

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI Ā TARA ROHE**

[2022] NZERA 40
3131419

BETWEEN DERYCK HUMPHRIES
Applicant

AND ACW 2020 LIMITED
First Respondent

AND ASPEC WELLINGTON
LIMITED
Second Respondent

Member of Authority: Sarah Kennedy

Representatives: Barbara Buckett, counsel for the Applicant
Charles McGuinness, counsel for the Respondent

Investigation Meeting: 29 September 2021 at Wellington

Submissions received: 29 September and 19 October 2021 from Applicant
11 October 2021 from Respondent

Determination: 15 February 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Deryck Humphries was employed by Aspec Construction Wellington Limited (now “ACW” 2020 Limited) in the role of foreman/foreperson on construction and building sites until he says he was dismissed by reason of redundancy on 8 June 2020. He claims the dismissal was unjustified both procedurally and substantively.

[2] Mr Humphries also claims that deductions made to his salary and his annual leave entitlements during Level 4 Covid-19 lockdown in April and May 2020 were in breach of the Wages Protection Act 1983, the Employment Relations Act 2000 (the

Act) and the Holiday Act 2003. He claims remedies consisting of compensation, lost wages, unpaid wages and annual leave, holiday pay arrears.

[3] ACW's position is firstly that Mr Humphries resigned during the consultation period about the restructure, and secondly that he failed to work out his notice, or in the event, there was a redundancy, it was justified both procedurally and substantively.

The Authority's investigation

[4] For the Authority's investigation written witness statements were lodged from Mr Humphries and Barbara Allan, his wife, David Hurley and Martin Irvine, directors and shareholders of ACW and Amanda Kirkcaldy, ACW's wellness advisor. All witnesses answered questions under oath or affirmation from me and the parties' representatives. The representatives provided written submissions.

[5] Aspec Construction Wellington Limited changed its name to ACW on 2 December 2020. A joint memorandum of counsel was filed setting out the parties' agreement to Aspec Wellington Limited also being joined to the proceeding. There was no dispute from Mr Irvine or Mr Hurley that they were the directors of the company that employed Mr Humphries in one form or another at the relevant time.

[6] Having regard to s 174E of 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.

[7] 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 ER Act.

Issues

[8] It became apparent at the investigation meeting that Aspec Wellington Limited was not the employer, although it paid Mr Humphries from time to time.

[9] The issues for investigation and determination were firstly whether Mr Humphries was dismissed (by reason of redundancy) or resigned.

[10] If I find that there was a dismissal, the next question is whether ACW had done what a fair and reasonable employer could have done, in all the circumstances, at the time it decided to dismiss him on the grounds of redundancy, and in how it made and carried out its decision.¹

[11] The third issue is whether the way in which ACW managed deductions to wages and holiday pay (during the Covid-19 lockdown in April and May 2020) was lawful.

Background

[12] New Zealand had entered the Covid-19 Alert Level 4 lockdown which ran from 25 March to 27 April 2020. The lock down was implemented under the state of national emergency, also declared on 25 March 2020, in response to the Covid-19 pandemic. The state of emergency, with several extensions, ran until 13 May 2020 when the country moved to Alert Level 2.

[13] On 14 April 2020, during a visit to the CDC work site close to his home, Mr Humphries says Mr Irvine told him he would be in touch because the CDC site was reopening the following week. They had received permission from MBIE it and it was considered to be “essential service site”.

[14] Then on 11 May 2020, having been away from work due to Alert Level 4, Mr Humphries was invited by text message from Mr Irvine to “pop in for a chat” the next day. At that meeting (on 12 May 2020), Mr Irvine and Mr Hurley told Mr Humphries that ACW was going to restructure due to significant financial pressure from the Covid-19 situation causing projects to be cancelled.

[15] The exact content and detail of the 12 May meeting is not agreed between the parties but it was accepted they discussed restructure and the financial pressure caused by Covid-19.

[16] Mr Humphries evidence was that he was told a decision had already been made to disestablish his role and he was given an ultimatum that if he wanted to keep working for the company then he would have to accept an alternative role or alternative

¹ Employment Relations Act 2000, s 103A.

redeployment options. He says he was given no detail about the financial pressure the company was under.

[17] There was also discussion about two issues that had arisen at the last site Mr Humphries worked at before Level 4 lockdown. Mr Humphries took this to be a reprimand, but ACW says it needed to raise those with him and considered it to be constructive feedback. ACW accepts that these were discussed at meeting about restructure.

