

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2023] NZERA 585  
3191939

BETWEEN                      CARL SHANKS  
   Applicant

AND                              RAY THOMAS and RUTH THOMAS  
   trading as TE MATAI PARTNERSHIP  
   Respondents

Member of Authority:        Philip Cheyne

Representatives:             Damien Pine, counsel for the Applicant  
   Respondents in person

Investigation Meeting:       7 June 2023 in Invercargill

Information and  
Submissions Received:      19 June & 30 June 2023 from the Applicant  
   13 July 2023 from the Respondents

Date of Determination:      9 October 2023

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     Ray Thomas and Ruth Thomas trading as Te Matai Partnership operate a dairy farm business. I will refer to the employer as TMP or the partnership. Mr & Mrs Thomas' son Luke Thomas is the chief executive of TMP.

[2]     TMP employed Carl Shanks in its business from March 2020 as a dairy assistant and from October 2020 as a team leader. TMP did not provide Mr Shanks with a written employment agreement for either position.

[3] It is common ground that TMP told employees that their annual holidays had to be cleared during the holiday period starting at the beginning of June. However, over the holiday period Mr Shanks performed work on most days under an arrangement with TMP. An issue arose in July 2021 about the amount of annual holidays to be deducted from Mr Shanks' leave entitlement after accounting for that work. Ray Thomas and Mr Shanks agreed that the leave balance would show a remaining entitlement of 10 days annual leave due at the start of August 2021.

[4] In August 2021, there was an interaction between Mr Shanks and Ray Thomas as Mr Shanks was leaving work. He rang Luke Thomas to tell him he had quit. Luke Thomas told him to take the next day off. Luke Thomas arranged a meeting between himself, Ray Thomas and Mr Shanks for several days later. Matters were not resolved, despite the meeting. Mr Shanks did not return to work.

[5] By his solicitor's letter dated 4 November 2021, Mr Shanks raised a personal grievance claim of constructive dismissal, based on exchanges during the 13 August 2021 meeting and earlier. He also said he had been unjustifiably disadvantaged by not being provided a written employment agreement. Compensation and reimbursement were sought as remedies for the personal grievances. Final pay was requested. Wages and time records were sought and potential minimum wage issues were foreshadowed.

[6] In a comprehensive response, the solicitor for TMP disputed that Mr Shanks had been constructively dismissed or unjustifiably disadvantaged. Wages and time records were provided. TMP considered that it had paid holiday pay entitlements and disputed any minimum entitlements issues.

[7] Mr Shanks later commenced this action in the Authority with respect to the two personal grievances and is claiming remedies of compensation and reimbursement in settlement. The application included a claim for penalties for breaches of good faith by TMP, but that claim was later withdrawn. A claim for arrears of wages and holiday pay is also before the Authority for investigation and determination.

[8] TMP says that it did not terminate Mr Shanks' employment, it did not pay him at a rate lower than payable under the statutory minimum and did meet its obligations under the Holidays Act 2003. TMP accepts it did not provide Mr Shanks with a written employment agreement. However, the partnership says that Mr Shanks has no grounds for any remedies claimed.

[9] Despite mediation, matters were not resolved.

### **The Authority's investigation**

[10] Mr Shanks, Michelle Shanks (his wife) and Natalie Shanks (his mother) all provided statements of evidence and appeared to confirm their evidence and answer questions.

[11] Mr Thomas similarly provided evidence and appeared. TMP also provided witness statements for two other people but advised that they were unable to appear at the investigation meeting.

[12] Relevant documents were provided prior to the investigation meeting. Some additional material was provided during the meeting.

[13] The 13 August 2021 meeting arranged by Luke Thomas had been recorded. A transcript was included with the statement of problem and the recording was produced after the investigation meeting.

[14] Mr Shanks and TMP both provided submissions in support of their positions.

[15] In this determination, I will state relevant factual findings, state and explain relevant legal findings, and express conclusions on issues necessary to conclude the matter and set out any orders.

