

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2024] NZERA 562  
3248059

BETWEEN SHANTI AHLUWALIA  
Applicant

A N D THE NEW ZEALAND ANTI-  
VIVISECTION SOCIETY  
INCORPORATED  
Respondent

Member of Authority: David G Beck

Representatives: Ramses Hunt, counsel for the Applicant  
Jeremy Ansell and Phillis Goredema counsel for the  
Respondent

Investigation Meeting: 13 and 14 August 2024

Submissions Received: 23 August 2024 from the Applicant  
23 August 2024 from the Respondent

Date of Determination: 19 September 2024

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment relationship problem**

[1] Shanti Ahluwalia worked for The New Zealand Anti Vivisectionist Society Incorporated (NZAVS) as a part-time campaigns manager from 19 November 2019 until his employment terminated on 23 May 2023 as a result of a restructuring process that identified his position as surplus.

[2] Mr Ahluwalia raised a personal grievance by letter of 1 June 2023 alleging that he had been unjustifiably dismissed and disadvantaged. The letter set out alleged procedural

deficiencies and substantive reasons to support the claims that he had been personally targeted in the restructuring NZAVS enacted. NZAVS did not initially provide a formal response to the personal grievance letter but the parties attended a mediation on 15 August that did not resolve matters.

[3] Mr Ahluwalia then filed a statement of problem in the Authority on 30 August 2023, identifying claims that he had been:

- (a) Unjustifiably dismissed.
- (b) Unjustifiably disadvantaged by being suspended during the restructuring consultation process.
- (c) The subject of good faith breaches and breaches of his individual employment agreement.

[4] NZAVS filed a statement in reply on 18 September 2023, suggesting that Mr Ahluwalia's employment had ended as a result of a genuine redundancy that was effected in a fair manner. The matter was initially set down for an investigation meeting in mid July 2024 but adjourned by agreement and there was some difficulty in setting the matter down promptly before 13 and 14 August was agreed.

[5] At the investigation meeting, I heard evidence from Shanti Ahluwalia, Tara Jackson, Executive Director of NZAVS and John Ransley a NZAVS board member who all answered questions on written statements they had provided. After the meeting I received extensive submissions from counsel for both parties that I have carefully considered.

[6] Pursuant to s 174E Employment Relations Act 2000 ("the Act") I make findings of fact and law and outline conclusions on matters to resolve the disputed issues and make orders but I do not record all evidence and submissions received.

## **Issues**

[7] The issues to be decided are:

- a) Prior to the decision to end the employment relationship was the action of suspending Mr Ahluwalia an unjustified one.
- b) Was Mr Ahluwalia unjustifiably dismissed or was the employment relationship ended by reason of a genuine redundancy situation absent of any ulterior motive.
- c) Did NZAVS breach good faith obligations in enacting the decision to make Mr Ahluwalia redundant including whether they provided sufficient information to facilitate genuine consultation and justification for the decision to disestablish Mr Ahluwalia's position.
- d) If it is found that NZAVS did not act in a fair and reasonable manner what, if any, remedies should be awarded to Mr Ahluwalia.
- e) If remedies are awarded to Mr Ahluwalia, should they be reduced because he has contributed to the situation giving rise to his personal grievances.
- f) How costs are to be resolved.

## **What caused the employment relationship problem?**

[8] Mr Ahluwalia, who had a background in working on opposing animal exploitation, commenced employment with NZAVS in November 2019 as a campaign officer initially on a fixed term basis. The employment once permanent (from April 2020) was the subject of an individual employment agreement for 18 hours per week and a change in title to Campaign Manager. Mr Ahluwalia reported to NZAVS's executive director, Tara Jackson.

[9] Mr Ahluwalia described his job as being ideal for his personal ideology and commitment to animal causes. He was involved in a number of successful public campaigns including an award winning one, that gained a significant sum of prize money for the

organisation in 2022 (\$97,000) and he worked closely with Ms Jackson. Ms Jackson says she had ultimate responsibility to manage campaigns and delegated tasks to Mr Ahluwalia and generally had no problems with his performance.

[10] Mr Ahluwalia says however, in early 2023 when he was approached by Ms Jackson to make changes to his job description and employment agreement, that he became wary of their relationship. The changes did not occur.

### **The restructuring**

[11] NZAVS is a well-established charity (founded in 1978) that works to end experimentation on animals and the harmful use of animals in science. It is a small charity reliant upon donor funding and legacies. At the time they commenced the restructuring in dispute, NZAVS had five employees being (in addition to Mr Ahluwalia); a full-time, executive director; a full-time, general manager a part-time support-engagement officer and a part-time research officer. The organisation has a board of volunteers who see their role as a governance one that supports the executive director who has delegated operational responsibilities. Ms Jackson, the executive director, has been in this role since September 2016 and prior to that she was NZAVS's campaign manager from January 2015.