[18] Mr Humphries was also told that he was to start work the next day (13 May 2020) at the Rimu Road project in Raumati. A risk assessment had been carried out and because of his age, and the health information he disclosed to Ms Kirkcaldie, health and wellness assistant, he was considered by ACW to fall into the high-risk category. It was not known to Mr Humphries how or why the decision was made that he was returning to work after others had already returned.

[19] From 12 May to 5 June there was no further discussion between the parties about Mr Humphries employment and Mr Humphries worked at the Rimu Road site for several weeks expecting follow-up from the 12 May conversation. When there was no further communication, he says he became increasingly stressed.

[20] Mr Humphries evidence was that the stress he was feeling about the uncertainty of his employment was compounded by comments from other staff at the Rimu Road site that he found hurtful and humiliating to the effect of “you’re my apprentice now” and “why are you still here”. ACW were unaware of the comments from other staff or how that had made Mr Humphries feel but he formed the view that other employees knew about his situation meaning it had been discussed and his evidence was that by the 3 June he was having trouble sleeping and other health issues had flared up.

[21] On 3 June, Mr Humphries went to work but went home sick and booked an appointment to see his doctor for 5 June. He also returned an air compressor to the work site that morning because he anticipated being off work. He says his doctor confirmed he was suffering from stress at that point but no medical certificate was provided.

[22] A medical certificate was produced after a later consultation with his general practitioner dated 2 July. It records that after further examination Mr Humphries was “suffering from stress and anxiety symptoms.”

[23] On 3 June, ACW wrote two letters to Mr Humphries hoping to deliver them personally but because of his sick leave, they were emailed to him. Mr Humphries received both letters on 5 June. One advised him that ACW was restructuring as follows:

“Restructuring and role change

As a result of the current economic conditions Aspec Wellington are restructuring areas within the organisation. This is a direct result of a number of projects that were due to start either being delayed or all together cancelled. Covid 19 effects on the industry will most likely continue and as a company we are forced to look at our operating structure and direct overheads.

This is a challenging time and we are committed to retaining staff. Where roles are disestablished, we will look at offering other roles within the organisation that are in line with the individuals skill set.”

[24] The other letter informed Mr Humphries that his position had been disestablished, and referencing the 12 May meeting with the directors, offered him a position as a carpenter commencing 1 June at an hourly rate of \$28.00 per hour in a role where he was required to provide his own transport and tools. If that was acceptable to him, a new contract agreement would be drafted:

“As per our discussion on the 12th of May, at our office with myself & David Hurley your current role as a foreman has been disestablished. This is a direct result of a number of projects that were due to start either being delayed or all together cancelled. Covid 19 effects on the industry will most likely continue and as a company we are forced to look at our operating structure and direct overheads.

In doing so Aspec are offering you a position as a carpenter, this role is an on the tools based position that comes into effect from the 1st of June. This position will

require you to provide your own transport too & from the building sites and tools required by a carpenter to carry out this role.

The role will be a waged based position with a normal working week of 44 hours.

...

The hourly rate will be \$28.00ph in line with others in this role at Aspec Wellington.

This is a challenging time and we are committed to retaining staff, if the above is acceptable to you we will draft a new contract agreement.”

[25] Mr Humphries evidence was that by this stage, he had become very stressed and unwell from the uncertainty and over the weekend (after receiving both letters) decided to decline the carpenter’s role and take redundancy. He also wanted to propose that he did not work out his notice because of the impact on him.

[26] On 8 June, Mr Humphries went to ACW offices unannounced and met with Mr Irvine briefly to convey his decision and handed over company property at the meeting, consistent with his evidence that he was seeking to not to return to the workplace. Mr Humphries said he believed he had agreement from Mr Irvine at the meeting that he did not have to work out his notice period. There was dispute about when it was sent but he also sent an email confirming his decision as follows:

“I’ve taken some time to reflect on the situation, and on your offer of either redundancy or a change in role. It is clear to me that there is little value in my remaining with the company, and as a result, believe it would be best for both parties if I take the option of redundancy effective immediately. As I understand it, this would be a month’s notice from you as my employer, and annual leave accrued at my original rate of salary. I will return my phone, table, fuel card, order books etc, and uniforms forthwith, and advise that I have not retained any company equipment or materials in my vehicle (however you are welcome to inspect if you so wish).”

