

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2024] NZERA 22
3188279

BETWEEN

JACOB PERE
Applicant

AND

AGRI-LAB CO-PRODUCTS
LIMITED
Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Dave Cain, advocate for the Applicant
Digby Livingston Senior, advocate for the Respondent

Investigation Meeting: 5 September 2023 in Napier

Submissions received: 5 September 2023 from Applicant
17 October 2023 from Respondent

Determination: 17 January 2024

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Pere was employed by Agri-lab Co-Products Limited (Agri-lab) as a plant manager (apprentice) from 15 March 2021 until his resignation on 8 June 2021. Prior to this Mr Pere was employed by Agri-lab on a casual basis for a short period of time. Agri-lab is a limited liability company carrying out the business of pharmaceutical preparation and has its registered office in the Hawkes Bay. Angela Payne is the sole director and shareholder.

[2] Mr Pere says his resignation should be treated as a constructive dismissal arising from the way in which his employer acted towards him during his employment. This included two warnings concerning the provision of medical certificates as well as the way in which an incident with chemicals was addressed by Ms Payne. Mr Pere says by

placing blame on him without taking any further action to prevent such incidents occurring again meant he felt he had no option but to resign because of how unsafe he felt in the workplace.

[3] Ms Payne denies any of the actions by Agri-lab were unjustified or unfair. Given the nature of the work Agri-lab was engaged in a “meat handler’s certificate” was required before Mr Pere could return to the premises and Mr Pere failed to follow her instructions in this regard. Ms Payne found Mr Pere’s explanations to be less than credible. She arranged meetings and issued the warnings to Mr Pere using the online templates and advice from her advocate. Regarding the chemical incident, Ms Payne says Mr Pere actively obstructed her investigation into a serious health and safety matter.

The Authority’s investigation

[4] For the Authority’s investigation written witness statements were lodged from Mr Pere and Ms Payne. The witnesses answered questions under oath or affirmation from me and the parties’ representatives. The representatives also gave written closing submissions and further information was supplied to the Authority by the respondent after the investigation meeting.

[5] 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.

Sequence of events

[6] The employment relationship between the parties did not last long. Mr Pere started as a casual employee on 1 February 2021. He transitioned to permanent employment as an “apprentice” plant manager from 15 March 2021 until 8 June 2021, when he resigned while on sick leave. In total he had 16 days of sick leave over that time which equates to 20 per-cent of the time he was employed. He was a relatively young employee for whom Ms Payne had high hopes but in recognition of his age and stage the position he was transitioned into was “apprentice” when his employment became permanent.

The requests for a meat handler's certificate

[7] On 5 May, Mr Pere became unwell and remained off work until 24 May apart from when he returned on 10 May without a "meat handler's certificate" and Ms Payne sent him away to get that certificate. Agri Lab was highly regulated because it exported meat products. There was a suggestion that Mr Pere had symptoms that could have been consistent with Leptospirosis so this needed to be ruled out before Mr Pere returned to work.

[8] In light of this Ms Payne's understanding and advice was Mr Pere must provide a "meat handler's certificate" verifying he had nothing contagious that might impact on her business before he returned. Leptospirosis is listed as a notifiable infectious disease under the Health Act 1956 and I was informed Agri Lab was subject to stringent regulations because it processed by-products of the meat industry. The consequences of an employee having Leptospirosis were serious for Agri-lab and overseas orders would need to be cancelled.

Warnings and meetings

[9] On 17 May, while away from work after his medical certificate was extended, Mr Pere attended a performance meeting (after three months employment) with Ms Payne to review his "KPIs". Ms Payne says this was a routine review and I understood her evidence to be that she called this meeting despite the medical certificate because she was wanting to move things along and she did not see any issue in requesting attendance at a work meeting when the medical certificate had certified the employee as not fit for work provided the employee agreed.

[10] Nonetheless, Mr Pere agreed and attended the meeting. Ms Payne said they had a productive meeting discussing his progress. She was, however, surprised to see Mr Pere was in good health and to hear he had been looking after his grandmother, especially when he had failed this far to obtain a "meat handler's certificate" at her request verifying he was fit to work in the meat processing industry.

[11] Mr Pere on the other hand was working on the basis his medical certificate had been extended on 12 May to Monday 24 May because of the possibility of Leptospirosis so that was the date he was intending to return to work. Ms Payne told him she required him to be medically cleared before returning to work and reiterated her request for a meat handling certificate.

