couldn't find any hours, even though two days prior offered four different positions (Whanganui MSD, Cars, PEL and landfill.
> - Offered redundancy and mentioned to go to work and income for support.
> - Mentioned that he'll keep me at JB HIFI for weekend shifts, till the contract ends around the end of December.
> - Said he had calculated 107 hours owing

- Said to ask to put me for cover at different msd sites if needed
- Offered if I want to be put on a casual contract and work when needed."

[31] There was a conflict in the evidence about whether a meeting also occurred on 13 July after that initial phone call, where options and redundancy were discussed in person. Mr Roets said it did and Ms Jones said it did not.

[32] Regardless of that, Mr Roets evidence was that he was trying hard to find options for her. He was hoping some work in Wanganui would come to fruition but it was delayed because of Covid-19. He also talked to her about a casual opportunity at the landfill but that required driving company vehicles and because she was under 25 years of age, it was discounted because of the age requirement for car insurance.

[33] On 13 July, Mr Roets emailed Ms Jones and there is a suggestion that there had been a meeting, nonetheless, he noted that despite her removal from the first site, she had stayed on a 40 hour contract, and then after removal from two other sites, she still remained on a 40 hour contract. He then stated:

> "I will use you at JB Hifi for 19 hours and top up with MSD work where available until the 31st of July when the JB Hifi contract ends. I strongly advise that you negotiate with G4S that takes over the JB Hifi contract as discussed. I have shared your details with them as discussed.
>
> Allied Security unfortunately does not have any other permanent sites available after this date.
>
> Let me know what you think and I will schedule another meeting for Wednesday at 11.30 to discuss."

[34] On 15 July 2020, they met. First, they discussed JB HiFi and the possibility that Ms Jones could approach the company taking on the JB Hifi work about employment opportunities. Then Mr Roets handed Ms Jones a redundancy letter dated 15 July 2020 that stated:

> "Re NOTICE OF REDUNDANCY
>
> As per our discussion today, it is with regret that I must advise you that our client JB HiFi has confirmed that they will not be continuing with Allied Security and as such, the role that you were working in at JB HiFi is no longer required.
>
> Given your previous removal from three other sites, with the client deeming you unsuitable for ongoing employment at their sites, we can find no suitable alternative

> roles for you. Therefore, I am confirming that your role with Allied Security is to be made redundant.
>
> In line with your Individual Employment Agreement (IEA), I am confirming your termination of employment due to redundancy, on two weeks' notice effective from 17 July 2020. Your last day of employment will be 31 July 2020. You are not required to work out this notice period.
> …."

[35] The evidence regarding the redundancy letter, was that Mr Roets and Nathan Williams had a conversation on the morning of 15 July before the meeting with Ms Jones about moving her to a casual contract because Allied could not offer her 40 hours of work per week at that time. The redundancy letter was a result of that conversation.

[36] Ms Jones and Mr Roets both agreed that alternative placements were discussed at the meeting but not until after the termination letter was given to Ms Jones. Mr Roets was to contact MSD to enquire about options there. Ms Jones asked if she could go back to one of the supermarkets she had been removed from but was told that was not an option.

[37] Mr Roets also discussed the client removals from all three sites, including the theft allegation again. Ms Jones said she felt like she was on trial for those again. Ultimately Mr Roets told her he could piece together casual work until it was possible to offer her permanent work again.

[38] On 20 July, after hearing nothing further from Mr Roets since the meeting on 15 July about the alternatives Ms Jones was convinced Allied just wanted to get rid of her and so concerned about her financial situation, she resigned because of the stress she was under:

> "On the 20 July 2020 I resigned … due to the stress of it all. I couldn't even do it myself and had it done on my behalf. I had just had enough of the company's belligerent positions outlined above over several months. I felt I was being driven crazy, that they just wanted me gone and that I would never be reasonably supported by them. It was my only way left to protest the corner they had pushed me into. The only voice I had left. If they hadn't treated me like this I would never have resigned. I was in not state to complete any notice period.

[39] Ms Jones says she was paid her final pay on 29 July, two weeks after the notice of redundancy was given to her. Ms Jones said she was in "disbelief" that the agreed

arrears from the wage deductions resulting from the mix up about the COA issue were not paid to her at that time.

[40] Ms Jones had agreed at the meeting on 15 July to work her assigned shifts on 25 and 26 July at JB Hifi despite the notice of redundancy stating otherwise. She did not attend the remaining shifts as agreed.

