

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2023] NZERA 600
3223060

BETWEEN	NATHAN REU Applicant
AND	WSP LIMITED First Respondent
AND	Craig Allen Walker Second Respondent

Member of Authority: Davinnia Tan

Representatives: Padmi Wickramasinghe, counsel for the Applicant
No appearance for the Respondents

Investigation Meeting: 19 September 2023 in Whanganui

Submissions received: 26 September 2023 from the Applicant
Nothing received from the Respondents

Determination: 16 October 2023

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Mr Reu, claims that he has been unjustifiably disadvantaged and unjustifiably (constructively) dismissed by the first respondent, WSP Limited (company number 7976217). Both claims are based on the same grounds and relate to WSP Limited's failures to:

- (a) Provide Mr Reu with a written copy of his employment agreement at Mr Reu's request, in breach of s 64 of the Employment Relations Act 2000 (the Act);
- (b) keep a wage and time record in breach of s 130 of the Act;

- (c) pay Mr Reu's wages in accordance with his employment agreement, the Minimum Wage Act 1983 (the MWA), the Wages Protection Act 1983 (the WPA), and the Holidays Act 2003 (the HA); and
- (d) comply with good faith obligations under the Act.

[2] Mr Reu seeks leave under s 142Y of the Act from the Authority to recover arrears in wages and other money from its sole director and shareholder, Craig Allen Walker, as a person involved in a breach of employment standards (pursuant to s 142W of the Act), in the event WSP Limited is unable to pay.

No engagement by the respondents

- [3] To date, the respondents have not participated in the Authority's process.
- (a) Notice of Mr Reu's application to the Authority and a copy of the statement of problem was sent to Mr Walker at his home address on 19 April 2023 and to his accountant's address being WSP Limited's registered office. A courier note confirmed delivery of both notices. The respondents did not lodge a statement in reply.
 - (b) The Authority sent a letter dated 4 May 2023 to the respondents advising that it had not received a statement in reply and that the file would be allocated to an Authority Member. The Authority advised it would be in touch at a later date to make arrangements for an investigation meeting.
 - (c) Notice of the scheduled case conference for 1 June 2023 was sent to the respondents and confirmed by the courier as having been delivered and signed for on 20 May 2023. There was no attendance by the respondents at the case conference of 1 June 2023.
 - (d) A further notice of direction dated 2 June 2023 setting down the date for an investigation meeting was sent and confirmed by the courier as having been delivered on 7 June 2023.
 - (e) On 4 July 2023, the Authority sent a copy of Mr Reu's briefs of evidence to the respondents and provided them with an opportunity to reply, noting that if the respondent chooses not to engage, the investigation meeting will proceed in their absence.

- (f) On 7 July 2023, the company registry updated WSP Limited's registered office address to Mr Walker's home address.
- (g) On 10 July 2023, Mr Walker rang the Authority and advised the Authority Officer that he will not engage with the Authority. The Authority Officer advised Mr Walker that she strongly recommended he applied for leave to file a statement in reply so their view would be made known to the Member. She also advised him that whether he chose to participate or not, the matter will proceed with an investigation as scheduled.
- (h) On 29 August 2023, due to illness of Mr Reu and his support person, the investigation meeting was rescheduled for 19 September 2023. The notice of the investigation meeting was couriered to the address for service as set out on the companies register for WSP Limited and Mr Walker's address. The address for both were identical. The courier note stated that delivery was made on 7 September 2023.
- (i) On 8 September 2023, the mail delivered to Mr Walker's home address on 7 September 2023, was redirected to a different address belonging to a different company, unrelated to WSP Limited or Mr Walker.

[4] Having reviewed the events above, I am satisfied that all notices, letters, briefs of evidence, including the notice of investigation meeting initially scheduled for 30 August 2023 and the subsequent notice of investigation meeting rescheduled for 19 September 2023 were properly served on WSP Limited and Mr Walker in accordance with regulation 16(3) of the Employment Relations Authority Regulations 2000.