[12] Then, on 21 May, having not received such a certificate, and with no further communication between them, Ms Payne sent a written warning to Mr Pere for not providing a “meat handler’s certificate”. The written warning recorded Ms Payne had reached a preliminary view at the meeting on 17 May that a meat handler’s certificate should be able to be issued urgently and the lack of provision of such a certificate by Mr Pere was the basis for her decision to issue the warning.

[13] The warning letter ended with an expectation Mr Pere would be back at work on 24 May with a “meat handler’s certificate” to be presented to Ms Payne before that time. Mr Pere was reminded this certificate was required before he could officially return to work and therefore this matter now required urgent attention.

[14] Having not received the “meat handler’s certificate” two days later on Sunday 23 May, Ms Payne emailed Mr Pere again asking him to provide one and repeated her expectation it would be provided prior to his return to work. Ms Payne said this was to “be further verified by an MPI audit” scheduled to be conducted on 26 May and attached a copy of what she said was a “meat handler’s certificate”.

[15] In order to comply with Ms Payne’s requests Mr Pere again attended his doctor on Sunday 23 May and another medical certificate was issued as follows:

This person was seen by me on 23 May 2021 at 11.37am

From my examination and from I understand is the nature of the job, the patient is unfit for work.

He can return on 24/5/2021. He has had a negative leptospirosis blood serology result. Whilst this does not exclude leptospirosis [sic] is highly unlikely. His urine was not checked at the time of infection.

[16] Ms Payne did not accept that certificate as sufficient or to comply with her request for a “meat handler’s certificate” and emailed Mr Pere as follows:

There continues to be inconsistencies in the provision of the correctly worded certificate that is required in order for you to return to work.

Please can you obtain one with the specific wording like the example I have provided.

If you cannot provide one like that, please can we have a meeting at the packhouse office on Monday morning 24 May at 8 am to discuss the implications and to allow me to further understand the situation and how to move things forward.

You are welcome to bring a support person to the meeting. Please also bring the originals of all of your health documents relating to the period May 5th and anything else you think might be relevant.

[17] The example of a “meat handler’s certificate” Ms Payne provided simply recorded the words “I have examined the above patient today and find her fit to work in the meat industry.” and it was a certificate previously issued to Ms Payne some years earlier.

[18] Mr Pere says when he arrived at work on Monday 24 in time for his usual 8.00am start he was required to attend a meeting with Ms Payne in the packhouse. Ms Payne was angry that he did not have a “meat handler’s certificate” and told him she no longer trusted him or had confidence in him and said that the words the doctor had recorded were not professional. Ms Payne denies some of that but agreed that she was extremely frustrated given the risk to her export business and the need to comply with MPI regulations.

[19] Mr Pere says he was given an ultimatum at that meeting to get a meat handlers certificate by midday or he would lose his job. Ms Payne denies giving an ultimatum but agrees she was finding the situation very difficult because she simply needed the certificate she had requested and nothing else and could not understand why this was so hard.

[20] Mr Pere left that meeting and returned to Hastings to see his doctor which was some distance from where Agri Lab was based in an effort to resolve the issue. He says he did this because he believed he would lose his job. Mr Pere says he had asked the doctors for a “meat handler’s certificate” in the past and showed them what Ms Payne had provided. Mr Pere says he was told they did not know what a “meat handler’s certificate” was, but that what had been provided should be sufficient.

[21] When he returned to the doctor on 24 May, Mr Pere says he told the doctor his boss would not accept the wording on the previous certificate and asked if the certificate could be rewritten in the hope it would be sufficient for Ms Payne to allow him to keep his job. He was given a further medical certificate as follows:

This person was seen by me on 24 May 2021 at 11.34 am.

I understand Jacob works in the meat industry.

I understand Jacob was unwell from 5th – 12th of May and has been symptom free since.

He had negative serology for leptospirosis infection from the bloods taken on 10/5/21. However, this does not fully exclude leptospirosis infection I think this diagnosis is unlikely.

I would support Jacob’s return to work.

[22] The next day, on 25 May, Ms Payne issued a second written warning for the repeated failure to follow reasonable instruction, serious breach of policy and procedure and potentially actions that could seriously damage the employer's reputation with reference to clause 31 of the employment agreement which references serious misconduct. This was issued with no additional communications between the parties.