Employment agreement

[41] Ms Jones' employment agreement provided for 40 hours per week and included the following clause:

> "4.4 Where economic conditions are such that existing hours of work cannot be sustained by the Employer, the Employer will consult with the Employees to determine mutually acceptable arrangements to overcome the problem. Where the problem cannot be resolved by consultation in good faith, the Employer may change the hours of work after seven days' notice in writing has been given to the Employee."

[42] In the case of redundancy, the agreement provided the following:

> "33.1 If the Employee's position is redundant there will be no redundancy payment made to the Employee. The employee accepts their role is dependent on Allied Security's client requiring the services of Allied Security. In the event the client alters, or reduces or ceases the requirement, both parties accept a change in work hours will be the result. Wherever possible any change will be provided with a minimum 14 days' notice. Both parties accept this may not be possible."

[43] Then at clause 36.3 it was set out that two weeks' notice or pay in lieu of notice was required in the case of termination for redundancy.

[44] Then at clause 37 the following was set out:

> " 37 Termination by Client and Frustration of Contract:
>
> 37.1 The Employee acknowledges that the client may require the Employer to cease provision of the services of the Employee at any time.
>
> If requested to cease supply of the Employee's services, the Employer will act reasonably to assist the Employee in finding alternative work with the Employer where practical.
>
> The Employer or Employee may decide to end the employment at this point as they decide. If the employment is terminated due to frustration this will be effective

> immediately. On termination for frustration of contract no notice period will be applicable.
>
> If no alternative work is available and the Employee is not terminated the Employee will remain as an Employee of the Employer and move to the employment "on a casual basis" and may by offered work on a time by time arrangement.
>
> Payment for wages and salary will be on a work performed basis at all times and if no work is performed no payments will be made nor required…"

[45] Allied asserted in its correspondence with Ms Jones and at the investigation meeting that it relied on clause 37.1.

[46] That provision purports to permit the employer to terminate employment for "frustration of contract" in circumstances where there is insufficient work and provides an alternative to dismissal which is moving from permanent employment to employment on a casual basis.

[47] A number of errors appear to have been made by Allied in this case, in particular the removals from client sites with no proper process, and reductions in Ms Jones' hours and wages with no proper process. The short point is that none of those actions are permitted by the Employment Relations Act 2000 or the Wages Protection Act 1983 and minimum employment standards set out in the employment legislation is not able to be contracted out of. To the extent there is an assertion that clause could be relied on to justify Allied's actions, it could not.

Additional information

[48] The Authority's investigation meeting was adjourned to allow Allied an opportunity to provide documentation to corroborate the assertion made by Mr Williams about the overall downturn in business, to support the submissions that the redundancy was genuine and justified.

[49] The additional information provided consists of a written explanation setting out how the JB Hifi contract ceased, a sample of the total hours per week available in Palmerston North during specified weeks in June and July 2020, and the week of 8 November 2021. This sample clearly shows the available work for guards increased but two new contracts accounted for this and because the incumbent providers transferred all their staff to Allied, there were no vacancies as such for Ms Jones to fill.

The “ad hoc” work was explained which is consistent with Mr Roets offering Ms Jones casual work when it was available.

[50] The additional information also repeated the assertion that work was offered to Ms Jones and she routinely turned that down and it was submitted that this justified the employers’ actions.

[51] I have reviewed the attached text messages and they do not show Ms Jones routinely turned down extra hours. Even if she did, that argument has little weight because the employment agreement between the parties was not a casual agreement.

[52] As a fair and reasonable employer Allied should have paid Ms Jones in accordance with the employment agreement until the agreement was either varied or came to an end.

Dismissal or resignation

[53] Ms Jones’ resignation was received part way through the redundancy process. Allied says Ms Jones resigned but Ms Jones argues her employment ended by way of termination for redundancy because of the circumstances in which the resignation was tendered.

[54] Ms Jones says she was blindsided by the redundancy and by now thought she was being singled out because of the removals such that this was not a genuine redundancy based on business needs. The way she characterised her resignation in her evidence was akin to a protest at how unfairly she had been treated and continued to be treated.

[55] She also wanted a way to not have to work the remaining shifts she had agreed to because of the stress she was under by this point and perhaps mistakenly thought resignation would relieve her of that responsibility. However, the employer’s decision to terminate her employment had already been made and they acted on that, in that her final pay was 14 days after the notice of redundancy was given.

[56] The letter of redundancy is very clear. Given the unequivocal wording of the letter, headed up "Notice of redundancy" there could be no confusion as to whether or not the employer was sending her away. The evidence on behalf of Allied was also very clear, there was insufficient work, and regardless of the reasons for that, Allied Security could no longer provide 40 hours of work per week.

