

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2024] NZERA 627
3264979

BETWEEN	RYO WATANABE Applicant
AND	GO GREEN AUTOS NEW ZEALAND LIMITED First Respondent
AND	GREEN FIELD LIMITED Second Respondent
AND	TETSUO (TERRY) NOZAWA Third Respondent
AND	HAYATA UCHIDA Fourth Respondent

Member of Authority:	Nicola Craig
Representatives:	Ruth Katsui and Ben Anderson, counsel for the applicant Tetsuo (Terry) Nozawa representing himself and for the first respondent Hayata Uchida representing himself and for the second respondent
Investigation Meeting:	8, 9 and 24 May 2024 in Auckland and by audio-visual link
Submissions (and further information received):	At investigation meeting and 16 July 2024 from the applicant 7 June 2024 from the first respondent 7 June 2024 from the second respondent
Determination:	17 October 2024

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Ryo Watanabe is a Japanese national who worked in New Zealand from early January 2023 as a mechanic in a workshop operated by Go Green Autos New Zealand Limited (Go Green).

[2] The identity of Mr Watanabe's initial employer in New Zealand needs to be determined. Go Green accepts it was Mr Watanabe's employer for some of 2023. Green Field Limited (Green Field) is a Japanese registered company connected with Mr Watanabe's move to this country. Green Field and Mr Watanabe signed an agreement, referred to in translation from Japanese, as a consignment agreement.

[3] Mr Watanabe was told from 1 May 2023 that he should not come into work, seemingly because he did not yet have a work visa. On 27 June 2023 his work visa was issued. Initially Go Green's representative did not agree to him returning to work and there is a question about whether he was dismissed. Later, agreement was given for his return to work but the parties became embroiled in communications without Mr Watanabe actually working or being paid.

[4] On 15 September 2023 Go Green's lawyer wrote that "any decision" to terminate was during a 90-day trial period and previous advice stands with the relationship having been terminated for performance related issues.

[5] Mr Watanabe sought interim reinstatement to his employment with Go Green which the Authority granted.¹ Go Green did not implement that, as set out below.

[6] Mr Watanabe raises grievances that he was disadvantaged by unjustified actions, unjustifiably dismissed and is owed remuneration. Go Green says Mr Watanabe was its employee on a fixed term agreement but he was dismissed under a valid trial period. Green Field says it had a contractor relationship with Mr Watanabe which was cancelled.

Parties

[7] Earlier the Authority dealt with Tetsuo (Terry) Nozawa for Go Green with Mr Nozawa also making some contact for Green Field.

¹ *Ryo Watanabe v Go Green Autos New Zealand Limited and Green Field Limited* [2024] NZERA 52.

[8] Leave was given for Green Field to be served with the statement of problem in Japan. This occurred. No statement in reply was received from Green Field but Hayata Uchida participated fully in the substantive investigation meeting representing Green Field.

[9] At that investigation meeting the Authority raised that the amended statement of problem sought orders that the following people were liable under s 142Y of the Employment Relations Act 2000 (the Act) as persons involved in breaches of employment standards:

- (a) Mr Nozawa as director of Go Green;
- (b) Mr Uchida as shareholder of Go Green and executive of Green Field;
and
- (c) Hiroyuki Oku as shareholder of Go Green and executive of Green Field.

[10] Mr Nozawa and Mr Uchida agreed to go ahead with those matters being heard. They are thus joined under s 221 of the Employment Relations Act 2000 (the Act) as parties to this proceeding. Mr Oku is based in Japan, has not been in contact with the Authority and was not present at the investigation meeting. In those circumstances I decided not to proceed at that point with the issues regarding him. Mr Watanabe is able to pursue Mr Oku but would need to apply for him to be joined as a party and Mr Oku would need to be given a right to be heard before a decision is made on his joinder.

Authority's process

[11] The investigation meeting was held on 8, 9 and 24 May 2024 in Auckland. Mr Uchida for Green Field attended the investigation meeting by audio-visual link from Japan. The Authority received affirmed affidavits from Mr Watanabe and Mr Nozawa for the interim reinstatement application, which were also considered as part of the substantive investigation. Mr Nozawa also provided further written material which was taken as his witness statement for that investigation.