[16] The following issues arise:

- (a) What if any arrears of wages under the employment agreement or under the statutory minimum are due to Mr Shanks?
- (b) What if any arrears of holiday pay are due to Mr Shanks?

- (c) Did TMP dismiss Mr Shanks?
- (d) If yes, was the dismissal justified?
- (e) Was Mr Shanks disadvantaged by an action by TMP?
- (f) If yes, was the action justified?
- (g) If Mr Shanks has any personal grievance against TMP, what remedies are appropriate?

**What if any arrears of wages under the employment agreement or under the statutory minimum are due to Mr Shanks?**

*No default in payments due under the employment agreement*

[17] It is common ground that Mr Shanks generally worked 11 days on and 3 days off each fortnight. Mr Shanks was paid a salary of \$45,000.00 pa at first. The salary increased to \$47,500.00 pa from 10 August 2020 and to \$55,000.00 pa from 5 October 2020. Salary was paid on a Monday for the fortnight ending on the preceding Sunday.

[18] TMP says that Mr Shanks agreed to work additional hours as required on the farm and that the salary compensated him for all the hours worked. Mr Shanks' evidence is that he was told he would mainly work 8-hour days with the occasional longer day as required, to be compensated through extra days off.

[19] It is likely that Mr Shanks was offered and accepted employment as a full-time salaried worker to work 88 hours per fortnight. Any extra hours worked would be covered by time off during the off-season.

[20] The claim for arrears of wages turns on whether there is proof of a default in payment to Mr Shanks of money payable to him under an employment agreement. Mr Shanks was entitled to payment of a fortnightly salary of \$1,730.77, \$1,826.92 or \$2,115.38 each fortnight in the periods starting 23 March 2020, 10 August 2020 and 5 October 2020 respectively. Except as set out below, the payslips show no default in the fortnightly payments to Mr

Shanks. In the absence of an agreed term requiring extra payment for time worked in excess of 88 hours each fortnight, the arrears claim must fail.

[21] I was referred to two cases.<sup>1</sup> *Reid* was an application to clarify the meaning of the terms of an interim reinstatement. The judgment offers no assistance here. The *NZ Postal Workers* case concerned whether a provision in a collective agreement which required delivery agents to work reasonable paid overtime if so directed on rostered work days, was an availability provision but unenforceable. The Court held that it was. The employer could not require employees to work overtime. The point does not directly arise here.

*Some default of Arrears under the Minimum Wage Act*

[22] Every worker who belongs to a class of workers for whom a minimum rate of wages has been prescribed under the Act shall be entitled to receive from their employer payment for their work at not less than the prescribed minimum rate.<sup>2</sup>

[23] Mr Shanks was not paid by piecework, by the hour or by the week. Mr Shanks was therefore in the class of “all other cases” for the purposes of the Minimum Wage Order in force at relevant times.<sup>3</sup> He was entitled to payment of at least the following amounts: \$1,416.00 per fortnight plus \$17.70 per hour for each hour exceeding 80 worked in a fortnight up to 31 March 2020; \$1,512.00 per fortnight plus \$18.90 per hour for each hour exceeding 80 worked in a fortnight up to 31 March 2021; and \$1,600.00 per fortnight plus \$20.00 per hour for each hour exceeding 80 worked in a fortnight from 1 April 2021.

[24] There is a dispute in the evidence about the total hours worked by Mr Shanks.

[25] TMP kept a hand-written wage book in standard form but did not record days or hours of work in that book. There are computer payslips that record total hours for each fortnight. The wage book and payslips cover the duration of Mr Shanks’ employment.

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<sup>1</sup> *Reid v New Zealand Fire Service Commission* EMC Wellington WEC11A/96, 19 March 1996 and *Postal Workers Union Inc v New Zealand Post Ltd* [1999] NZEmpC 25. *m*

<sup>2</sup> Minimum Wage Act 1983 s 6.

<sup>3</sup> See clause 4(d) of the Minimum Wage Order 2019 and following years.