[57] I am satisfied that Ms Jones employment came to an end by way of termination for redundancy. It seems the purpose of the resignation was to forgo the need to work out notice rather than a resignation which appears to have been a clumsy attempt to do away with the need to work out her notice but this does not detract from the fact her employer had already terminated her employment.

[58] Ms Jones' final pay was at the end of the redundancy notice period and not the resignation notice period.

Was the dismissal justified?

[59] Redundancy is a "no fault" dismissal because there is no question of fault by the employee, instead, the position has become superfluous to the needs of the business.

[60] The test for justification, set by s 103A of the Act means that Allied Security was required to show its decision to end Ms Jones' employment on the grounds of redundancy was genuine and that it had complied with the notice and consultation requirements of s 4 of the Act. In this context "genuine" means making a decision on business requirements and not as a pretext for dismissing an employee for other reasons.[1]

[61] An employer proposing to make a decision likely to have an adverse effect on the continuation of a worker's employment must give the worker all relevant information about that prospect and, before making any decision, give the worker an opportunity to comment.[2] The only exception to the obligation to provide all relevant

[1] *Grace Team Accounting Limited v Brake* [2014] NZCA 541 at [85].
[2] Employment Relations Act 2000, s 4(1A)(c).

information is where there is good reason to maintain the confidentiality of the information.[3]

[62] If any defects in the process Allied Security followed in considering the future of its employment relationship with Ms Jones were more than minor and had resulted in her being treated unfairly, the Authority may determine her dismissal for redundancy (including how it was made and carried out) was unjustified.[4]

Redundancy - genuine business reasons

[63] For a position to be made redundant the law requires that the position must be superfluous to the needs of the business, and this can arise where the employer is seeking to make the business more efficient.[5] In assessing this, a solid foundation of evidence or paper trail can be an important indicator of whether the decision on redundancy was for genuine commercial reasons. Providing insufficient information about the rationale for a proposed redundancy decision has been found to fall below what is expected of a fair and reasonable employer.[6]

[64] The reason provided to Ms Jones was insufficient work and the rationale for that was a combination of JB HiFi's intention to end its relationship with Allied, and the position taken that Ms Jones could not return to any of the sites she had been removed from, regardless of whether the removals were steps open to a fair or reasonable employer.

[65] Taking into account the concessions made by Allied at the investigation meeting, I am of the view that Allied's actions were not what a fair and reasonable employer could have done in all the circumstances and therefore the removals could not form part of the basis for the rationale that there was insufficient work.

[66] Nonetheless, from its perspective, Allied was still in the position of not having any work for Ms Jones after 31 July 2020 and Mr Roets started to engage with Ms Jones in relation to that issue.

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[3] Employment Relations Act 2000, s 4(1B).
[4] Employment Relations Act 2000, s 103(5).
[5] *Grace Team Accounting Ltd v Brake* [2014] NZCA 541.
[6] *Tan v Morningstar Institute of Education Limited* [2013] NZEmpC 82.

[67] The analysis of hours per week provided to the Authority (after the investigation meeting), would have been information relevant to Allied's decision and important for Ms Jones to know, in order that she could respond fully to a proposal to make her position redundant. That information was not provided to her although verbally she was told that there was insufficient work, she was not given any detail.

[68] On that basis I find the rationale for redundancy to be flawed and insufficient information about the reasons were provided to Ms Jones and both of those things fall below what is expected of a fair and reasonable employer.

Redundancy process

[69] Mr Roets did engage with Ms Jones about the available work hours and was consistent across the phone call, email, meeting and the subsequent notice of redundancy that the work at JB HiFi was ending, and there was insufficient work for Allied Security to fulfil its contractual obligation to provide 40 hours employment to Ms Jones.

[70] The process from the point in time when redundancy was raised to termination was approximately 5 days and this was insufficient time to have fully disclosed all relevant information about the redundancy proposal and to give Ms Jones an opportunity to comment.

[71] Despite the matter being raised with Ms Jones, it is not obvious that a proposal was put to her.

[72] The fact the Notice of Redundancy was given to Ms Jones in the meeting to discuss reduced hours and a redundancy, confirms that a decision was already made about the continuation of her employment. The conversation between Mr Williams and Mr Roets on the morning of 15 July confirms that the only option Allied was considering for Ms Jones was redundancy.

[73] The lead up to this decision had been approximately four months of removals and Ms Jones was already being treated as if she was a casual employee evidenced by

the fluctuating hours and deductions from her wages. In that context, I find that the defects in the process were more than minor and resulted in Ms Jones being treated unfairly and that the termination for redundancy and the process followed by Allied was unfair and procedurally and substantively flawed. Subject to any contribution, Ms Jones has made out her claim for unjustified dismissal and is entitled to have remedies considered.