[23] Mr Pere was allowed to work from then on because Ms Payne checked with MPI and was told they would accept the general medical certificate dated 24 May in the circumstances.

Incident with chemicals at work

[24] On 28 May an incident with chemicals occurred at work for which Ms Payne considered Mr Pere responsible. A disciplinary meeting was held on 3 June and then Mr Pere resigned on 8 June saying he did not feel safe at work.

[25] Ms Payne's evidence was she arrived at work that day when Mr Pere was cleaning a vat and she could smell strong chemical fumes that she says was chlorine gas. She immediately asked everyone to leave and wheeled the vat Mr Pere was cleaning outside and drained it into the sump and refilled it to soak with the correct products.

[26] Earlier in the day Mr Pere contacted Ms Payne by text to ask about cleaning the vat and the communications between them were as follows:

Mr Pere ...I've tried and so has Kuini but the mince has set like tar to the tray. Would you want this soaked and cleaned. Everything else packaged and sealed.

Ms Payne Yes just write it off and soak it.

Then soak all the trays in a vat of something grunty like lime dishwash plus chlorine

Soak the mince tray separately but the rest can soak together

Thank you

Mr Pere Thumbs up emoji

[27] Mr Pere maintains that he followed Ms Payne's instructions however, it was Ms Payne's view chlorine had been mixed with acid to create chlorine gas and she would never give such an instruction. The next day, in order to ensure that all staff knew the dangers of mixing acid with chlorine, Ms Payne left a handwritten note on a piece of cardboard requiring all staff to Google "what happens when acid is mixed with chlorine

for future reference” and requested they record their names and signatures once they had done that and understood.

[28] Ms Payne asked other staff and Mr Pere what happened. As a result of the information she gathered she then wrote to Mr Pere inviting him to a disciplinary meeting on 3 June for an opportunity to explain why he ignored her instructions. He was put on notice that if Ms Payne was not satisfied with his explanation then his employment could be terminated giving two weeks’ notice. Additionally, the letter started out with reference to a further concern that Mr Pere had misled his doctor in relation to his symptoms and an allegation he had provided her with contradictory and untruthful information about the meat handler’s certificate.

[29] The letter also informed Mr Pere that Ms Payne had reached the conclusion Mr Pere mixed chlorine with acid despite her instruction by text. Ms Payne also recorded that when she pressed Mr Pere for an explanation directly after dealing with the vat, he stated he did not receive an instruction for what to soak the tray in until much later as he had not looked at his phone. That contradicted what Mr Pere told Ms Payne earlier and the thumbs up emoji he sent Ms Payne by text. Ms Payne stated there were multiple conflicting explanations from Mr Pere including that he did mix acid and chlorine for other cleaning activities and then retracted that. Ms Payne also recorded that Mr Pere told her he had not been trained correctly in the use of chemicals.

[30] Ms Payne went on to record:

Regarding the mix up of chemicals, at our meeting we were unable to agree on the order of events and timing of instruction despite proof by text and I further lost confidence in your communication of important matters and selective recall which undermined my confidence in your likely acceptable and correct implementation of basic written instructions via text.

[31] They met on 3 June with the assistance of Ms Payne’s representative. Mr Pere had a support person/representative. Ms Payne takes issue with the fact Mr Pere would not speak at the meeting but Mr Pere said his advocate spoke on his behalf and he did speak at the start of the meeting. Mr Pere’s evidence was that he was too afraid to say anything at the meeting and felt intimidated by Ms Payne and her representative.

[32] There were some further texts between them over the weekend about safety at work and training with regard to chemicals. Mr Pere indicated he thought it was unfair he was being blamed and he was concerned at the lack of accountability being shown

by Ms Payne. Mr Pere said because he received either no response or dismissive replies, he felt he had no option but to resign which he did on the Monday following the Friday 3 June meeting. Ms Payne says in relation to the text message conversation after the 3 June meeting, it was the weekend and she was out horse riding. Reception was sometimes patchy and she was genuinely disappointed to receive Mr Pere's resignation. All she required was accountability and then they could have moved on.

[33] Mr Pere raised a personal grievance for constructive dismissal and unjustified disadvantage through his new advocates by letter dated 15 June 2021 and lodged his claims in the Authority on 9 September 2022.

Constructive dismissal

[34] The doctrine of constructive dismissal concerns situations where an employer's conduct compels a worker to resign. A resignation may be held in employment law, to be as much a dismissal as where an employer has actually dismissed the worker.