[12] Ms Jackson, at the end of 2022 when planning for the coming financial year, says she started to become aware of an emerging problem with funding as the organisation was already running at a deficit and she could not see how this could be sustained. As a result, in mid-March 2023 Ms Jackson reported to the NZAVS board that engaging staff on a part-time basis was problematic and they needed to be more "output driven" to address their financial situation. Ms Jackson reported to the board that she intended to soon meet with her general manager and consider the staffing structure.

[13] Mr Ransley, giving evidence during the investigation meeting, recollected at the time of the March 2023 board meeting, although not predetermined, some form of restructure was discussed as proceeding and that Ms Jackson "was to assess the NZAVS staffing levels and determine which position could be disestablished/absorbed into her role" to reduce overall

staffing costs. Mr Ransley stressed the board saw this as an operational matter that they would not be involved in. Ms Jackson confirmed this to be the case and says she was not asked to formulate a proposal for the board's approval as she had delegated responsibility for all staffing matters and she only reported back on progress once her review and decision to disestablish the campaign manager role was completed. It was clear that the restructuring was not directed by the board but on Ms Jackson's initiative with the board's tacit approval. It would appear from Mr Rawnsley's recollection that Ms Jackson had already a working plan in mind prior to embarking on her review.

[14] Ms Jackson says she undertook the review with input from her general manager and on process matters sought advice from an external HR provider NZAVS engaged on an ongoing basis. Ms Jackson says the review involved her examining all existing roles and determining that the role occupied by Mr Ahluwalia was distinct in the sense that it could be absorbed into her role. When asked why, given the small team, she did not first seek ideas from the team on how to reduce costs, Ms Jackson says she did not want to cause unnecessary distress to other team members.

[15] Ms Jackson stressed that Mr Ahluwalia was regarded as a good performer with positive recent appraisals and that he had made significant contribution to specific campaigns and that he had considerable expertise and his commitment to the organisation's cause was unquestioned.

[16] To proceed, on 26 April 2023 Ms Jackson got the HR provider to draft an initial letter to Mr Ahluwalia. As a courtesy, Ms Jackson says she rang Mr Ahluwalia on 26 April to advise they were considering making his role redundant. She then emailed the pre-prepared letter that she says was to invite him to a meeting to discuss his feedback.

#### *The first letter*

[17] The 26 April letter purported to open the consultation process but it contained somewhat 'mixed messaging'. It referred to an 'informal meeting' earlier that day when none had occurred and then suggests "we" are considering a restructure of the area which Mr Ahluwalia worked

in, due to the financial challenges the “business” was facing. It then confirmed “we are considering making your role as Campaign manager redundant” and sought to meet the next day or on 3 May. It then suggested before any decision was finalised, they would consider any suggestions raised by Mr Ahluwalia “and whether you can reasonably be redeployed into other roles within the Business”.

[18] Attached to the email was a short document headed “Restructure Proposal”. This document first described a recent review by NZAVS of “various aspects of its operation” prompted by the financial challenges it is facing. On the latter it is then suggested the charity had “incurred substantial losses over the last financial year and is in deficit” and seeing as staff costs were the biggest expenditure item “the charity has reviewed its organisational chart accordingly”. This then led to a suggestion that NZAVS was proposing to “reduce its current staff members” and then a heading (Affected position/s) that led to a proposal to disestablish the Campaign Manager role due to:

.... this role being the only one that could be absorbed by other roles within the Business. Should this proposal go ahead, there may be potential for those affected to be redeployed into another area of the business.

[19] The letter then reiterated that further to a meeting of 26 April, an opportunity was being provided for feedback on “the above proposal” and that dependent on feedback received that may change the timeframe: “We expect the consultation process will take approximately 2 working days, with the Business being in a position to communicate a final decision shortly thereafter”. It was noted that the above was just a proposal “and no final decisions will be made until feedback provided by those affected has been considered”.

[20] The letter ended with a reminder to Mr Ahluwalia “of the importance of maintaining confidentiality during this time”.

[21] An observation that was confirmed at the investigation meeting, was the above cited letter was generically prepared by the HR consultancy who had neglected to adopt suitable contextual terms (such as charity and not business) and it did not accurately convey at this point in time, that the only position under scrutiny was the one occupied by Mr Ahluwalia and, that no one else was being consulted.