[26] TMP kept a book in the office in which information was written by hand under the following headings: “NAME”, “DATE”, “TIME ON” “LUNCH START”, “LUNCH END” and “TIME OFF”. It covers the period from 22 June 2020 to 19 August 2021. The book appears to have been kept on a day-by-day basis. Mr Shanks’ evidence is that he was supposed to write start, finish and lunch time in this book.

[27] Mr Shanks included with his statement of evidence a hand-written document headed “Schedule 1”. His evidence is that it is a record of his hours of work. An annotated version of “Schedule 1” was included with the statement of problem. It does not appear to have been kept day-by-day, but appears to have been compiled at some later point, perhaps as part of formulating the current claim. “Schedule 1” does little to establish what days or hours were worked by Mr Shanks. I do not accept Mr Shanks’ evidence that he wrote “Schedule 1” each day.

[28] During the investigation meeting it became apparent that “Schedule 1” had been compiled from a notebook kept by Mr Shanks. A copy was produced. The first few pages of the notebook might have been written on a day-by-day basis, but the remainder of it does not give that appearance. Mr Shanks was not able to explain why this notebook did not match the hours that he had written in the office book. To the extent of any differences in the days and times recorded in Mr Shanks’ notebook and the office book, I prefer the office book record. However, the office book started from 22 June 2020. I find that Mr Shanks’ notebook for March, April and May 2020 can be treated as an accurate record of days and hours of work over that period.

[29] I note the finding that Mr Shanks was entitled to be paid at least \$1,416.00 plus \$17.70 for each hour in excess of 80 in a fortnight. The rates increased to \$1,512.00 per fortnight and \$18.90 per hour from 1 April 2020. In the fortnight ending Sunday 5 April 2020, Mr Shanks appears to have worked 107.75 hours according to his notebook, not 98.25 hours as referred to in counsel’s submissions. Mr Shanks was paid \$1,730.77 for the fortnight. Whichever is the correct total hours, there will be a shortfall in the statutory minimum payment due to Mr Shanks. I will reserve leave for counsel to review his calculations based on my findings.

[30] The other claims for arrears under the Minimum Wage Act 1983 are dismissed because Mr Shanks has not proven that he worked sufficient additional hours exceeding 80 per fortnight for the statutory calculation to exceed the salary he was paid.

**What if any arrears of holiday pay are due to Mr Shanks?**

[31] There were no agreed terms of employment regarding holidays. The matter must be determined in accordance with the Holidays Act 2003.

[32] TMP did not suggest that the instruction by Mr Thomas to Mr Shanks to take all his annual leave over the period 1 June 2021 to early July 2021 was because of a closedown period, with respect to which Mr Thomas gave not less than 14 days' notice of a requirement that Mr Shanks take annual holidays. The payslips show that TMP did not require Mr Shanks to take any holidays in the June 2020 period and his anniversary date was not re-set to the start of a customary closedown period. The provisions at ss 29 – 35 of the Holidays Act 2003 are not applicable here.

[33] On 23 March 2021, Mr Shanks became entitled to four weeks paid annual holidays. At that point he had already taken 4 days annual leave in advance by agreement in the period between 28 December 2020 and 24 January 2021. Accounting for that, the payslips acknowledged that Mr Shanks had 144 hours of annual leave available. On an 11 on/3 off roster, four weeks annual leave would amount to 22 days, less four taken in advance left 18 days.

[34] When annual holidays are to be taken is to be agreed between the employer and the employee.<sup>4</sup> Under s 19(1)(a) of the Holidays Act 2003, an employer may require an employee to take annual leave if they are unable to reach agreement under s 18(3) of the Act. The employer must give the employee not less than 14 days' notice of the requirement to take annual holidays.

[35] Mr Shanks did not request annual holidays in June – early July 2021. There was no attempt by Mr Thomas to reach agreement with Mr Shanks about when he might take his

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<sup>4</sup> Holidays Act 2003 s 18(3).

annual holidays. The evidence is that Mr Thomas directed Mr Shanks to use his annual leave entitlement in the 1 June – early July 2021 period. I find that is what happened.