[5] In reaching this conclusion, I have taken into account Mr Walker's express communication to the Authority in which he informed the Authority that he will not engage with the Authority. In that same phone call, he was encouraged to seek leave to lodge a statement in reply and was informed by the Authority Office that the matter would proceed regardless of his participation. He was therefore already on notice that investigation meeting would be proceeding but did not engage with the Authority's processes. Following the change of WSP Limited's registered address for service to Mr Walker's home address as listed on the companies register, the subsequent notice of investigation meeting was sent by courier to this address for which there was authority

to leave the couriered mail at the address. The courier note states it was delivered on 7 September 2023. The following day, that mail was marked for redirection to an unrelated address with a similar company name. The recipients at the unrelated address contacted the Authority to advise that it was unrelated to WSP Limited and that no such person by the name of Craig Walker was involved with its company. Notwithstanding the anomalous attempt to redirect the mail to an unrelated entity, I am satisfied that when the second notice of investigation meeting was formally recorded by the courier as having been delivered on 7 September 2023 to Mr Walker's home address, the services requirements pursuant to regulation 16(3) were satisfied as it was at the respondents' registered address for a day.

[6] As at the date of the investigation meeting, WSP Limited was listed on the companies register and bore the same registered address as Mr Walker's home address.

The Authority's investigation

[7] For the Authority's investigation Mr Reu provided a written witness statement and answered questions under affirmation from me and counsel. Counsel for Mr Reu gave oral closing submissions at the investigation meeting followed by written submissions on 26 September 2023.

[8] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Background

[9] Mr Reu is registered with Work and Income as a Jobseeker. On 31 August 2022, Work and Income advised Mr Reu of a vacancy regarding full-time permanent employment as an installation worker with WSP Limited, a company registered in Whanganui. Craig Allen Walker is the sole director and shareholder of WSP Limited.

Commencement of employment

[10] Prior to the commencement of employment, Mr Walker rang Mr Reu to discuss the nature of the role. Mr Reu says that Mr Walker advised that the installation worker role was a permanent full-time job working 40 hours a week, and that the hours of work would be 8am to 4pm each day. The phone call ended with Mr Walker saying that he

would text Mr Reu the following morning to advise him on where to meet him on his first day of work.

[11] On 1 September 2022, Mr Walker sent a text message to Mr Reu at 7.18 am and advised him to meet him at Carters in Whanganui, a buildings material store, at 8 am. When they met, Mr Walker advised Mr Reu that the first three working days, being 1, 2 and 5 September 2022 would be ‘trial days’.

[12] On 2 September 2022, Mr Reu queried the amount he would be paid. Mr Walker advised, “I am not sure, but it will be above minimum wage” and stated Mr Reu would be working Monday to Friday.

Agreed hourly rate and request for employment agreement

[13] On 6 September 2022, upon Mr Reu’s query, Mr Walker confirmed that Mr Reu’s trial period was over. Mr Reu then requested a copy of his employment agreement to which Mr Walker stated that “it is coming” but noted that none of his other employees required employment agreements.

[14] On 7 September 2022, Mr Reu asked Mr Walker what his hourly rate was and was advised that it would be “\$22.10 per hour or something close to that anyway” and that he would be paid weekly. Mr Reu advised Mr Walker of his IRD tax code, and again asked for a copy of his employment agreement and other necessary paperwork, such as the ‘KiwiSaver deduction form’. This was not provided.

[15] On 9 September 2022, Mr Reu was paid \$526.35. Mr Walker stated this was for the period 1 to 7 September 2022. Mr Reu was not provided a pay slip and did not dispute the amount at that time.

Request for employment agreement and lack of communication

[16] Mr Reu says that he continued to ask Mr Walker for a written employment agreement and for a time and wage record, but Mr Walker did not do so. Mr Reu also says that despite being advised by Mr Walker that the role was a full-time permanent job which required him to work 40 hours a week, there would be days where he expected to work, but would be told by Mr Walker in the morning to take the day off. Mr Reu says he was not paid for those days.