[22] In addition, the letter inappropriately mentions redeployment as a prospect too early in the process which conveyed an impression that the decision had already been made to disestablish Mr Ahluwalia's role.

### **Consultation process**

[23] In response, Mr Ahluwalia negotiated a longer consultation period by securing an agreement that the first meeting be held on 9 May in order for him to obtain representation and advice. In the interim, he requested a couple of days off to digest the proposal and prepare a response but was met with a response from Ms Jackson that their HR consultant had advised it was something he could do after work or at the weekend and was expected to complete his set tasks during working hours. However, while suggesting it was not 'normal practice' to take two days off to digest a proposal, Ms Jackson offered the possibility of "a few hours off next week" to meet his advisor and make some notes. Free counselling was offered by Ms Jackson (and the general manager also reiterated this in separate correspondence) but with the proviso "you are also expected to complete your routine work hours with NZAVS".

[24] On 5 May, Mr Ahluwalia provide a comprehensive written submission to Ms Jackson. Mr Ahluwalia opened his submission by pointing to the critical function campaigning brought to the organisation and reducing this capacity seemed unwise given the past successes he had been involved in or instigated. He then sought greater clarity around the financial reasons advanced and cited a recently circulated document Ms Jackson had provided on 20 April to staff ("Evaluation end of year 2022-23") that from Mr Ahluwalia's reading, painted a less gloomy outlook. He then provided his opinion on how future funds would be obtained without the media attention his campaigning role could generate and after reiterated a question of how campaigning work would continue; he then asked if the business case for removing his role could be reviewed and listed the impacts of "losing a campaigner".

[25] As alternatives Mr Ahluwalia suggested NZAVS look outside the campaign team to make savings or in an option he described as more desirable, he suggested exploring reducing hours across the board and consulting other staff on their willingness to adopt cost saving measures.

[26] Mr Ahluwalia also noted that some of his work that had been done by an external contractor could be returned to him as being potentially more cost effective.

#### *9 May meeting*

[27] On 9 May, Ms Jackson responded to an agenda request for their meeting later that day as follows:

- Introductions.
- Purpose of the meeting.
- Questions on the proposal that have been outlined in your feedback, followed by responses from ED.
- Next steps.
- Final comments.
- Close.

[28] The meeting attended by Mr Ahluwalia, Ms Jackson, and the general manager, was audio recorded and transcribed and took around 70 minutes. On going through the record of the meeting it is apparent that there was an extensive discussion of the reasoning behind the proposal to disestablish the campaign manager's role. Essentially Ms Jackson sought to explain that due to her own campaigning experience she had resolved to take sole charge of managing campaigning tasks. Mr Ahluwalia in response expressed scepticism how his 18 hours of work could be 'absorbed' by Ms Jackson.

[29] There was a lengthy discussion on the issue of reducing the organisation's financial deficit and the pace of doing this with Ms Jackson concluding the external fund-raising environment was too challenging to not deal with overheads more promptly to ensure sustainability longer term. Ms Jackson also clarified there was no intention to engage contractors to do core campaign tasks but she did not rule out engaging a contractor to do some specialist media work or to assist her in the decision to absorb media work into her role.

[30] The discussion on alternatives to disestablishing the campaign manager role was less satisfactory from Mr Ahluwalia's perspective. In particular the suggestion that other staff hours could be reduced across the board was dismissed as just not being feasible without much elaboration other than it would have a negative impact.

[31] Toward the end of the meeting as Ms Jackson indicated the board had access to more up to date financial figures and Mr Ahluwalia sought more detailed financial information such as past and projected costs on contracting staff and campaign spending and was assured of the further provision of this.

[32] However, when Mr Ahluwalia reiterated he would like to consult with the rest of the staff over the financial situation and ideas on how it could be resolved, including whether voluntarily cutting hours across the board may work, he was met with an ambiguous response. But as the meeting closed Ms Jackson advised “just a reminder that all matters are confidential” apart from you being able to talk to your lawyer.

[33] A day after the meeting, Mr Ahluwalia emailed Ms Jackson with an additional option suggesting that with the uncertainty of fund raising forecasting being apparent and more media work being required, why not delay the redundancy a few months. Ms Jackson responded saying this additional feedback would be taken onboard.

#### *Second meeting and suspension*

[34] On 12 May, Ms Jackson forwarded Mr Ahluwalia an invite to a Zoom meeting on 18 May described as the “Final Meeting regarding the proposed Restructure”. The invite indicated “this meeting is strictly 30min; please keep your feedback and questions succinct”. Mr Ahluwalia responded seeking clarity on the purpose of the meeting, suggesting it may be too short for him to respond and could some advance material on what would be presented be forwarded to him.