[12] Mr Watanabe, Mr Nozawa and Mr Uchida gave evidence under oath or affirmation at the investigation meeting. The Authority was assisted by an interpreter of the Japanese language.

[13] All parties provided submissions at or after the investigation meeting.

[14] As permitted by s 174E of the Act this determination has not recorded everything received from the parties but has stated findings of fact and law, expressed conclusions and specified orders made as a result.

The issues

[15] The issues to be investigated are:

- (a) Who was Mr Watanabe's employer/s over his work time in New Zealand?
- (b) Was Mr Watanabe disadvantaged by unjustified action of Go Green and/or Green Field regarding:
 - (i) bullying;
 - (ii) discrimination; and
 - (iii) making disciplinary allegations without process?
- (c) Was Mr Watanabe unjustifiably dismissed by Go Green and/or Green Field?
- (d) If a personal grievance is established, what remedies (if any) should Mr Watanabe receive including consideration of reinstatement, lost wages (including holiday pay and other entitlements), accommodation allowance, compensation under s 123(1)(c) of the Act and contribution?
- (e) If not covered above, does Go Green and/or Green Field owe Mr Watanabe unpaid wages, including holiday pay, other entitlements and accommodation allowance?
- (f) Did Go Green and/or Green Field breach their duty of good faith to Mr Watanabe and if so, should penalties be imposed?
- (g) Were Mr Nozawa and/or Mr Uchida persons involved in breaches of employment standards?

Connections between the companies

[16] Mr Watanabe describes Go Green and Green Field as affiliated companies, using that term broadly.

[17] Go Green was initially incorporated in April 2020 with Mr Uchida as sole director and shareholder. At that point Mr Uchida provided a New Zealand address. In October 2020 another person was briefly the sole director before being replaced by Mr Nozawa the following month. Mr Uchida had introduced Mr Nozawa to the business. Mr Nozawa took up a shareholding and later Mr Oku did as well.

[18] Mr Nozawa's understanding is that Mr Uchida and Mr Oku were both investors in Go Green.

[19] Mr Uchida describes Green Field's vision as supporting mechanics in Japan who want the opportunity to work overseas. It sold vehicles from Japan to businesses in other companies and provided servicing. Go Green was set up as one of the companies which Green Field supplied mechanics to. Some cars found by Green Field were sent to Go Green, with others being sent to another car business in Auckland.

[20] Mr Nozawa told the Authority he did not have anything to do with Green Field and was not required to report to it. He was not based at the Go Green workshop and had relatively limited involvement with the company's operations.

[21] Mr Uchida described Go Green as paying a fee of consignment to Green Field. It has to make a profit in order to pay Green Field back. Mr Nozawa described his role as being to familiarise the staff member from Japan with New Zealand business. All the Go Green mechanics came from Japan.

[22] Mr Oku is described as the representative for Green Field in the consignment agreement and signed documents on its behalf.

Japanese appointment practices

[23] The Authority received evidence from witnesses about appointment practices in Japan as these were potentially connected with what happened with Mr Watanabe's appointment. Perhaps not surprisingly there was some disagreement in this evidence as it came from the parties rather than anyone independent.

[24] Mr Uchida describes Japanese companies looking for temporary staff who start as contractors. If they prove satisfactory they can be re-contracted as a full time employee. After clarification with the interpreter, Mr Uchida identified that the contracting arrangement could be part time or casual contractor. The reference to "part time" seemed overlapping with "casual" or "temporary", with those who were satisfactory being moved onto "full time" or "permanent".

[25] Mr Watanabe did not have the same understanding of a difference in Japan between a full time or permanent employee and a part time employee.

Mr Watanabe's initial engagement

[26] Mr Watanabe was an experienced mechanic having worked in Japan on a freelance or self-employed basis. He wanted to work overseas.