[17] Mr Reu says that typically he would call Mr Walker each morning (or the evening prior) to find out the location for work that day, but Mr Walker would not

answer the phone, so Mr Reu would send Mr Walker a text message and wait for his response. Some days Mr Walker would respond and advise on the location, but on some other days he would be told he had the day off, or not get a response at all.

[18] For example, on 11 and 12 September 2022, Mr Reu called and texted Mr Walker who did not respond. Evidence of the text messages sent to Mr Walker show the following:

Sunday 11 September 2022 6.42pm (Mr Reu's text message to Mr Walker):
"Whats up tomorrow"

Monday 12 September 2022 7.28am (Mr Reu's text message to Mr Walker):
"Hello"

Tuesday 13 September 2022 8.11am (Mr Reu's text message to Mr Walker):
"What am I doing today?"

[19] On 13 September 2022, Mr Walker responded to Mr Reu's text and was advised he would be picked up that morning for an installation. However on 16 September 2022, Mr Reu's calls and texts were again not responded to.

Time and wage record query

[20] On 21 September 2022, Mr Reu was paid \$366.56. Mr Reu says that because this second pay (which should have been for the period 8 to 21 September 2022) appeared a lot less than his first week's pay of \$526.35 (for the period 1 to 7 September 2022), he queried the amount with Mr Walker via text message and asked him what weeks and hours he had been paid but Mr Walker did not respond. Mr Reu was also confused as he was told he would be paid weekly which meant he should have been paid the week prior. Mr Reu did not believe WSP Limited had correctly paid his wages and again tried to address this with Mr Walker but was unsuccessful. Despite continued requests, Mr Walker did not provide Mr Reu with a copy of his employment agreement or a time or wage record.

[21] On 27 September 2022, Mr Reu texted Mr Walker asking what he was required to do that day for work. Mr Walker replied telling him he had the day off again. Mr Reu expressed dissatisfaction with this and asked Mr Walker:

How much money you owe me [?] how many weeks have you paid me for [?]

[22] Mr Walker did not respond.

Resignation and dispute over wages

[23] On 28 September 2022, Mr Reu texted Mr Walker at 2.15 pm again asking what hours, days, and weeks he had been paid for.

[24] After receiving no response, at 4.01 pm Mr Reu informed Mr Walker by text message he was resigning:

Hi Craig, sorry but I have decided not to continue working with you. Please pay my final pays. I worked it out to be 47 hours. Oh a[nd] the stat holiday.

[25] Mr Walker then responded:

47 hours??? That seems excessive. There is no way I owe you almost 50 hours.

[26] Mr Reu replied:

Ok so what do you think you owe? To me it looks like you only paid me the first week.

[27] Mr Walker then responded:

I have paid you 2 weeks, of the three you were here. I'd like a breakdown of the 47 hours thanks.

[28] Mr Reu replied:

Do you think 366.56 is enough for 33.5 hours work

[29] Mr Walker's response was:

You hadn't provided me with your accurate hours, so you were paid in line with the hours calculated.

[30] Mr Reu then asked Mr Walker:

What hour did you calculated? Did you think I only work 16.5 and a half hours that week

I don't have a problem with your first pay...

But after that 366.56\$ for 33.5 hour worked for the next week which you paid on the 20th seems like its not enough

I thought that \$366.55 was only for the Thursday and Friday after the Wednesday you had already paid being such a short amount.

Do you know what days you have paid me for?

Mr Walker ceases communication

[31] On 1 October 2022, Mr Reu then texted Mr Walker an image of his record of hours worked and the amounts he believed Mr Walker paid and owed him. Mr Walker did not respond to Mr Reu and ceased all communication with him at that point.

Personal grievance raised

[32] On 2 November 2022, Mr Reu raised a personal grievance with WSP Limited through his representative and requested that the matter be addressed by way of mediation through Mediation Services through the Ministry of Business, Innovation, and Employment (MBIE). Mr Walker did not respond.

[33] Mediation Services eventually closed Mr Reu's file due to the respondents' repeated failures to respond to phone calls. There is no email on file for Mr Walker or WSP Limited.