[35] In the interim, on 16 May Ms Jackson provided a response to issues raised at the 9 May meeting addressing how she felt able to absorb the campaign manager’s work including media liaison; she provided a very brief breakdown of the last financial year showing a \$83,485.31 ‘total deficit and a breakdown on contractor spending in the last year (\$28,501.46). Of particular contention was Mr Ahluwalia questioning why the previous tolerance of a set deficit figure of \$90,000 per annum had now been changed to a goal of zero deficit budgeting.

[36] Ms Jackson's response to the request for more detailed financial information was objectively unnecessarily evasive, she indicated while she was happy to give a profit and loss summary for the last financial year, more was seen as "commercially sensitive, so I won't be emailing that to you I can report in the next meeting if there are specific questions you have". I observe that Mr Ahluwalia's ability to ask specific questions would have been assisted by greater disclosure and given the charitable status and orientation of the organisation, using 'commercial' sensitivity as a shield was a questionable stance.

[37] The 16 May letter concluded "we can't risk delaying making financial cuts in order to remain financially viable". Mr Ahluwalia responded questioning Ms Jackson's ability to perform his campaign manager's tasks "more quickly and efficiently" and the impact this would have on her existing job. He then posed some options and requested a staff wide meeting and disclosed he had already sounded out some staff on alternative salary reductions.

[38] Ms Jackson responded to this feedback by stating she was "shocked and concerned" at his approach and she reminded Mr Ahluwalia of her expressed confidentiality stricture that nothing could be discussed with co-workers without her express prior consent or this "may lead to disciplinary action". Ms Jackson then suggested discussing the redundancy proposal with other workers was "incredibly inappropriate".

[39] Mr Ahluwalia responded indicating his understanding was the confidentiality meant it should not be discussed outside the organisation and he provided a government website link that promoted openness in discussing redundancies and suggested preventing co-worker communication was an isolating tactic. He then disclosed he had messaged a few co-workers to let them know about the proposal to make him redundant and to find out if they would be comfortable in discussing an alternative involving everyone reducing their hours.

[40] Unfortunately, Ms Jackson then responded saying due to his actions "we need to put you on paid special leave immediately" until the consultation process was complete and the final outcome determined. Ms Jackson asserted unnecessary stress had been created for everyone in the team and he was not permitted to involve others in this process. Ms Jackson then suggested that Mr Ahluwalia was attempting to run his own inappropriate restructuring

process. Mr Ahulwalia was also admonished for exploring the provision of a reference from a co-worker. On questioning of why she took this action Ms Jackson says it was on the advice of their HR advisor who told her this was not a suspension but needed to happen to safeguard the organisation's interests.

[41] Later, on 17 May, Mr Ahluwalia emailed Ms Jackson saying he had obtained legal advice and considered the instruction to not speak to other workers to be unlawful and obstructive. He portrayed the direction to take leave as a unilateral suspension asking for it to be revisited so he could return to work. Further, he asked for more detailed financial information which had been used to formulate the notion that it was necessary to disestablish the campaign manager's role.

[42] In response, Ms Jackson cryptically suggested there was no grounds for a suspension which is why he was placed on special leave and he had been asked (albeit after the instruction to take leave was made) to advise of any questions. Ms Jackson then 'doubled down' on her stance by admonishing him for exploring the provision of a reference from a co-worker; she expressed a view that approaching co-workers was a breach of her confidentiality instruction and in response to the plea for financial information, claimed all the information related to his redundancy had been disclosed and contextually explained during a close to 90 minutes meeting.

[43] Ms Jackson then offered to allow Mr Ahluwalia a return to work provided he gave an assurance that he would not distract co-workers by discussing a reduction of other workers hours as a solution to his redundancy. Mr Ahluwalia agreed to reluctantly abide by the instruction and in an 18 May email Ms Jackson agreed to allow him to return to work.

[44] An 18 May email exchange disclosed after the investigation meeting, showed Ms Jackson also sought some guidance from Mr Ransley on whether she should disclose the further financial information being sought. While Mr Ransley suggested Ms Jackson run everything past their HR advisor, he opined provisional financial information related to the previous financial year should not be disclosed as it was confidential. Mr Ransley also gave strong support to Ms Jackson's view that Mr Ahluwalia's request to consult other staff was

inappropriate. He opined after having read the meeting transcript that Mr Ahluwalia was unlikely to take matters any further and said: “I assume there is actually some form of redundancy payment- I understand he’s also had a lot of leeway in terms of sick leave too”.