[36] I do not accept Mr Thomas' evidence that it was "agreed" that Mr Shanks would return to work when all his annual leave was taken. That was the instruction given by Mr Thomas. It was not by agreement with Mr Shanks.

[37] The situation is analogous to *E Tū v Carter Holt Harvey Ltd*.<sup>5</sup> There, the employer advised employees that they would need to take eight days annual leave to cover part of a nationwide lockdown, the Government response to the emergence of Covid-19. The evidence established that the employer had made no attempt to reach agreement about when annual leave was to be taken. The Court held that s 19(1)(a) of the Holidays Act 2003 did not apply, so the employer was not entitled to require employees to take annual leave. In that case, opportunities for agreement about the taking of leave were significantly constrained because of the need to comply with Government directions. In the present case, there were no external constraints that limited TMP's ability to seek agreement about the timing of annual leave. Mr Thomas simply did not make any attempt. I find that TMP had no power under the Holidays Act 2003 to require Mr Shanks to taken annual holidays in the period 1 June – early July 2021.

[38] Given the foregoing finding, it is not necessary to review in any detail the evidence of Mr Shanks about the work he performed at TMP's direction between 1 June – early July 2021. Mr Shanks' evidence is that he worked most days between 8.30am – 3.00pm on tasks associated with TMP's stock. Mr Thomas is sceptical about that claim and says the necessary work might have taken an hour and a half each day. It is also not necessary to consider whether shorter working days (whether 6 hours or 1.5 hours) afforded Mr Shanks the opportunity for rest and recreation in accordance with the purpose of the Holidays Act 2003.

[39] I accept Mr Shanks' evidence that he had four days annual leave over the period when he was away from the area on holiday. Taking into account those 4 days and the annual

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<sup>5</sup> *E Tū v Carter Holt Harvey Ltd* [2022] NZEmpC 141.

holidays taken in advance, I find that Mr Shanks retained an entitlement to 14 days annual holiday after July 2021.

[40] The evidence from Mr Shanks and Mr Thomas is that they discussed the outstanding annual holidays issue in July 2021 and agreed that Mr Shanks would retain a leave balance of 10 days, to account for his work from 1 June – early July 2021. While the payslips do not show that TMP actually credited 10 days to Mr Shanks annual leave entitlement, the argument for TMP is that Mr Shanks should be held to that agreement. Mr Shanks says that he changed his mind after later conduct by Mr Thomas he characterises as “bullying”.

[41] The point is answered by s 6 of the Holidays Act 2003. Entitlements under the Act are minimum entitlements. An agreement that excludes, restricts, or reduces an employee’s entitlements under the Act has no effect to the extent it does so. The July agreement reduced Mr Shanks’ minimum entitlement to annual holidays. I find it was of no effect.

[42] The payslip for the period 26 July – 8 August 2021 shows 22.15 hours attributed to “Annual leave in this period”. There is no other evidence that Mr Shanks requested or agreed to take annual leave in that fortnight. I find that he did not. Mr Shanks worked as required in that fortnight.

[43] Mr Shanks worked on Monday 9 and Tuesday 10 August 2021. Luke Thomas told him to have time off while he arranged a meeting to discuss the problem that came to a head on Tuesday. It is common ground that the meeting was on 13 August 2021, so Mr Shanks was entitled to salary up to and including that day.

[44] When Mr Shanks’ employment ended, he was entitled to salary for five days, payment for the portion of untaken annual holidays (14 days) plus 8% of his gross earnings from 23 March to 11 August 2021. Mr Shanks was paid salary for two days, \$429.11 gross as annual leave and \$1,788.20 for 8% of gross earnings from his anniversary date. There will be arrears of salary and holiday pay. I will reserve leave for counsel to calculate these arrears based on the findings above.

**Did TMP dismiss Mr Shanks?**

[45] There is a dispute in evidence about whether Mr Shanks had asked for a written employment agreement during the employment. Mr Shanks told me that he had several times. That evidence supports the statement in the letter of 4 November 2021. TMP had not in its solicitor's response taken issue with that statement.