[27] Green Field advertised in Japan on-line for mechanics to work overseas. The standard ad used over three years included (in translation):

Recruitment and job opportunities at GREEN FIELD, LLC [Working abroad]
Automobile mechanic level 2 and above* with immigration support

Contracting (freelance)
Vehicle mechanic / Joint-stock company GREEN FIELD

- ✓ Venture businesses
- ✓ Trial period available
- ✓ Permanent employment available
- ...
- ✓ New business

[28] Mr Uchida told the Authority that the first two lines in the ad are free-writing, where Green Field chose what to enter. The "Contractor (freelance)" entry was an option which Green Field chose to select. The advertising system had prompts which he thought were supposed to make things clear and specific. Mr Uchida considers the ad very clear.

[29] Mr Uchida describes this ad as indicating from the Japanese perspective that they were looking for someone to work overseas on consignment agreement, effectively on a "freelance" basis. The reference to "[p]ermanent employment available" was Green Field's plan for employment with the local company (in this case with Go Green) if they performed well. Whilst I accept there may be a different legal context, from a New Zealand perspective it was not clear from the lay out or wording that the reference to permanent employment was further down the track, if things worked out.

[30] On the other hand Mr Watanabe's evidence was he thought the ad proposed an employment relationship.

[31] Mr Watanabe was interviewed, likely twice online and then in person. The first interview was conducted by Mr Uchida and possibly Mr Oku.

[32] Another man I identify as Mr N joined for subsequent interviews or meetings. Mr N is a director of a New Zealand company which sold cars and offered vehicle

servicing. I refer to that company as I Co. A substantial amount of Go Green's business came from I Co. The exact nature of the connection between I Co, Green Field and Go Green was difficult to pin down.

[33] Mr Uchida describes the expectations of Japanese and New Zealand customers being very different, with Mr N to work closely with Mr Watanabe to help get him over the barrier of working in a different country. Green Field had previous mechanics who had experienced the initial barrier, including with communications and technical issues.

[34] On 13 November 2022 Mr Uchida instructed Mr Watanabe to check about a working holiday visa. However, it turned out Mr Watanabe was too old for that visa. Mr Watanabe says he was told to come to New Zealand on a visitor's visa, work for the first three months here on that visa and after that Go Green would issue him with a work visa.

[35] Mr Uchida's evidence was that the initial absence of a work visa was covered by Green Field's consigning or outsourcing to the mechanics rather than a local company being involved. Go Green's experience had been that qualified mechanics would work in a supported environment, apply for a work visa within three months of being in New Zealand and that would be granted within about a month. They could then work by themselves for a New Zealand company (like Go Green). Mr Nozawa was not involved in Mr Watanabe's appointment, the arrangements between Green Field and Mr Watanabe or his immigration situation.

Consignment agreement

[36] In December 2022 at different times Mr Watanabe and Mr Oku on behalf of Green Field, signed the consignment agreement. This was a standard agreement used by Green Field for the mechanics it sent overseas.

[37] Mr Uchida gave Mr Watanabe the agreement to sign at the airport when Mr Watanabe was about to fly to New Zealand. Mr Uchida describes not having a chance to provide the document earlier but the two reading it together at the airport. Mr Watanabe's description is of being given the agreement a few hours before his plane was due to leave and asked to sign it before he left.

[38] Under this agreement Green Field consigns Mr Watanabe the "whole work" related to the "New Zealand Affiliated Corporation Go Green Autos New Zealand

Limited”, including but not limited to maintenance work. Mr Watanabe was to be paid in Japanese yen deposited into a Japanese bank account. He describes this as initially because he did not have a New Zealand bank account and because he was being sent by Green Field for the first three months like a contractor.

[39] The jurisdiction provision in the consignment agreement identifies the place of Green Field’s head office as the court of first trial jurisdiction. For completeness it is noted that there was no objection by Green Field to having this matter, or its part of it, dealt with in New Zealand nor suggestion that Japan would be the more suitable place.

Mr Watanabe’s start in New Zealand

[40] Mr Watanabe began work here on 4 January 2023. Mr Watanabe was based at Go Green’s workshop and initially had accommodation there too. Also present was a Green Field and/or Go Green representative I refer to as Mr M. He handed over to Mr Watanabe what was involved.

[41] Mr Uchida describes Mr Watanabe as needing support to help him settle in, with there being lots of issues. This included his application for a visa.