[45] At the same time, Mr Ransley gave robust advice that Ms Jackson could set the agenda and timing of any further meeting and then he indicated:

That said, getting it over with is also good as you can move on to other more important things. No-one on 18 hours a week can afford a lawyer and even if he could he would have been advised to STFU.

As I said last night – its pretty simple – campaigns are not the core of NZAVS – its stuff like your presentations, networking and fundraising. And supporting the volunteers and activists out there who turn up, sign petitions and contribute. We need to keep heading in this direction to ensure both the effectiveness and long term viability of NZAVS.

[46] Objectively, though unguarded comment, the above exchange is impliedly dismissive of Mr Ahluwalia. The parties then met briefly on 18 May and afterwards at 5:34 pm, Ms Jackson emailed asserting there was no further feedback to consider and attached a letter headed: “Confirmation of Redundancy”. This noted after having reviewed all areas no redeployment opportunities existed and consequently “your position is redundant, effective 23/4/23, due to the financial challenges the organisation is currently facing”. Mr Ahluwalia was paid two weeks pay in lieu of notice and accumulated holiday pay. The letter contained no offer of assistance with job seeking such as a reference and no further offer of counselling.

## **Submissions**

[47] Mr Ahluwalia’s submission asserts his employment ended by reason of a flawed redundancy process. He essentially claims that NZAVS’s failure to sufficiently disclose requested financial information hampered his ability to respond to the redundancy proposal and this resulted in him being treated unfairly and that NZAVS did not genuinely consider his feedback and/or closed off their mind to exploring other alternatives by refusing to engage with the wider staff and focussing solely on the position he occupied. Mr Ahluwalia contended NZAVS knew that he was financially literate (having a degree in economics) and had previously had access to financial information and given this, if he had been provided with

sufficient financial information, he posited he could have contributed on how the organisation could better forecast future income in an unpredictable funding climate.

[48] Further, while not going as far as to state explicitly there was an ulterior motive for the redundancy, Mr Ahluwalia did point to his perception that Ms Jackson was not sufficiently detached from the outcome of her subsuming his campaigning work. He suggested that Ms Jackson lacked impartiality in being involved in the review and predetermined the outcome as evidenced by her failure to genuinely consider alternatives including reducing the hours of the general manager who was arguably conflicted as she assisted Ms Jackson in formulating the redundancy proposal.

[49] In contrast, NZAVS's submission concentrated on the size and limited resources the organisation had, to undertake a restructure and the unpredictability of its funding environment. In asserting that they had established a genuine redundancy situation and embarked upon a fair and comprehensive process that took three weeks to complete and was aided by external HR advice, NZAVS suggested the decision to dismiss Mr Ahluwalia was one a fair and reasonable employer could make in all the prevailing circumstances.

[50] It was suggested that Mr Ahluwalia had not been suspended and the instruction that he not discuss the restructure proposal with co-workers was a reasonable one and in any case, the disruption was minimal as only one day's paid leave was at issue.

[51] The decision to reduce staffing expenditure was presented as a fair and reasonable one, open to the employer due to its unpredictable future income prospects and deficit situation and Mr Ahluwalia would be generally well aware of this context. In terms of process NZAVS noted the business rationale had been clearly expounded and they had engaged in and genuinely considered, Mr Ahluwalia's submissions which had been approached with an open mind. They pointed to substantial written feedback provided and discussion on such.

[52] On the issue of provision of financial information NZAVS's submission contended this did not extend to the provision of "detailed and commercially sensitive information" and that s4(1B)(c) of the Act made it permissible to decline disclosure on such grounds. Regardless,

NZAVS argued the information provided was sufficient and that the key indisputable issue was the size of their ongoing deficit. Overall, NZAVS conceded some minor process errors had been made such as lack of clarity in some correspondence and indications of truncated timelines but these had been rectified during the process and, did not cause unfairness to Mr Ahluwalia.

### **The legal framework**

[53] Mr Ahluwalia's employment agreement and accompanying employee handbook contained no provisions defining a redundancy situation other than the employee protection provision required under s 60J of the Act covering a situation where a new employer undertakes the work undertaken by the employee (i.e. a contracting out situation).

[54] Given that there is no statutory definition of redundancy it has long been established in common law that a redundancy arises where a specific position is superfluous to the needs of an employer's business, which establishes an abstract construct where it is the position and not the person that is redundant.<sup>1</sup>

[55] However, the above is only an overarching definition that does not necessarily address the spectrum of how a redundancy arises and in what context.

[56] In order to justify termination of employment including in a redundancy situation, NZAVS must meet statutory requirements set out in s 103A of the Act commonly referred to as the 'justification test'. This test requires the Authority to undertake an objective assessment of whether the employer's actions and how it acted, were what a fair and reasonable employer could do in all the circumstances at the time of the ending of the employment relationship.