Was Ms Jones disadvantaged?

[74] I have already found the dismissal unjustified. Ms Jones has also claimed for an unjustified disadvantage on the basis that the unilateral decisions on three occasions to remove her from three work sites without consulting her has disadvantaged her. She also says this course of conduct by her employer was unfair and in breach of the good faith obligations in s 4 and the test for justification in 103A of the Act.

[75] I find those aspects of the claim already form an integral part of my finding that the dismissal is unjustified because the mere fact of the removals formed the basis for the redundancy, and as such I do not intend to consider those as separate matters.

Remedies

Lost wages

[76] The Act permits reimbursement of the employee of a sum equal to the whole or any part of the wages or other money lost by the employee because of the grievance.

[77] Ms Jones said the financial stress came about because she only just had enough to pay rent and basic food. She had to ask family and friends for petrol money, and she had to make arrangements with her bank to manage payments that she could not meet.

[78] In seeking lost wages, Ms Jones provided proof of her applications for new employment during that time. Ms Jones started new employment on 31 October 2020 and provided evidence of the financial hardship and steps she took with her bank to manage her financial situation. In the three months after the dismissal, Ms Jones received a jobseeker payment from Work and Income New Zealand.

[79] I accept that reimbursement is appropriate in the circumstances of a no-fault termination when the manner of dismissal was unfair and unreasonable, and I consider that reimbursement of a sum equal to three months' ordinary time would be appropriate.

[80] Reimbursement of lost wages for 13 weeks calculated at $19.50 per hour at 40 hour per week = $780 x 13 weeks = $10,141.00. Taking into account the WINZ payments she received, Ms Jones claims lost wages in the amount of $6,750.00.

[81] I find that Ms Jones is entitled to reimbursement of the sum of $6,750.00 under s 123(1)(b) of the Act.

Compensation

[82] Ms Jones seeks compensation in the amount of $15,000 for hurt and humiliation. Ms Jones says of the stress resulting from financial hardship and the unfair way she was treated by Allied, caused her to suffer emotionally and resulted in anxiety and depression. She did not provide the Authority with any medical evidence but talked about the steps she took to regain her equilibrium and confidence.

[83] The dismissal process followed by Allied Security was unfair and procedurally and substantively flawed which came at the end of a series of errors by the employer that impacted on Ms Jones. Ms Jones was humiliated and suffered loss of dignity and injury to feelings as a result of how she was dismissed and how she had been treated. Subject to any contribution, Ms Jones is entitled to payment of compensation in the sum of $15,000 under s 123(1)(c)(i) if the Act. In reaching this figure I have taken into account other comparable cases.

Contribution

[84] Allied submits that Ms Jones was in fact responsible for the redundancy situation she found herself in. It says there were genuine business reasons for redundancy, but had she not engaged in behaviours that were responsible for clients requiring her removal from their sites, Allied would have had alternative positions it could have re deployed her into. It says a higher if not total level of contribution should be considered under section 124 of the Act.

[85] I do not consider that Ms Jones contributed towards the situation that gave rise to the personal grievance. The site removals were a feature of this case as was the assertion that work was turned down, however, the ultimate mischief lay in how Allied Security dealt with client complaints and then failed to honour its contractual obligation and went about dealing with Ms Jones when it took the position it had insufficient work to meet its contractual obligations.

Penalties

[86] Penalties are claimed for breach of the employment agreement for failing to pay Ms Jones for her full contractual hours of work, withholding payment of the full amount of unpaid wages owing until 24 February, which amounted a breach of s 4 of the Wages Protection Act 1983; breaches of good faith for "unconscionable conduct".

[87] I do not think a penalty is warranted for those matters in circumstances where Ms Jones has been reimbursed in full for those failings and this determination has remedied the additional matters.

Orders made

[88] Allied Investments Limited is ordered to pay Brooke Jones the following:

(a) Reimbursement for lost wages in the amount of $6750.00 (less tax) under s 123(1)(b) of the Act.

(b) Compensation in the amount of $15,000.00 without deduction under s 123(1)(c)(i) of the Act; and

Costs

[89] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If they are not able to do so and an Authority determination on costs is needed, Brooke Jones may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of this determination. From the date of service

of that memorandum Allied Security would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[90] If the Authority were asked to determine costs, the parties could expect the Authority to apply its usual daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.

[91] For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1

Sarah Kennedy
Member of the Employment Relations Authority