[34] On 13 April 2023, Mr Reu lodged a statement of problem with the Authority.

[35] Mr Reu seeks the following remedies:

- (a) Compensation for humiliation, injury to feelings and loss of dignity pursuant to s 123(1)(c)(i) of the Act;
- (b) Outstanding wages, holiday pay, and payment for the statutory holiday;
- (c) Loss of income under s 123(1)(b) of the Act;
- (d) Penalties; and
- (e) Costs.

The issues

[36] The issues requiring investigation and determination are whether Mr Reu was unjustifiably disadvantaged and/or constructively dismissed by WSP Limited, due to WSP Limited or Mr Walker's failures to:

- (a) Provide him with a written copy of his employment agreement at Mr Reu's request, in breach of s 64 of the Employment Relations Act 2000 (the Act);
- (b) keep a wage and time record in breach of s 130 of the Act;

- (c) pay his wages in accordance with his employment agreement, the Minimum Wage Act 1983 (the MWA), the Wages Protection Act 1983 (the WPA), and the Holidays Act 2003 (the HA); and
- (d) comply with good faith obligations under the Act.

[37] If any of the claims above are made out, the Authority must consider what remedies, if any, should be awarded.

[38] The Authority must also determine whether leave should be granted for Mr Reu to recover arrears in wages and other money from WSP Limited's sole director and shareholder, Craig Allen Walker, as a person involved in a breach of employment standards, in the event WSP Limited is unable to pay.

[39] Finally, in the event Mr Reu is successful, should the respondents contribute to his costs?

Constructive dismissal

Relevant law

[40] A resignation may amount to a dismissal in some circumstances.¹

[41] The Court of Appeal in *Auckland Shop Employers Union v Woolworths (NZ) Limited* has listed three non-exhaustive situations where a constructive dismissal may occur.²

[42] One of these is where a breach of duty by the employer results in an employee resigning. That is the ground on which Mr Reu relies. Counsel for Mr Reu submitted that WSP Limited's repeated breaches of employment standards and good faith obligations were of sufficient severity such that Mr Reu's resignation was foreseeable.³

[43] The correct approach the Court of Appeal⁴ has stated in constructive dismissal cases where breaches are alleged is to firstly conclude whether the resignation has been caused by a breach of duty on the part of the employer. In determining that matter all the circumstances of the resignation must be examined and not simply the

¹ *Wellington Clerical Union v Greenwich* [1983] ACJ 965 (CA) at 975.

² *Auckland Shop Employees Union v Woolworths (NZ) Limited* [1985] 2 NZLR 37 (CA) at 374.

³ *Auckland Shop Employees Union v Woolworths (NZ) Ltd* [1985] 2 NZLR 372 (CA); *Auckland Electric Power Board v Auckland Provincial District Local Authorities Offices' Industrial Union of Worker Inc (IUOW Inc)* [1994] 1 NZLR 415 (CA).

⁴ *Auckland Electric Power Board v Auckland Provincial District Local Authorities Offices' Industrial Union of Worker Inc (IUOW Inc)* [1994] 1 NZLR 415 (CA).

communication of the resignation.⁵ The Authority needs to assess whether the breach of duty, if one is found by the employer, was of sufficient seriousness to make resignation reasonably foreseeable.

[44] Mr Reu has the burden of establishing that the resignation was a dismissal.

Mr Reu's submissions

[45] Counsel for Mr Reu submitted that WSP Limited had breached:

- (a) employment standards as defined under s 5 of the Act by failing to provide him his employment agreement when requested and to pay him wages in accordance with entitlements set out under the HA, WPA and MWA; and
- (b) its good faith obligations as set out under s 4(1A)(b) of the Act to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are, among other things, responsive and communicative.

[46] Counsel for Mr Reu submitted that Mr Walker's repeated failures to respond to Mr Reu about the wage issue and his poor communication created tremendous difficulties, causing him to lose all trust and confidence in WSP Limited and ultimately to resign.