[46] Mr Thomas says that it was oversight, that they normally use Federated Farmers template agreements, that Mr Shanks never raised the point during the employment and it would have been "no trouble" to provide one if Mr Shanks had asked.

[47] The statements of evidence of both men reflects what they each said during the 13 August 2021 meeting. However, Mr Thomas told me "I don't recall Carl ever asking for a contract".

[48] It is not necessary to resolve the dispute. TMP had a legal obligation to provide Mr Shanks with the intended agreement for discussion, to advise him that he was entitled to seek independent advice, allow an opportunity for that and consider any issues raised by him. The agreement had to describe Mr Shanks' work, indicate where it was to be performed, include agreed hours of work, the salary and other specified matters. The statutory obligation applied, regardless of whether Ms Shanks asked for a written agreement. The context in which the following issues arose included TMP's failure to meet its statutory obligation, especially regarding agreed hours of work.

[49] There were exchanges in July 2021 between Mr Shanks and Mr Thomas about Mr Shanks' work hours over the period from 1 June 2021. Mr Thomas denies some comments attributed to him by Mr Shanks, but accepts that he did say he did not believe that Mr Shanks had not taken any holidays. I note that in the 13 August 2021 meeting Mr Thomas did not dispute having said "I do not believe these hours". I find that Mr Thomas told Mr Shanks he did not believe him when Mr Shanks told him he had worked 8.30 am to 3.00 pm over that period. Unsurprisingly, Mr Shanks took that as an accusation that he was lying. The dispute about work resulted in the agreement about 10 days annual leave remaining.

[50] Mr Shanks' evidence is also that Mr Thomas told him he had a bad attitude and did not like farming. That is disputed by Mr Thomas. However, it is likely that Mr Thomas said something of that sort as part of reacting to Mr Shanks' claimed work hours.

[51] The end of July and beginning of August 2021 was very busy for Mr Shanks at work, as for others. Mr Thomas' evidence is that the roster of 11 on/3 off on did not apply over that period. In the lead up to the following event, Mr Shanks had worked long hours with little time off.

[52] On 10 August, Mr Shanks started work at about 6.15am or slightly earlier. Mr Shanks did not get a lunch break. Before about 3.30pm Mr Shanks told Mr Thomas he had been there since 6.00am and asked when it would be time for him to go home. Mr Thomas told him to go and look at some cows that were "down". At some point in this exchange, Mr Thomas said to Mr Shanks that he had a "poor attitude" and "you don't like working here".

[53] Mr Shanks went on his own to check the cows. One other worker had to attend to the milking. A third worker had left earlier, either because his shift had ended or because Mr Thomas had sent him home. Mr Shanks then returned to help the other worker to finish the milking. His evidence is that Mr Thomas was in the office, he told him about the cows and that he was going home. Mr Thomas did not dispute that evidence and I accept it.

[54] Soon after, Mr Shanks was in his vehicle about to leave work. Mr Thomas went to the truck. Mr Thomas had already been told about the cows, so I do not accept his evidence that he went to the truck to find out what was "going on". Mr Shanks did not wind down the window, so Mr Thomas opened the driver's door. I accept Mr Shanks' evidence that Mr Thomas asked him what he was doing and Mr Shanks said he was going home. Mr Thomas said "Let's go and sort this out".<sup>6</sup> I prefer that account to his later evidence that he said "Carl, we need to talk about this".

[55] Mr Shanks got out of the vehicle and went to the office. Mr Thomas' evidence is that he does not recall him saying anything. Mr Shanks went to the office, wrote something down or did something on the board. Mr Shanks did not give evidence about saying anything. He

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<sup>6</sup> As stated in the the 13 August 2021 meeting.

later said in the meeting with Mr Thomas “you tried to drag me back in here for a conversation”. It was not suggested there was any physical altercation.