[42] Mr Watanabe recorded his hours of work and sent them monthly to Mr Uchida who arranged for payment to be made to him. Mr Uchida describes the pay being based on a daily rate of seven or eight hours’ work. There was some adjustment if more hours worked. No tax was deducted.

[43] I Co was not required to provide work to Go Green with Mr Uchida indicating that more work would be provided if I Co was pleased with Go Green’s work or less if performance was not so good.

[44] Mr Uchida describes issues arising with Mr Watanabe’s work including its speed and accuracy, his communication and how quickly he was able to trouble shoot difficulties. Mr N reported to Mr Uchida that the work was challenging for Mr Watanabe. Mr Watanabe’s evidence was that he was unaware of these concerns.

[45] Mr Uchida had weekly remote meetings with Mr Watanabe and refers to sharing issues of performance sales.

[46] Another mechanic I refer to as Mr U was sent in April 2023 by Green Field to work at Go Green. Mr Uchida’s explanation was that he had been told by Mr Nozawa

that Mr Watanabe's visa was not sorted out and thus he could not legally work in New Zealand.

[47] Mr Uchida refers to Mr U being concerned about Mr Watanabe's work. Again Mr Watanabe says he was not told about this.

[48] Mr Uchida accepts that it is hard to give negative feedback and acknowledges that people have got challenges. I find that the regular discussions between Mr Uchida and Mr Watanabe were about the business's performance in a way that did not make it clear to Mr Watanabe that there was criticism of his performance implied. The focus was on the organisation's earnings.

The Go Green employment agreement

[49] Mr Watanabe arrived here on a visitor's visa which was to expire around the end of March 2023. The consignment agreement was also for a three-month term, which presumably would have ended in either very late March or early April.

[50] Lead by an immigration adviser, preparations were made for Mr Watanabe to apply for a work visa, with Go Green supporting the application.

[51] On 25 March 2023, via the immigration advisor, Go Green's job offer letter and employment agreement were provided to Mr Watanabe. Mr Uchida refers to being sent these documents shortly before that, with some urgency. He would normally have taken them to his lawyer but did not because of the time pressure. He had a query about his ability to sign for Go Green as he was only a shareholder, not a director of that company. However, he did sign both through electronic signature.

[52] The offer was that Mr Watanabe would start as Go Green's chief mechanic as soon as his visa was approved, as Go Green understood Mr Watanabe could not work without an (appropriate) visa. The letter states that the offer is to:

... capitalise on your specialist mechanic skills and business skills as RYO Auto Engineering as seconded from its associated company, Greenfield Co. Ltd in Japan.

Since you formally commenced a short-term contract as a senior mechanic/mechanical consultant at the RYO Auto Engineering as the director of RYO Auto Engineering on 6 January 2023, we have been constantly impressed with your high level of expertise, commitment and hard work, highly beneficial to our business. ... in recognition of your outstanding work

performance, we welcomed you to our team at Greenlane (*sic*) Co Ltd in Japan as a trusted employee as of 1 March 2023.

[53] The reference to 1 March was sourced from the immigration advisor's advice that for visa purposes Mr Watanabe need to be employed by the local company, with Mr Uchida then specifying the 1st of the month. RYO Auto Engineering was a trade name Mr Watanabe used in Japan, not in New Zealand. The reference to Greenlane Co Ltd was agreed to be a typo.

[54] In the offer letter Go Green offers to make every endeavour to demonstrate Mr Watanabe is required for this position with the immigration office. Remuneration at \$29.66 per hour was to be paid into Mr Watanabe's New Zealand bank account.

[55] The agreement is specified to be for a period of 12 months with the commencement date being when Mr Watanabe's work visa is approved by Immigration New Zealand. The reason identified for having a fixed term is to "help put Go Green ... in orbit by providing short-term operational assistances as a seconded chief mechanic from Greenfield Co Ltd."

[56] When asked, Mr Uchida told the Authority that the 12-month period was incorporated by the immigration advisor and he is not sure he was aware of that at the time the document was signed.

[57] Mr Uchida explains the positive comments about Mr Watanabe in the offer letter, despite his evidence of being informed about performance issues. The immigration advisor explained the situation was quite tricky and said he would draft the letter for Mr Uchida to sign. Mr Uchida wanted to be supportive of Mr Watanabe, recognising that people have got challenges.