Reasons for the resignation

[47] Mr Reu stated that when he was hired for the role with WSP Limited, he had expectations of being in the job long term having recently gained a qualification in carpentry and was looking forward to gaining relevant work experience. Mr Reu says that the agreement he had with WSP Limited was for a permanent 40 hour a week full-time job. This was confirmed in the first phone call he had with Mr Walker prior to commencement of employment. He began employment on 1 September 2023 and resigned on 28 September 2023.

[48] Mr Reu said what began as areas of frustration and concern for him when his phone calls to Mr Walker were unanswered or occasions where he was sent to the

⁵ *Auckland Electric Power Board v Auckland Provincial District Local Authorities Offices' Industrial Union of Worker Inc (IUOW Inc)* [1994] 1 NZLR 415 (CA).

incorrect address for work, turned into stress and anxiety when he never had certainty if he would be required to work on any given day or be paid for those days.

[49] Mr Reu requested a copy of his employment agreement on several occasions and was initially told “it was coming” but Mr Walker then ignored his requests completely.

[50] He also believed he had not been paid correctly and sought to determine whether he had been paid correctly but was never advised what he was paid for despite several requests. To support his evidence, Mr Reu produced copies of text messages to Mr Walker that verified his statement.

[51] On some days his phone calls and texts to ascertain his place of work for the day would go unanswered. Despite being advised the job was a full-time permanent role, he was not paid regularly or for 40 hours a week. Mr Walker would often advise Mr Reu that he had the day off. On days Mr Reu was advised by Walker that he had “the day off” and on days he did not receive a response from Mr Walker, Mr Reu would not be paid.

[52] Mr Reu found it increasingly difficult to engage Mr Walker in a discussion about his pay when he had concerns that he was being underpaid. Mr Reu’s requests for a time and wage record and a copy of his employment agreement were continuously ignored. The stress and anxiety of not being able to resolve his concerns took its toll on Mr Reu who also had an ongoing responsibility of paying board at home and was increasingly concerned WSP Limited would continue ignoring his legitimate requests for his employment agreement and wage and time record, and not pay him wages he believed he was owed. Mr Reu says being ignored on all these issues caused him immense stress. He eventually lost all trust and confidence in WSP Limited and therefore felt he had no choice but to resign from WSP Limited.

Was there a breach of duty?

Employer’s obligation to provide written employment agreement and wage and time record

[53] An employer has an obligation to provide a copy of a written employment agreement upon request under s 64 of the Act.

[54] Section 130 of the Act is plain that the responsibility to keep a wages and time record in either written form or in a form easily converted into written form lies with the employer.

[55] The evidence is that Mr Reu repeatedly asked for a written employment agreement through phone calls, in person and text messages, but was not provided one. There were also repeated requests via text messages for a wage and time record that were ignored.

[56] As the respondents have chosen not to engage in the Authority's process, Mr Reu's evidence is the only sworn and unchallenged evidence I have.

[57] Therefore, I am satisfied on the evidence that WSP Limited did not comply with either obligation.

Prejudice to bring an accurate arrears in wages claim

[58] Counsel for Mr Reu submitted that WSP Limited's failure to produce a wage and time record has prejudiced Mr Reu's ability to bring an accurate claim to recover wages he believes he is owed. Mr Reu says his hourly wage, as agreed with WSP Limited was \$22.10.

[59] Section 132 of the Act provides:

(1) Where any claim is brought before the Authority under [section 131](#) to recover wages or other money payable to an employee, the employee may call evidence to show that—

(a) the defendant employer failed to keep or produce a wages and time record in respect of that employee as required by this Act; and

(b) that failure prejudiced the employee's ability to bring an accurate claim under [section 131](#).

(2) Where evidence of the type referred to in subsection (1) is given, the Authority may, unless the defendant proves that those claims are incorrect, accept as proved all claims made by the employee in respect of—

(a) the wages actually paid to the employee, including overtime rate payments, and penalty rate payments:

(b) the hours, days, and time worked by the employee:

(c) the district in which the employee worked for each hour and day (see [section 135](#) of the Fair Pay Agreements Act 2022).