[27] Mr Irvine’s evidence was that he was not expecting to see Mr Humphries that morning and he was somewhat taken aback. While Mr Humphries evidence was that Mr Irvine agreed there was little value in him being at work and the redundancy could be effective immediately, Mr Irvine gave evidence that while he agreed verbally, in fact

he did not actually agree. They had wanted to keep Mr Humphries on in a carpenter role and he definitely did not agree to Mr Humphries not working out his notice because then left them short of staff at that time, but Mr Irvine accepted he did not say this.

[28] Both Mr Irvine and Mr Hurley gave evidence that they had been under extreme pressure to keep the business afloat during the Covid-19 period in 2020. This pressure was both professional and personal as they had purchased the company only 2 years previously. It was a business venture they had embarked on together and as such they were the only two directors and they recognised the responsibility they had to all those involved with the company. ACW's evidence was that it had done the best it could for Mr Humphries in a difficult situation and the directors felt let down by Mr Humphries for not recognising this and effectively leaving them short handed by not working out his notice.

[29] Mr Humphries received no reply to his 8 June email. On 21 June he was advised of his final pay and noted that he thought he had been underpaid by one week. On 23 June ACW replied confirming his role had been "disestablished" and taking the position that he had abandoned his employment meaning there was no entitlement to arrears of wages or holiday pay and he says this added to his distress.

[30] There was correspondence between the parties, and on 17 July Mr Humphries raised a personal grievance with ACW.

Dismissal or resignation?

[31] Mr Hurley said in evidence and during cross examination that the decision was made a week prior to the meeting with Mr Humphries on 12 May and he confirmed that Mr Humphries was told at that meeting that his role had been made redundant. He resiled from that position at one point suggesting that it was Mr Irvine who managed staff matters.

[32] Mr Irvine's position appeared to be that no decision had been made despite the 3 June letter going out with the 1 June deadline in it, and no communication between the parties. He said that ACW were still in consultation with Mr Humphries on 8 June when Mr Humphries came to see him and resigned.

[33] The submissions on behalf of ACW suggest that there is simply no evidence of a redundancy.

[34] I am satisfied there is sufficient evidence that Mr Humphries was made redundant after the 12 May meeting because the letter of 3 June records that disestablishment of the position was discussed at the 12 May meeting which is more consistent with the evidence Mr Humphries gave. If I am wrong about that then he was definitely redundant by 3 June when the letter was drafted recording in writing that Mr Humphries position was “disestablished”.

[35] Considering the lack of consultation about restructure and/or any suitable redeployment option, after restructure was first raised with Mr Humphries, the position was clearly disestablished and therefore the position became redundant.

[36] Further confirmation of ACW’s intent and clear communication that Mr Humphries was redundant is the email from Mr Irvine dated 23 June which he tells Mr Humphries “You were offered a new role as your role was disestablished...”.

Was the dismissal justified

[37] 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. When there is confusion about whether a particular action amounts to a dismissal what is required is evidence of a “sending apart” or “sending away” or “sending forth”.²

[38] The test for justification, set by s 103A of the Act means that ACW was required to show its decision to end Mr Humphries 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.³

[39] 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

² *Wellington Clerical Union v Greenwich* (1983) ACJ 965 (AC) at 973.

³ *Grace Team Accounting Limited v Brake* [2014] NZCA 541 at [85].

opportunity to comment.⁴ The only exception to the obligation to provide all relevant information is where there is good reason to maintain the confidentiality of the information.⁵

[40] If any defects in the process ACW followed in considering the future of its employment relationship with Mr Humphries were more than minor and had resulted in him being treated unfairly, the Authority may determine his dismissal for redundancy (including how it was made and carried out) was unjustified.⁶

Individual Employment Agreement

[41] Mr Humphries written employment agreement with ACW provided that in the event of redundancy he would be given two weeks' notice or in lieu of such notice the employer could elect to pay two weeks wages. No redundancy compensation was payable. At clause 21.3 it states:

Where an Employee is given notice and voluntarily terminates his/her employment before the expiry of the notice period, the Employee shall not be paid for the unworked period of notice.

[42] And at clause 21.6:

“... prior to making the Employee redundant, the Employer in consultation with the Employee, will consider whether any reasonable alternative positions are available prior to making the Employee's position redundant.”

Genuine business reasons

[43] 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.⁷ 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

⁴ Employment Relations Act 2000, s 4(1A)(c).