[57] In applying this test, the Authority must consider a number of factors including: the resources available to the employer and here in context whether the employer gave the applicant an opportunity to comment on the proposal to end the employment relationship and whether that comment was genuinely considered.

---

<sup>1</sup> *GN Hale & Sons Ltd v Wellington Caretakers IUOW* [1990] 2 NZILR 1079 (CA) affirmed as still applicable law in *Grace Team Accounting v Brake* [2015] 2 NZLR 494.

[58] The Court of Appeal in *Grace Team Accounting v Brake*<sup>2</sup> has ruled that an employer claiming to be in a redundancy situation is only entitled to justifiably end an employment relationship for valid and demonstrable commercial reasons and when looking at applying the s 103A tests has said:

If the decision to make an employee redundant is shown not to be genuine (where genuine means the decision is based on business requirements and not used as a pretext for dismissing a disliked employee), it is hard to see how it could be found to be what a fair and reasonable employer would or could do. The converse does not necessarily apply. But, if an employer can show the redundancy is genuine and that the notice and consultation requirements of s.4 of the Act have been duly complied with, that could be expected to go a long way towards satisfying the s.103A test.

[59] In essence, the above requires the Authority to determine first if the redundancy was genuine (an assessment that has to exclude any ulterior motive) and then whether it was enacted in a procedurally fair manner.

[60] To ensure a redundancy is enacted in a procedurally fair manner, good faith obligations also apply as set out in s 4 of the Act - these include a positive disclosure obligation of an affected employee being provided with access to information supporting the reason for the redundancy and the detail of how it is proposed it will be implemented.

[61] Further, an employee must be afforded an opportunity to comment on any redundancy proposal prior to a decision being finalised. In the Employment Court decision *Stormont v Peddle Thorp Aitken Ltd* key the process is described as:

Consultation involves the statement of a proposal not yet finally decided on, listening to what others have to say, considering their responses, and then deciding what will be done. Consultation must be a reality, not a charade. Employees must know what is proposed before they can be expected to give their view on it. This requires the provision of sufficiently precise information, in a timely manner. The employer, while quite entitled to have a working plan already in mind, must have an open mind and be ready to change and even start anew.<sup>3</sup>

---

<sup>2</sup> At [85].

<sup>3</sup> *Stormont v Peddle Thorp Aitken Ltd* [2017] ERNZ 352 at [54].

## Assessment

[62] Assessing whether a redundancy is genuine is often a subjective exercise and this situation is particularly fraught given the size and purpose of the organisation that was objectively not driven by normal commercial imperatives. My first observation is that the NZAVS board appropriately delegated the review to Ms Jackson and that she gained nothing personally from the outcome. Objectively, she increased her own workload. I also was convinced by the reasoning behind the review in that an ongoing deficit in straightened economic times needed a response and staffing overheads presented an ongoing expense that could be managed. At the investigation meeting, NZAVS disclosed fuller financial information that objectively showed they were in a difficult financial position and had a significant deficit.

[63] I do not comment on whether increasing Ms Jackson's workload was a sensible measure to endorse or not as this was a business decision the organisation was entitled to make.

[64] What I was not convinced about was whether genuine alternatives were seriously considered and the failure to consider involving the rest of the staff in the review does point to a lack of open mindedness to input from Mr Ahluwalia. While I accept that Ms Jackson and the general manager did review the staffing structure and that the option of disestablishing the campaign manger's role and absorbing it into Ms Jackson's ambit had significant merit, it was not the only option.

[65] In a small group of workers faced with a need to reduce expenditure on staffing it is inevitable that others would be impacted in some way and they should have been consulted. While the jobs undertaken were distinct, wider options for reducing expenditure could have been explored and as the Employment Court held in *Harris v Charter Trucks* it can be a "fundamental flaw" to not consult all employees potentially affected by a proposed restructuring.<sup>4</sup>

[66] I also observe that Ms Jackson was too reliant on what was at times poor advice from NZAVS's HR contractors who appeared deaf to the contextual situation (this was not a

---

<sup>4</sup> *Harris v Charter Trucks*, CC 16A/07, CRC 8/06, 19 December 2007 at [69].

corporate environment) and legal obligations at stake. The clumsily worded first consultation letter and aggressive advice around suspension, created a very real perception that matters were pre-determined. While Ms Jackson made some significant effort to counter this perception and attempted to engage with Mr Ahluwalia in good faith, the damage had already been done and the suspension should have been handled with more sensitivity.