[60] As the respondents did not engage or respond to Mr Reu's claims, pursuant to s 132(2), I accept the claims made by Mr Reu in respect of the wages paid to him and

that the verbal agreement with WSP Limited was for a full-time permanent role working 40 hours a week at \$22.10 per hour.

[61] In addition to Mr Reu's evidence I have referred to the Work and Income website, which states that one of the obligations on a registered job seeker is "to generally be expected to look for work of 30 hours a week" unless they have a health condition or a disability that means they cannot work fulltime.⁶ As the job vacancy at WSP Limited was submitted through Work and Income, this adds weight to Mr Reu's evidence that the role was offered to him as a full-time job.

[62] For the period 1 to 7 September 2022, Mr Reu was paid \$526.35. Although he did not dispute this at that time, I note that payment for 40 hours at \$22.10 would have amounted to \$884.00. On 21 September 2022, Mr Reu was paid \$366.56. He had not been paid the week prior. Based on a 40-hour work week, it is plain Mr Reu has not been paid at the agreed hourly rate of \$22.10 wage nor the minimum wage of \$21.20 over the period 1 to 21 September 2022.

[63] Mr Reu also submitted that pursuant to s 23 of the HA he should have been paid 8% of his gross earnings as his employment with WSP Limited ended within 12 months. Under s 23 of the HA, if an employee's employment ends before they have completed their first 12 months of service, they are entitled to a payment for annual holidays of 8% of gross earnings during the employment.

[64] On 26 September 2022, there was a one-off statutory holiday, 'Queen Elizabeth II Memorial Day'. This was a Monday and would otherwise have been a workday for Mr Reu.

[65] Mr Reu did not receive a final pay from WSP Limited after resigning on 28 September 2022, meaning he was not paid for his final week (including the statutory holiday), nor his annual holiday pay required under s 23 of the HA.

[66] It follows that WSP Limited breached its duty to pay Mr Reu's wages in accordance with his employment agreement, the Minimum Wage Act 1983 (the MWA), the Wages Protection Act 1983 (the WPA), and the Holidays Act 2003 (the HA).

⁶ <https://www.workandincome.govt.nz/on-a-benefit/obligations/obligations-for-getting-jobseeker-support.html>.

Arrears in wages

[67] Mr Reu was paid a total of \$892.89 from WSP Limited. Although Mr Reu provided Mr Walker with his IRD tax code, Mr Reu's summary of income as provided by IRD shows that WSP Limited did not comply with its tax and KiwiSaver obligations.

[68] The total outstanding arrears owed to Mr Reu is **\$2,925.99**, calculated as follows:

- Total wages for 160 hours (for the period 1- 28 September 2022):
 $\$22.10 \times 160 \text{ hours} = \$3,536.00$
- Annual holiday pay calculation:
 $8\% \times \$3,536.00 = \282.88
- Total wages including annual holiday pay and statutory holiday calculation less wages paid to date:
 $(\$3,536.00 + 282.88) - \$892.89 \text{ (wages paid to date)} = \$2,925.99$

[69] I find that WSP Limited has not complied with its statutory obligations and it is appropriate to make an order that WSP Limited pay Mr Reu \$2,925.99 (gross) in outstanding wages.

Was the resignation caused by a breach of duty?

[70] The breaches above had occurred and accumulated over the period of Mr Reu's employment with WSP Limited. What is clear from the evidence is that Mr Reu had raised his concerns from the outset and several times over the course of his employment. The lack of response and communication on the part of Mr Walker had exacerbated the fact Mr Reu was not being paid his correct and agreed wages. There is no other evidence to suggest that Mr Reu resigned for any other reason but for the fact he was not being paid his due wages and was unsuccessful in seeking to resolve this with Mr Walker.

[71] Counsel for Mr Reu has also submitted that s 4(1A) of the Act requires that parties are active and constructive in establishing and maintaining a productive employment relationship and must be responsive and communicative.