[35] One recognised category of constructive dismissal is where it can be shown the resignation is caused by the employer's actions including any breach of duties owed to that employee. A resignation may be deemed to be a constructive dismissal if any breaches of duty by an employer were sufficiently serious that it was reasonably foreseeable an employee would resign rather than put up with such breaches or where a breach of duty by the employer leads an employee to resign.¹

[36] The focus for the Authority in considering this matter is on whether Agri Lab breached any duties to provide a safe workplace or the duty of fair treatment given the implied duties on employers and the fair and reasonable employer test in s 103A of the Act that applies when raising and addressing concerns with employees.²

[37] Mr Pere says Agri Lab breached its duty to him to provide a safe workplace by the way in which it dealt with the chemical incident, in particular, in not responding to his request for training on use of chemicals once he highlighted that he felt unsafe and to continue to blame him for what happened.

[38] Mr Pere also relies on the fact he was disadvantaged in his employment when he was issued with two written warnings in quick succession with no proper process.

¹ *Auckland Shop Employees IUOW v Woolworths (NZ) Ltd* [1985] 2 NZLR 372 at 374-375.

² Employment Relations Act 2000, s 103A.

Mr Pere says he was not made aware on either occasion that Ms Payne was considering disciplinary action or that she was investigating whether he had conducted himself properly in relation to obtaining the “meat handler’s certificate”.

[39] Mr Pere claims a third disadvantage in relation to the chemical incident. This is on the basis the workplace was not safe due to issues with training, supervision and identifying hazards in the workplace and then after the incident occurred, the written instruction to google information left in the workplace was insufficient. It is also noted Mr Pere was employed at a junior level and was early on in work experience in general as well as at Agri Lab. The submission flowing from this was that taking disciplinary action against Mr Pere and then failing to provide assurances that training and processes would be put in place to keep Mr Pere and the workplace safe, are actions taken by the employer that caused Mr Pere to be further disadvantaged and led to him believing he had no option but to resign.

Was Mr Pere disadvantaged by the written warnings?

[40] The first warning (21 May) occurred while Mr Pere was on sick leave and resulted from Ms Payne’s observations of him at the performance meeting at the three-month mark. The warning was intended as disciplinary action because it informed Mr Pere that if his attendance did not improve “or if there is a repeat of the lack of attendance at work without just cause....” his employment might be terminated. The warning held him accountable for not providing a “meat handler’s certificate” and this was despite the fact a medical certificate had already been issued confirming a date in the future he could return to work.

[41] Somewhat at odds with how things played out, Ms Payne gave evidence that she never intended to take disciplinary action or to dismiss Mr Pere. She said Mr Pere was outstanding in her business and she had great hopes that he would progress which is why she offered him a permanent position.

[42] Nonetheless, the issuing of a warning is disciplinary action and the test in s 103A of the Act therefore applied to Ms Payne and the actions she took. The employment agreement did not reference written warnings. Given none of the steps in the test in s 103A of the Act were followed before the first warning was issued, I am satisfied Ms Payne’s actions fell well short of the fair and reasonable test in the Act and caused Mr Pere to be disadvantaged in his employment.

[43] The second warning resulted from Mr Pere being sent away from work on 24 May (the day his medical certificate signed him off as fit to return to work), because he did not have a meat handler's certificate as directed by Ms Payne. There is a difference in the accounts of the interactions between the parties that day, but Ms Payne admits to being extremely frustrated and said in evidence that she did not believe what Mr Pere's doctor had provided was professional or that Mr Pere was being truthful with her.

[44] I am satisfied Mr Pere was disadvantaged by Agri Lab issuing the second written warning. It referred to matters that had never been raised with Mr Pere such as discrepancies with his communications with Ms Payne, lack of confidence in Mr Pere's recollection and record keeping procedures as well as his interpretation of MPI and business requirements. The second warning also recorded:

Your employment may be terminated if your communication with myself and your doctors does not improve sufficiently or if there is a repeat of questionable interpretation of official documents during your period of employment.

[45] I also consider it was unreasonable to hold Mr Pere accountable for not providing a "meat handler's certificate". He had a medical certificate covering his absences for that period and getting to the bottom of what was actually required as opposed to what could be provided necessitated the involvement of other people. Ms Payne said she was getting advice about what was required from the Ministry of Primary Industries (MPI) and Mr Pere said he was getting advice about what was able to be provided from his general practitioner.