⁵ Employment Relations Act 2000, s 4(1B).

⁶ Employment Relations Act 2000, s 103(5).

⁷ *Grace Team Accounting Ltd v Brake* [2014] NZCA 541.

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.⁸

[44] Covid-19 lockdown meant that all current projects were halted then delayed before starting up again and the cost of new materials increased significantly. There were five projects underway prior to Alert Level 4 (CDC Warehouse, North Power, Rimu Road and Pirie St) that had to stop although one was able to start again in April 2021 because it was deemed an essential service by the Ministry of Health.

[45] During Alert Level 3, four projects progressed and each had a foreperson assigned to them. Of the four projects that were planned to commence in 2020, after the Covid-19 and the lockdowns, two were delayed by 12 months and two did not go ahead at all. Mr Humphries was earmarked to be the foreperson on one of those projects that was initially delayed but then did not go ahead at all.

[46] ACW says the survival of the business depended on them reducing their cost base very quickly and people were a major expense. In essence, ACW say that whilst it accepts that if it dismissed Mr Humphries, this was attributable to a justifiable redundancy.

[47] It is clear that the business was affected by the Covid-19 Level 4 lockdown. Having heard the evidence that about the projects not going ahead or being delayed, and Covid-19 as the context (although Covid 19 not a reason in and of itself), I am satisfied there were genuine business reasons to consider restructure on the basis there was no longer a requirement for all five foreperson roles.

Process

[48] While I have concluded there were genuine business reasons for redundancy there are also obligations on employers set out in the Act to comply with the procedural requirements for information sharing and consultation. These were not complied with by ACW.

⁸ *Tan v Morningstar Institute of Education Limited* [2013] NZEmpC 82.

[49] The good faith duty requires an employer who “is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of the employment of one or more of his or her employees” to provide the affected employees with access to relevant information about the decision and an opportunity to comment on the information before the decision is made (s 4(1A)(c)). This information should include the criteria for the selection for redundancy and the weight to be applied to those criteria.⁹

[50] The reasons for providing access to information were discussed by the Employment Court in *Vice-Chancellor of Massey University v Wrigley*:¹⁰

“When a business is restructured, the employer will, in most cases, have almost total power over the outcome. To the extent that affected employees may influence the employer’s final decision, they can do so only if they have knowledge and understanding of the relevant issues and a real opportunity to express their thoughts about those issues. In this sense, knowledge is the key to giving employees some measure of power to reduce the otherwise overwhelming inequality of power in favour of the employer.”

Selection criteria

[51] In terms of information to be provided to the employee, the employer must select employees for redundancy using a fair and reasonable process. There must at least be clear criteria for selecting the employees to be made redundant. Both the criteria for selecting employees for redundancy, and how they will be applied should be discussed with the employees concerned. Subjective assessment of an employee’s attributes behind closed doors, without an opportunity for the employee to comment, will not be fair and reasonable.¹¹

[52] Mr Humphries IEA is silent and does not assist in terms of setting out any selection criteria to be followed in the case of redundancy and in any event the evidence was undisputed that the selection criteria ACW used was not provided to Mr Humphries.

⁹ *Jinkinson v Oceania Gold NZ Ltd* (2009) NZELC 93, 341.

¹⁰ *Vice-Chancellor of Massey University v Wrigley* (2011) 9 NZELC 93, 782.

¹¹ *Apiata v Telecom New Zealand Ltd* (1998) 5 NZELC (digest) 98, 484.

[53] Both Mr Irvine and Mr Hurley said that the final decision (that Mr Humphries' position would become redundant) was based mostly on him being a foreperson and ACW not having sufficient project work for five employees in that role due changes in circumstances attributable to the Covid-19 situation.

[54] It became evident at the investigation meeting that Mr Humphries was unaware that a total of three employees (including him) were considered for redundancy and all received the same generic letter but it was unclear whether the other two had meetings with the directors on 12 May. Two were already allocated to projects actively running. That perhaps explains why Mr Humphries said he felt singled out unfairly and in a personal way.

[55] The selection criteria would have been important and relevant information for Mr Humphries to have to enable him to respond to a redundancy proposal.

Consultation

[56] In addition to providing access to information the good faith duty requires the employer to give employees an opportunity to comment on the information before a decision is made.¹² That opportunity must be real and not limited by the extent of the information made available by the employer. In other words, information must first be provided followed by an opportunity for consultation with affected employees. These steps are required in all redundancy situations.