[72] Having reviewed the evidence, despite Mr Reu's efforts to address his concerns in a constructive way and continuing to make himself available for work every day, his requests for a time and wage record were continuously ignored. Mr Walker has been

anything but constructive, responsive or communicative in his relationship with Mr Reu.

[73] Mr Reu's text messages of 21, 27 and 28 September seeking clarification on the wages owed and hours paid for, were ignored, so by the late afternoon of 28 September 2022 Mr Reu conceded that he was unlikely to ever receive a proper response regarding his wages. This is not the behaviour one would or should expect from an employer acting in good faith. It follows that I find WSP Limited breached its obligations of good faith to Mr Reu. Understandably, this was also the last straw for Mr Reu.

[74] I therefore accept that these breaches had caused Mr Reu to resign.

Were the breaches of duty sufficiently serious so that resignation was foreseeable?

[75] The breaches of duty in the circumstances described above constitute breaches of the minimum employment standards as defined under the Act. No effort had been made on the part of the respondents to engage on any of the issues when raised by Mr Reu. Despite several opportunities to respond to reasonable requests for a written employment agreement, his time and wage record, and queries relating to wages paid prior to Mr Reu resigning, Mr Walker ignored Mr Reu on all matters. Mr Walker also breached the terms of Mr Reu's employment agreement and failed to pay Mr Reu his agreed hours at the agreed hourly rate.

[76] In these circumstances, I consider it entirely foreseeable that Mr Reu would resign. I therefore find that he was unjustifiably (constructively) dismissed by WSP Limited and has lost remuneration as a result of the dismissal.

Contributory conduct

[77] I am required under s 124 of the Act to consider the issue of any contribution that may influence the remedies awarded.

[78] Mr Reu raised his concerns with Mr Walker from the outset, thereby giving him an opportunity to rectify the situation at an early stage, however he deliberately failed to do so giving rise to ongoing breach and to Mr Reu continuing to suffer harm.

[79] I have considered the matter of contribution as I am required to do under s 124 of the Act. Mr Reu did not contribute to the situation which resulted in his constructive dismissal and there is to be no reduction in the remedies awarded.

Compensation and loss of wages

Compensation

[80] As Mr Reu's dismissal claim is made out, I find he is entitled to compensation for humiliation and injury to feelings pursuant to s 123(1)(c)(i) of the Act.

[81] Mr Reu's evidence in this respect was credible. I accept that what initially started out as areas of frustration became much more significant and serious when coupled with his financial stresses in paying board. I find that Mr Reu suffered ongoing distress and felt exploited given his age and lack of work experience.

[82] Having balanced his evidence against current trends in both the Court and Authority, I consider \$12,000.00 appropriate.

Loss of wages

[83] With respect to wages, s 128(2) of the Act requires the payment of three months wages or the actual loss and compensation depends on the evidence offered.

[84] Mr Reu gave evidence that when he obtained employment with WSP Limited he had recently been qualified in carpentry and saw this as the beginning of what he had hoped would be long term employment and relevant work experience. I have no reason to doubt his credibility. In fact, I find that by making himself available for work every day despite Mr Walker's conduct is testament to his perseverance in gaining relevant work experience. I note that following his resignation from WSP Limited, Mr Reu continued to look for work as a job seeker through Work and Income.

[85] An award of three months of wages is made.

[86] I therefore order WSP Limited to pay Mr Reu the equivalent of three months of lost remuneration calculated at \$22.10 an hour 40 hours a week for 13 weeks.

Unjustifiable disadvantage claim

[87] Given that Mr Reu is successful in his claim of unjustifiable (constructive) dismissal, I do not need, therefore, to further consider whether Mr Reu was unjustifiably disadvantaged by WSP Limited.

[88] This claim is based upon the same facts as formed the basis of his successful unjustifiable dismissal claim for which he has been awarded remedies. There is no separate remedy award under this head.

Penalties

[89] Having considered the claims, I now must consider whether penalties should be awarded for the breaches of employment standards and the employment agreement.