[56] Mr Shanks went back and got into his vehicle. Mr Thomas followed. He opened the driver’s door a second time. Mr Thomas’ evidence is that Mr Shanks asked “Am I on contract” and Mr Thomas answered “No”, thinking the question was about whether he was an independent contractor. I find that Mr Shanks asked “Am I on contract for your farm”.<sup>7</sup> I accept Mr Thomas’ evidence about why he said ‘No’.

[57] Mr Shanks’ evidence is that Mr Thomas said “If you drive away, you won’t be back”. When asked, Mr Thomas told me that he did not recall saying it “but it wouldn’t be beyond me to say it”. I find that Mr Thomas told Mr Shanks that if he drove away, he would not be back. By that, Mr Thomas meant that it would end the employment. He was pressuring Mr Shanks to work on. Mr Shanks drove off.

[58] Later the same day, Mr Shanks rang Luke Thomas, explained what had happened and told him that he had “quit”, referring to Mr Thomas’ last statement. Luke Thomas gave him the next day off and later arranged a meeting for 13 August 2021.

[59] The meeting was recorded. I will mention some parts of the exchange.

[60] Luke Thomas explained that the purpose was to “air” Mr Shanks’ concerns and find a way to “go forward”, with the best outcome “a clear understanding and we’re back to working”.

[61] Mr Shanks spoke to his concerns that he had been “accused of lying” over hours worked during the holiday period, told he had a “poor attitude”, did not have a “contract”, did not have a roster over the last few weeks and only had four days off over the holiday period. Later in the meeting Mr Shanks confirmed he wanted “this” to be worked out so he could continue working there.

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<sup>7</sup> As stated in the the 13 August 2021 meeting.

[62] Luke Thomas confirmed with Mr Thomas that the lack of a “contract” had been an “oversight” and could be “fixed” and that rosters could be “produced from now on”. Luke Thomas set out his view that the “agreement” about “10 days holidays left” was “a solution”.

[63] Mr Thomas said “we are calling this meeting but he’s got to justify the reason why he abandoned his job”. However, Luke Thomas confirmed that Mr Shanks was “taking leave” until the matter was “sorted out”, something he had arranged on behalf of Mr Thomas.

[64] Mr Thomas went on to say that Mr Shanks “can’t come back as a team leader”. He said he did not want Mr Shanks as a team leader and the five staff “absolutely don’t want him back as team leader”. Mr Thomas went on to say that Mr Shanks should not be in the shed as “he’s a terrible milker. He’s got a real bad temper”. Mr Thomas then said as part of referring to other work that “we’re kind of playing a double game here” as “everyone else has made it clear ... that we really don’t want him back”. Mr Thomas next said that “things” had come to light in the last two days about “stock mishandling and stuff”.

[65] The recording ends with Mr Shanks paraphrasing Mr Thomas as saying he did not want Mr Shanks back, Mr Thomas saying “I’m not sacking him”, Mrs Shanks saying that was because he knew he would be in “deep shit” if he did and Mr Thomas responding with “Well, the option is I just pay out the deep shit”.

[66] The last exchange touched on an unrelated matter that was known about by the meeting participants.

[67] Dismissal is the termination of employment at the initiative of the employer. Here, TMP initiated the termination of the employment when Mr Thomas told Mr Shanks if he left he would not be back. By that, Mr Thomas was pressuring Mr Shanks to continue working, in breach of agreed hours of work. Despite the pressure, Mr Shanks left, thinking he had “quit” by doing so. Mr Shanks left because of the breach of duty by TMP. The breach of duty, given the holiday hours disagreement and in the absence of a written employment agreement, was sufficiently serious to create a substantial risk of resignation. If matters rested there, I would find that TMP constructively dismissed Mr Shanks.

[68] Luke Thomas' intervention amounted to TMP setting aside Mr Shanks' apparent resignation by leaving the workplace. However, TMP again initiated the termination of the employment relationship when Mr Thomas would not allow Mr Shanks to continue as team leader.

[69] I find that TMP summarily dismissed Mr Shanks on 13 August 2021.