[57] It was not in dispute that the information Mr Humphries had about the rationale for redundancy was the general information set out in the 3 June letters. Mr Humphries evidence was that he was unaware of how many projects or which ones were being cancelled or delayed or that he was ear marked for a future project that did not go ahead. Given ACW says that was the main catalyst for the decision to make Mr Humphries redundant this should have been communicated to him.

[58] ACW said that Mr Humphries was aware of ACW's financial situation from Zoom meetings held with all employees during lockdown and the work programme

¹² Employment Relations Act 2000, s 4 (1A)(c)(ii).

document so the decision would not have come as a surprise to him given the situation with Covid-19.

[59] Zoom meetings during Covid-19 lock down were for all employees as were the contacts and conversations with Ms Kirkcaldy and as such were not specifically tailored to redundancy affecting Mr Humphries employment. Mr Humphries cannot have been expected to communicate concerns about redundancy to anyone other than the directors in the context of this matter.

[60] The work programme was not produced by ACW until the investigation meeting so while it may have been available if Mr Humphries went looking for it, it would have been reasonable for ACW to have provided that as part of the consultation process. This is especially so as there were no other documents or actual evidence of the genuine business reasons for a restructure.

[61] Both directors were firm that the company financial information was confidential and not for employees to see, so even if they had contemplated providing that information, it was unlikely that they would have. The end of year financial accounts were provided at the investigation meeting but these were not available at the time Mr Humphries position was made redundant.

[62] There is sufficient evidence for me to be satisfied that the decision regarding Mr Humphries position was made prior to either the 12 May meeting with the directors, and if not then, the letter of 3 June plainly stated the position was disestablished. Mr Humphries then had until 1 June to advise whether he wished to take up the carpenter role which predated the letter which also suggests decisions had been made.

[63] ACW accepted in evidence it did not follow any process other than the meeting and the letter and neither involved consultation. Mr Irvine seemed unaware of the need for consultation prior to making any final decisions conceded that in hindsight he would do things differently. I note at this point that he said he expected Mr Humphries to take the alternative role which may explain the process unfolded the way it did.

[64] This scenario leaves little room for a conclusion other than that there was insufficient information provided to Mr Humphries.

[65] With the obligation of good faith in s 4 of the Act resting with the employer, it would have been better that ACW clearly articulated with all affected employees what it was intending to do before taking any steps, set out the process it intended to follow. In order to comply with the employers' obligations set out in the Act, ACW needed to ensure the process involved provision of information, including about the selection criteria as well as the rationale for restructure and an active and full opportunity for consultation before any redundancy decisions were made.

Alternative positions

[66] While an alternative position was offered, the relevant clause in the IEA provides:

“prior to making the Employee redundant, the Employer in consultation with the Employee will consider whether any reasonable alternative positions are available prior to making the Employee's positions redundant”.

[67] Because I have found there was no consultation, this clause cannot have been fulfilled because it requires consideration of alternative positions prior to making the employee redundant.

Unlawful deductions

[68] Mr Humphries claims the difference between his usual salary (before tax) and what he received in April and May 2020 being \$1,166.00 (April) and \$658.96 (May). He also claims reimbursement for 20 hours of his annual leave entitlement that was used in April to top up his wages which came to \$673.08 before tax. There were no annual leave deductions in May.

[69] ACW accepted it made those deductions but says these were communicated by email to all employees with opportunities to raise any issues directly with Mr Irvine and Mr Hurley. ACW also says that the Covid-19 wage subsidy declaration required all employers receiving the subsidy to use their best endeavours to continue to pay all their employees at least 80 per-cent of their usual remuneration.

[70] ACW also says it put the proposition to staff in an email, including Mr Humphries, that wages would be reduced to 80 per-cent from 1 April and annual leave

would be used as a top up from 15 April, and made it clear that if there were any issues, then they should let the company know.

[71] Mr Humphries acknowledged that he did not take a proactive step to let his employer know he was not happy with the reduction. He says he felt in the context of Covid-19 he was unsure and accepted the deductions because he did not think he had a choice.

[72] It was submitted on behalf of ACW that this means the deductions were either consented to or permitted by Mr Humphries' IEA which allowed variations so long as there was agreement in writing. The Holidays Act 2003 also permits employers and employees to come to an agreement regarding the use of annual leave and if they are unable to do that, the employer may dictate when annual leave must be taken, provided they give at least 14 days of notice,¹³ which ACW says it did.