[67] Turning to the overall process adopted, I find a significant procedural flaw was not providing sufficient economic information to explain the rationale for the deficit reduction plan to Mr Ahluwalia. Clearly an analysis of this information drove the restructure and in order for Mr Ahluwalia to understand why it was necessary to urgently reduce expenditure, he needed to view more detail. I do not accept that in the circumstances given the size and purpose of the organisation and the position Mr Ahluwalia occupied, that there was any genuine commercial risk to disclosure. If this had indeed been a worry then undertakings could have been sought on confidentiality.

[68] Section 4(1A)(c) of the Act unequivocally states it:

... requires an employer who is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment of 1 or more of his employees to provide to the employees affected -

- i. access to information, relevant to the continuation of the employees' employment, about the decision; and
- ii. an opportunity to comment on the information to their employer before the decision is made. (my emphasis).

[69] The above is a positive disclosure obligation designed to facilitate an opportunity for an employee to comment on information relevant to the continuation of their employment. It is not a game of 'cat and mouse' with information only being disclosed when sought. I find this obligation was not met. This robbed Mr Ahluwalia of both a full explanation for his redundancy and an opportunity for informed input. These are key good faith obligations.

[70] The redundancy process was not a comfortable experience for Mr Ahluwalia and this was not assisted by the suspension for his alleged breach of confidentiality for his objectively reasonable suggestion that other workers be canvassed about the need to reduce the

organisation's deficit. The suggestion this did not constitute a suspension or that if it did, NZAVS was acting on HR advice, is not a sustainable position – Mr Ahluwalia was directed to leave the workplace for no tangible reason and he posed no threat to the organisation.

[71] While the suspension lasted only one day and in of itself caused little detriment, the main issue was the unreasonableness of the instruction that had the effect of unnecessarily isolating Mr Ahluwalia at a vulnerable time and inevitably making him question his employer's motivation and willingness to explore other options. The latter instruction constituted an action that no fair and reasonable employer could have engaged in. It was entirely inappropriate to portray Mr Ahluwalia's request to consult his co-workers as being an action with potential disciplinary consequences.

[72] For completeness, while I find the reasoning behind the redundancy was genuine and did not involve an explicit ulterior motive beyond expressed frustration at Mr Ahluwalia's attempts to engage in promoting alternatives, this was a significantly flawed redundancy process with 'surface' consultation and insufficient sharing of relevant financial information. Mr Ahluwalia was assured during the consultation that the decision was based on a careful analysis of the financial state of NZAVS and how the deficit became immediately at issue. If that was the case, the financial information that this decision was based upon could have easily been disclosed to Mr Ahluwalia. As a result, Mr Ahluwalia was provided with no real opportunity for informed comment on the decision to dismiss him. These procedural defects were not minor and they resulted in Mr Ahluwalia being treated unfairly. The respondent failed to meet specific information disclosure obligations set out in s 4 of the Act.

### **Finding**

[73] The procedural defects and breaches of good faith that I have identified above ended Mr Ahluwalia's employment relationship prematurely in a manner that did not fall within the parameters of what a notional, fair, and reasonable employer could have done in all the circumstances at the time. I find that Mr Ahluwalia was unjustifiably dismissed.

[74] As a result, Mr Ahluwalia is entitled to consideration of remedies he sought but I decline to make orders for penalties for cited breaches of good faith obligations or breaches of his employment agreement. I am not persuaded that penalties for the good faith breaches identified are warranted as the transgressions identified though not minor, are adequately remedied by my finding that Mr Ahluwalia has successfully established a personal grievance that he was unjustifiably dismissed.

[75] I rely on s 160(3) of the act in making this assessment as I consider that in the circumstances given the size of the organisation and the inexperience of their executive director in these matters, the failure to comply was not deliberate, serious, or sustained.<sup>5</sup> I consider the following discretionary remedies holistically address the employment relationship concerns Mr Ahluwalia has identified.

## **Remedies**

### ***Lost wages***

[76] Section 123(1)(b) of the Act provides for the reimbursement of the whole or any part of wages lost by Mr Ahluwalia should I find that he has established a personal grievance and, s 128(2) mandates that this sum be at least the lesser of a sum equal to his lost remuneration or three months' ordinary time remuneration.

[77] Here I find Mr Ahluwalia's lost remuneration was attributed to his personal grievance which was that he established that NZAVS did not meet key statutory procedural requirements when they enacted a decision to reduce their campaigning function by one position. However, given I have seen that the economic reason for the redundancy was evidently genuine that would still have meant there was a need to reduce staffing costs.