### **Was the dismissal justified?**

[70] TMP breached its obligations regarding a written employment agreement. TMP breached its obligations under the Holidays Act 2003. TMP breached good faith in the way Mr Thomas dealt with Mr Shanks following the holiday hours disagreement. TMP took none of the steps set out at s 103A(3) of the Employment Relations Act 2000 with respect to allegations made by Mr Thomas during the meeting.

[71] TMP's actions and how it acted were not what a fair and reasonable employer could have done in all the circumstances at the time.

[72] I find Mr Shanks has a personal grievance as he was unjustifiably dismissed by TMP.

[73] Matters advanced as disadvantage grievances are all part of this finding. I have also separately dealt with the Holidays Act 2003 breach as arrears, not as a personal grievance. It is not necessary for disadvantage grievances to be separately considered.

### **What remedies are appropriate?**

[74] There is a claim for reimbursement of lost remuneration. In settling a personal grievance, the Authority has power to order the reimbursement of a sum equal to the whole or any part of the wages lost as a result of the grievance.<sup>8</sup> If I determine that Mr Shanks has lost remuneration as a result of the personal grievance, I must order TMP to pay the lesser of the sum equal to that lost remuneration or 3 months' ordinary time remuneration.<sup>9</sup> By effect of s 128(3) of the Employment Relations Act 2000, I have a discretion to order payment of a greater sum than the amount that I am required to order under s 128(2), to reimburse loss.

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<sup>8</sup> Employment Relations Act 2000 s 123(1)(b).

<sup>9</sup> Employment Relations Act 2000 s 128(2).

[75] There is some evidence that Mr Shanks sought alternative employment following the termination of this employment. However, he was out of work until November 2021. I find that Mr Shanks lost remuneration as a result of the dismissal. The loss exceeds three months ordinary time remuneration, so I must order TMP to pay 3 months' ordinary time remuneration which I fix at \$13,750.00 (gross).

[76] There is evidence to support the claim for compensation for humiliation, lost dignity and injury to feelings. Mr Shanks became withdrawn. It affected his relationship with his family, which in turn reinforced the hurt to Mr Shanks. There is evidence that the dispute became known to others in the local community, so that added to the harm to Mr Shanks. The loss of income caused financial difficulties for Mr Shanks' family. The harm persisted for a considerable time, but has gradually reduced.

[77] I am referred to *Waikato District Health Board v Archibald*.<sup>10</sup> Counsel submits that compensation of \$35,000.00 would be appropriate.

[78] I consider that the proven harm to Mr Shanks would be fully remedied by an award of \$27,500.00 compensation. The harm was significant but there is no evidence that it resulted in a diagnosed medical condition or that professional support was required.

[79] Mr Shanks did not contribute in a blameworthy way to the circumstances giving rise to the grievance.

### **Summary and orders**

[80] Mr Shanks has established arrears under the Minimum Wage Act 1983 as outlined at paragraph [29] of this determination. Counsel is to lodge calculations quantifying the arrears within 14 days of this determination. TMP may then respond in writing within a further 14 days. I will then fix the amount of arrears.

[81] Mr Shanks has established arrears under the Holidays Act 2003 as outlined at paragraph [44] of this determination. Counsel is to lodge calculations quantifying the arrears

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<sup>10</sup> *Waikato District Health Board v Archibald* [2017] NZEmpC 132.

within 14 days of this determination. TMP may then respond in writing within a further 14 days. I will then fix the amount of arrears.

[82] TMP unjustifiably dismissed Mr Shanks.

[83] To settle that personal grievance, Ray Thomas and Ruth Thomas trading as Te Matai Partnership are to pay Carl Shanks the following amounts within 28 days:

- (a) Reimbursement for lost remuneration of \$13,750.00 (gross); and
- (b) Compensation for humiliation, loss of dignity and injury to feelings of \$27,500.00.

[84] Costs are reserved. Mr Shanks may lodge written submissions setting out a claim for costs within 14 days of this determination. TMP may lodge a submission in reply within a further 14 days. I will then determine costs with regard to those submissions and the Authority's standard practice.

Philip Cheyne  
Member of the Employment Relations Authority