[46] A medical certificate had been issued covering Mr Pere's absence with a specified return to work date. It was clear the laboratory had been asked to test for Leptospirosis and the doctor therefore issued the general medical certificates with that in mind and were aware of the industry in which he worked. That leads to the possibility the general medical certificate clearing Mr Pere fit for work at a date in the future (after the test had returned a negative result) was sufficient in these particular circumstances. I also understood from Ms Payne's evidence that MPI did in fact accept the general medical certificate as sufficient in the end.

[47] What was able to be provided was beyond the employee's control and there was a possibility the certificate issued was sufficient to manage the risk and meet MPI's needs. In these circumstances it was unreasonable to take disciplinary action against Mr Pere, certainly without further enquiry and information. Ms Payne could have been

expected to have investigated this further with a view to resolving the matter before deciding to pursue disciplinary action and issue Mr Pere with a warning.

Was Mr Pere disadvantaged by how the health and safety incident was addressed?

[48] Mr Pere's resignation email stated:

I do not feel physically safe with the lack of training and general approach to chemicals as I have highlighted. Your failure to take any accountability, to engage in my concerns and in fact blame me means I do not feel safe emotionally either.

[49] Mr Pere's concerns arose from the fact the chemical incident occurred in the first place and then being blamed for it when he says he did not know what he did wrong and, in the end, had no confidence Ms Payne would train him properly.

[50] Ms Payne says she could not get to the bottom of what happened because Mr Pere would not speak at the disciplinary meeting on 3 June. Mr Pere says by this time he was too afraid to say anything and felt intimidated by Ms Payne.

[51] Mr Pere's position at the investigation meeting appeared to be that the instruction to mix chlorine with something "grunty" as directed by Ms Payne in her text message could have resulted in a chemical reaction but if that was the case, it was a mistake and was a training issue rather than a disciplinary matter.

[52] Ms Payne strongly refuted the assertion that Mr Pere had not been trained in relation to the chemicals that were available. While she provided documentation to show this, when asked if she had provided training on not mixing an acid with chlorine, her response indicated she had not and that she thought this was self-evident. By way of example Ms Payne said she would not tell an employee not to drive on the wrong side of the road or not to drop a brick on their foot.

[53] The employment issue arising is the process Ms Payne followed to address any potential or actual health and safety issues. The evidence was clear there were products available for cleaning that contained acid. The letter Mr Pere received indicated Ms Payne had already formed a view Mr Pere had caused the chemical reaction and by virtue of his and the explanations of others that she had sought without his knowledge, she had lost confidence in him. That letter was direct and disciplinary in nature.

[54] After the investigation meeting Ms Payne provided her handwritten notes from the 3 June disciplinary meeting with Mr Pere. Ms Payne had recorded at the time she

checked with another employee who had told her Mr Pere mixed the chemicals and that she preferred that employee's evidence. She went on to record "Jacobs refusal to engage left me at a loss as to how to prevent a reoccurrence and find out what went on".

[55] Notwithstanding Mr Pere's lack of communication at the 3 June meeting, there are several problems with the approach taken by Ms Payne. The first is the letter inviting him to the meeting indicated Ms Payne had already established what had occurred and alleged Mr Pere had failed to follow instructions or to show any "remorse". Therefore, the meeting outcome was predetermined rather than being investigative.

[56] With regard to the reference to remorse, Mr Pere was told at the 3 June meeting and the investigation meeting that Ms Payne wanted to keep him on as an employee, but she required accountability so she needed him to admit he was wrong and they could move on.

[57] When matters are predetermined in that way, and what is being sought is actually an admission, an employers' actions are unlikely to meet the fair and reasonable employer test set out in s 103A of the Act.

[58] Furthermore, to Mr Pere's point, even if he was disciplined for the chemical incident, there were cleaning products available for use that contained acid, so further action was needed to prevent the risk of any further incidents if chlorine was also regularly used for cleaning. The self-directed Google search in the face of requests from Mr Pere for more training and information after the unsuccessful 3 June meeting, was insufficient to discharge the duties on employers to treat employees fairly and provide a safe workplace.

[59] I am satisfied Mr Pere was disadvantaged by his employer's approach to raising and dealing with employment issues in the workplace in relation to the warnings and the chemical incident.