[73] The IEA at clause 3 did provide for variations provided there is agreement in writing. The agreement relied on by ACW was one line in an all of staff email inviting contact with the directors directly if there were concerns about the proposal.

[74] Clearly the 20 per-cent reduction in salary albeit for a short period was a variation so if ACW was seeking Mr Humphries' consent to that reduction, then that consent or agreement would need to be expressly given and be in writing. Similarly, the Wages Protection Act and the Holidays Act both require agreement between the parties and no express consent or agreement can be pointed to in this case.

Remedies

[75] Mr Humphries claims compensation in the range of \$10,000 to \$40,000 for the unjustified dismissal in accordance with s 123(1)(c)(i) of the Act, reimbursement of lost wages (because of the unjustified dismissal) and \$1852.62 for wage deductions and \$673.08 for annual leave deductions to top up his wage.

¹³ Holidays Act 2002, ss 18, 19.

Lost wages

[76] After 8 June, Mr Humphries says he took a break to recover from the impact the dismissal had on him, but also actively pursued other opportunities and started a new role on 28 July. He claims lost income of three weeks and four days in the amount of \$5,115.37.

[77] Taking into account the fact Mr Humphries appears to have been paid for his notice period he would only be entitled to one week and four days lost wages which amounts to \$2,423.07.

Compensation

[78] Mr Humphries had no ability to have any meaningful input into the decision to terminate his employment and because he was the only one to lose his job, he felt that he was targeted and that there was a perception that he was not performing. There were five employees in the foreperson role, and this was to be reduced to four and three employees including Mr Humphries were considered for redundancy. There was a clear need to involve Mr Humphries in the selection process and he needed to be involved through a consultation process. The urgency caused by Covid-19 does not excuse ACW from following a proper process.

[79] The dismissal process was substantively flawed. Mr Humphries gave evidence of the redundancy on him and provided a medical certificate that referenced stress and anxiety symptoms. He says he lost confidence, self-worth and self-respect and was caused significant distress such that felt humiliated being effectively demoted instantly to the role of carpenter. After the 12 May meeting, he felt unsettled and uncertain. His stress levels rose, and he suffered stress related health conditions and had to seek medical advice. His wife gave evidence of the impact on him and their relationship as a result of the stress he felt himself under. He said that the way his employment ended, the suggestion that he had resigned, the delay in providing any further information about next steps after the 12 May meeting caused him significant hurt, loss and dignity and injury to feelings.

[80] Subject to any contribution, Mr Humphries is entitled to payment of compensation in the sum of \$15,000. In reaching this figure I have taken into account the compensation amounts awarded in other similar cases where there has been a significant failure by an employer to follow the process required when redundancy is being considered.

[81] I also note the position taken by ACW, that Mr Humphries had instead resigned, and consider this to be an aggravating feature of the way in which the employer conducted itself.

[82] The Authority is required under s 124 of the Act where it finds that an employee has a personal grievance to consider the extent to which the employee contributed towards the situation that gave rise to the personal grievance.

[83] As ACW sought to dispute whether redundancy had occurred or in the alternative said that redundancy was justified, and as redundancy is, by definition, a no-fault situation, Mr Humphries did not contribute to his personal grievance.

Conclusion and orders

[84] ACW was not entitled to make the 20 per-cent reduction in salary that it did. It needed Mr Humphries express consent make the reduction and use his annual leave to top up his salary and did not have this.

[85] Mr Humphries dismissal on the grounds of redundancy was unjustified. No proper process was undertaken, with a total absence of the required consultation. This means that the dismissal was both procedurally and substantively unjustified.

[86] ACW 2020 Limited is ordered to make the following payments to Mr Humphries:

- (a) Reimbursement of salary for the months of April and May 2020 amounting to of \$1,824.96.
- (b) Reimbursement of 20 hours of annual leave deducted in April 2020 amounting to \$673.08.
- (c) Lost wages amounting to \$2,423.07.

- (d) The sum of \$15,000.00 pursuant to s 123(1)(c)(i) of the Act as compensation for the hurt and humiliation suffered by Mr Humphries because of his unjustified dismissal.

Costs

[93] Costs are reserved.

Sarah Kennedy-Martin
Member of the Employment Relations Authority