[90] Although penalties have been sought by Mr Reu, they relate to the same actions which led to the claim of constructive dismissal. At this stage I decline to make an award for penalties.

Was Mr Walker a person involved in a breach of employment standards?

[91] Leave has been sought under s 142Y to recover wages payable to Mr Reu to the extent WSP Limited is unable to pay the arrears in wages. This requires an assessment of whether Mr Walker is involved in a breach of employment standards as defined under s 142W.

[92] Mr Walker was listed as the sole director and shareholder of WSP Limited on the Companies Office website during the time of Mr Reu's employment at WSP Limited.

[93] In considering whether Mr Walker was involved in a breach of employment standards, I note that Mr Walker had offered Mr Reu employment, advised of the terms and conditions of employment, including payment of wages and day to day operations, and was the sole decision maker in charge and responsible for WSP Limited's affairs and its conduct as Mr Reu's employer. The breaches occurred as a result of Mr Walker's conduct and nobody else's.

[94] As such, I find that he was directly involved in the breaches in the manner set out in s 142W of the Act and therefore a person involved in a breach of employment standards pursuant to s 142W of the Act.

[95] I also note that the Registrar has indicated its intention to remove WSP Limited from the register under s 318 of the Companies Act 1993 and stated that any objections to this must be lodged by 5pm before 17 October 2023.

[96] Accordingly, leave is granted to Mr Reu to seek compliance against Mr Walker in respect of the orders made with respect to the arrears in wages claim (which includes his annual holiday pay and statutory holiday entitlements) to the extent WSP Limited is unable to pay.

Costs

[97] Finally, there is the issue of costs.

[98] The power of the Authority to award costs is contained in s 15 of schedule 2 of the Employment Relations Act 2000 (the Act) which states:

15 Power to award costs

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[99] The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days. The daily tariff is usually taken as a starting point, although this is not to be used in a rigid manner, with principled adjustments made having regard to the particular characteristics of a case.⁷

[100] It is to Mr Reu's credit that following his resignation, he provided Mr Walker his personal record of hours and days worked in an effort to resolve the matter. However Mr Walker did not respond to Mr Reu and ceased all communication. Mr Walker did not engage in the mediation process or the Authority's processes. As such, it was necessary for Mr Reu to bring proceedings in order to pursue his personal grievances and outstanding and unpaid wages claims.

[101] While the investigation meeting was over in two hours, I had earlier made it clear that should the respondents appear, I would allow them to defend the claim. This meant counsel for Mr Reu had to prepare accordingly and that, in turn, warrants an award that recognises a time commitment which exceeds that which eventuated.

⁷ For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies and [Practice Direction of the Employment Relations Authority Te Ratonga Ahumana Taimahi](#).

[102] I determine an award equivalent to the notional daily tariff for half a day to be appropriate and order WSP Limited to contribute to costs of \$2,250.00 and the Employment Relations Authority filing fee of \$71.56 within 28 days of the issuing of this determination.

Conclusion and Orders

[103] For the reasons set out above, I consider that Mr Reu's claims of unjustifiable (constructive) dismissal and arrears of wages have been made out. Accordingly, I order WSP Limited to pay Mr Reu the sum of **\$28,739.55** comprised of the following:

- (a) **\$2,925.99** (gross) in arrears of wages (including annual holiday pay and statutory holiday entitlements); and
- (b) **\$11,492.00** gross as recompense for 3 months of wages lost as a result of the dismissal; and
- (c) **\$12,000.00** as compensation for humiliation, loss of dignity and injury to feelings pursuant to s 123(1)(c)(i) of the Act; and
- (d) **\$2,250.00** as a contribution toward the costs; and
- (e) **\$71.56** filing fee incurred in pursuing his personal grievance.

[104] Leave is granted pursuant to s 142Y for Mr Nathan Reu to seek compliance against Mr Craig Walker in respect of the orders made with respect to the arrears in wages claim (which includes his annual holiday pay and statutory holiday entitlements) in the event WSP Limited is unable to pay.

Davinnia Tan
Member of the Employment Relations Authority