[78] I find that had the restructuring process been properly and fairly enacted Mr Ahluwalia would have been given an opportunity or 'chance' to persuade NZAVS to look to other options or pause the decision until the funding situation became clearer or take a less drastic approach

---

<sup>5</sup> The threshold test that has to be met for a penalty to be considered as set out in Section 4A Employment Relations Act 2000.

to its deficit reduction target. However, this is speculative and continued engagement on a fairer basis may have led to the same outcome.

[79] In looking at this in its totality, I am obliged to take an approach that Mr Ahluwalia had only a “loss of chance”<sup>6</sup> in securing ongoing employment with NZAVS.

[80] Mr Ahluwalia gave evidence that he has not found alternative employment in his specialist area of expertise and applications he says have been hampered by a lack of an employment reference from NZAVS and a difficult job market. Some ongoing health issues have also contributed to Mr Ahluwalia’s vulnerability in the job market.

[81] Mr Ahluwalia claimed lost wages in a sum reflecting the actual loss in the intervening period (6 June 2023 – 15 August 2024) which is sixty-two weeks on the basis that had a fair selection process been undertaken, his employment may have been ongoing.

[82] I find that applying a ‘loss of chance’ approach and taking other factors into account that lost remuneration for a six-month period (26 weeks) would be a fair amount to cover Mr Ahluwalia’s lost wages. Given Mr Ahluwalia was paid \$30.80 per hour for 18 hours per week this amounts to a total of \$14,414.40. I also find it is appropriate to order holiday pay on this figure in the additional amount of \$1,153.15.

### ***Section 123(1)(c)(i) Compensation***

[83] Mr Ahluwalia gave compelling evidence of the significant impact of his dismissal and the uncertainty it created at a difficult time to find immediate alternative employment. He explained that this had a major impact upon his mental well-being and relationships. He was particularly upset about the manner of his dismissal and not being given an opportunity to work out his notice period and farewell co-workers.

[84] Mr Ahluwalia explained with some conviction that the manner in which he was treated during the consultation process caused particular humiliation as he felt portrayed as mercenary

---

<sup>6</sup> An approach the Court of Appeal endorsed in a redundancy selection matter in *Rongotai College Board of Trustees v Castle* [1998] 2 ERNZ 430 (CA)

in seeking to retain his role. The humiliation was exacerbated from Mr Ahluwalia's perspective from a feeling that his former employer did not appreciate his commitment to their cause. While Mr Ahluwalia freely admitted he had other life pressures impacting upon him that contributed to him struggling to cope with the decision to end his employment with NZAVS he nevertheless had a deep sense of betrayal that he had been unnecessarily isolated by the redundancy process.

[85] I am convinced that Mr Ahluwalia suffered humiliation, loss of dignity and injury to feelings for a lengthy period before he could resolve his employment situation and that this must have been an extremely alienating experience.

[86] Considering all the circumstances including the financial position of the organisation and awards made by the Authority in similar cases, I consider Mr Ahluwalia's evidence warrants a reasonably significant compensatory amount. I fix that sum at \$16,000 under s123 (1)(c)(i) of the Act.

### **Contribution**

[87] Section 124 of the Act states that I must consider the extent to which, if any, Mr Ahluwalia's actions contributed to the situation that gave rise to the personal grievance and assess whether any calculated remedy should be reduced. In these circumstances, I can find no reason to reduce the remedies awarded above as Mr Ahluwalia's response to the restructuring process although robust was understandable in the circumstances of him being effectively sidelined by his employer. In this respect, he was not engaged in a wrongful action and he did not act in a blameworthy or culpable manner that gave rise to his grievance occurring.

### **Costs**

[88] Costs are reserved.

[89] The parties are encouraged to resolve any issue of costs between themselves.

[90] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Shanti Ahluwalia may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of this determination. From the date of service of that memorandum

the New Zealand Anti-Vivisection Society Incorporated will then have 14 days to lodge any reply memorandum. Upon request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[91] The parties can expect the Authority to determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.<sup>7</sup>

## **Outcome**

[92] I have found that:

- a. Shanti Ahluwalia was unjustifiably dismissed from his employment with the New Zealand Anti-Vivisection Society Incorporated and as a result the following remedies are ordered.
- b. The New Zealand Anti-Vivisection Society Incorporated must pay Shanti Ahluwalia the sums below:
  - i. \$14,414.40 gross lost wages.
  - ii. \$1,153.15 holiday pay on the above amount.
  - iii. \$16,000 compensation pursuant to s 123(1)(c)(i) of the Act.

David G Beck  
Member of the Employment Relations Authority

---

<sup>7</sup> For further information about the factors considered in assessing costs see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)