[60] Having reached conclusions on the disadvantage claims, in order to be satisfied the constructive dismissal claim is made out, I also have to be satisfied the breaches were sufficiently serious to have made it reasonably foreseeable that Mr Pere would resign. Having regard to the significant substantive and process defects in relation to the two written warnings and the chemical incident, together with the fact Mr Pere was a relatively new employee and that all these incidents were closely connected in time,

I am satisfied the breaches were serious and that they have led to Mr Pere resignation. Mr Pere claim that he was constructively dismissed has been successful.

Remedies

Lost wages

[61] Mr Pere seeks lost wages for the five months he remained out of work and requests the Authority exercise its discretion to award lost wages for a period exceeding three months post termination.

[62] Section 123(1)(b) of the Act provides for the reimbursement of a sum equal to the whole or any part of the wages lost because of the grievance which has been established. This needs to be considered with s 128 of the Act which deals with lost remuneration.

[63] Section 128 (2) of the Act provides the Authority must order the payment of three months ordinary time remuneration, or the actual amount lost whichever is the lesser. Section 128 (3) the Act provides the Authority may in its discretion, order an employer pay an employee for lost remuneration a sum greater than three months.

[64] There was insufficient evidence for me to be satisfied this was an appropriate case to exercise my discretion and order Agri Lab pay a greater sum for lost remuneration. However, I accept Mr Pere has suffered a loss because of his grievance and I consider it appropriate to make an order for the payment of three months ordinary time remuneration.

[65] Mr Pere's wages at the time the employment relationship ended were \$23.00 per hour and his employment agreement specified a 40-hour week. A weeks wages therefore equates to \$920.00 before tax. Thirteen weeks wages amount to \$11,960.00.

Compensation for humiliation, loss of dignity and injury to feelings

[66] Mr Pere seeks compensation for hurt and humiliation in the range of \$20,000.00 to \$25,000.00 for unjustified dismissal (constructive dismissal) and \$5,000.00 for each disadvantage. Mr Pere's evidence established that he suffered distress and humiliation as a result of the way he was treated by Ms Payne and the way his employment ended.

[67] Mr Pere felt extremely nervous and anxious about coming back to work and says Ms Payne's responses to him heightened the way he was feeling. He felt he could

no longer trust his employer and that he could not return to the workplace because he did not feel safe. Further to this he became increasingly afraid to communicate with Ms Payne in case he said the wrong thing and feared getting into more trouble with Ms Payne. Mr Pere says he carried around anxiety about what might happen to him at another job, would second guess everything that he did and was scared he would get into trouble for a long time afterwards. Mr Pere has noticed he struggles with trust and is more reactive with people and these changes crossed over into his personal life.

[68] Considering the distress experienced by Mr Pere around the time leading up to his resignation and the evidence of the ongoing effects on him and the general range of awards in similar cases an appropriate amount of compensation under s 123(1)(c)(i) of the Act is \$25,000.00.³

[69] The disadvantage claims have formed the basis for the finding of unjustified constructive dismissal and as such I do not award any separate remedies for them.

Contributory conduct

[70] Under s 124 of the Act, the Authority must consider whether any remedies awarded should be reduced to the extent to which the actions of the worker contributed to the situation giving rise to the personal grievance.

[71] While Mr Pere admits he stopped communicating fully with Ms Payne at the 3 June meeting and the fact this is less than satisfactory, I am satisfied this was not a one-sided issue particularly because I have found above Agri Lab acted on more than one occasion in a matter of weeks in ways that fell well short of the fair and reasonable employer test in s 103A of the Act. In essence, having just received two written warnings with little or no proper process, it is understandable Mr Pere was reluctant to participate fully in a further disciplinary process with Ms Payne. In those circumstances it would not be fair to ascribe responsibility for the communication breakdown to Mr Pere.

Orders

[72] I order that Agri Lab Limited is to pay Jacob Pere:

³ *Richora Group Limited v Cheng* [2018] NZEmpC 113.

- (a) Lost remuneration for a period of three months following the date of Mr Pere's constructive dismissal in the amount of \$11,960.00.
- (b) Compensation for humiliation, loss of dignity and injury to feelings under s 123(1)(c)(i) of the Act of \$25,000.00.

Costs

[73] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[74] If they are not able to do so and an Authority determination on costs is needed Mr Pere may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Agri Lab would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[75] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.⁴

Sarah Kennedy-Martin
Member of the Employment Relations Authority