[58] Also around this time I Co was reportedly bringing in a larger number of cars but instead of this flowing to an increase in Go Green's sales figures, Go Green's earnings were decreasing. Mr N worked with Mr Watanabe to try to show him how to operate but Mr Uchida did not think that worked. Green Field decided to send an additional mechanic, Mr U, to New Zealand, the idea being that Mr Watanabe and Mr U could try to resolve the situation together.

Mr Watanabe's work continues

[59] After the agreement was signed, Mr Watanabe continued working at the workshop despite his work visa not having been obtained. His original visitor's visa seems to have expired around 1 April 2023 with an interim visa on visitor conditions being granted while he waited for his work visa to be approved.

[60] Mr Uchida was aware of Mr Watanabe's continued work. He became confused when there was no sign of Mr Watanabe's work visa coming through in the usual course. An additional document was required for immigration purposes which Mr Watanabe had to provide.

[61] Mr Watanabe says that (at some point) he too became concerned and told Mr Uchida that he thought he was working illegally as he had no work visa. He reports Mr Uchida rejecting that and saying there was no problem.

[62] Likely in April 2023, Mr Uchida was told by Mr N about hearing Mr Watanabe had ADHD and a serious matter in Japan in his past resulting in regulatory agency involvement.

[63] In about mid or late April Mr Uchida queried Mr Nozawa about the possibility of withdrawing Mr Watanabe's visa application as he had an impression that Mr Watanabe's performance was not good. Mr Nozawa passed on to Mr Uchida the immigration advisor's advice that once processing, the visa application cannot be withdrawn and they should wait until the visa was issued. Mr Uchida told Mr Nozawa they would wait until the visa was granted and then tell Mr Watanabe to leave or quit the job.

[64] Mr Watanabe recalls Mr Uchida ringing on 17 April 2023 and asking if Mr Watanabe had a disability, particularly ADHD.² Mr Watanabe said yes. His evidence was Mr Uchida saying he could not leave (or trust) the job to someone with a disability and yelling at Mr Watanabe. Mr Uchida said they would discuss this matter further.

[65] Mr Uchida accepts that ADHD was mentioned but was more concerned about the other matter in Mr Watanabe's past. He explains feeling shocked and surprised when he received this information from Mr N and Mr I, questioning why Mr Watanabe

² ADHD - Attention Deficit Hyperactivity Disorder.

did not tell him directly. He understands these matters were the reason it took so long to process Mr Watanabe's visa application, with the visa expected rather sooner.

[66] Mr Uchida indicates that he would have supported Mr Watanabe in a different way if he had known the ADHD. Mr Watanabe's position was that there was no obligation on him to make use of his Japanese disability certificate in relation to any particular job.

[67] I accept that Mr Uchida raised his voice, being irritated and concerned about these two matters he had just heard about from the client.

[68] Likely a few days later Mr Watanabe emailed Mr Uchida and Mr Oku asking them to sign a certificate of employment which the immigration advisor had drafted. Mr Watanabe was renewing his passport and seeking proof of "enrolment" (in translation from Japanese). Mr Uchida declined to sign. His initial explanation to the Authority was because Mr Watanabe was not an employee. This subsequently expanded to Mr Uchida not being updated on the visa process, not knowing anything about Mr Watanabe's past situation, there being two mechanics but issues which needed to be sorted out about Mr Watanabe's performance.

Mr Watanabe given cancellation notice

[69] Mr Uchida had heard reports of tensions with I Co and Mr N. One concerned a car he understood Mr Watanabe purchased from I Co or Mr N. Mr Watanabe told the Authority he had swapped a car he owned with one from I Co. Other points of apparent tension were about Mr Watanabe borrowing a motor bike from Mr N and using an I Co carpark, as the two businesses' premises were now nearby. Mr Watanabe says Mr N gave him permission to use the bike. Mr Uchida saw a conflict of interest if Mr Watanabe was purchasing off I Co, a customer of Go Green. Mr Uchida's evidence was that he had repeatedly asked Mr Watanabe to stop "this situation", as he could not work with someone who does not listen.

[70] On 1 May 2023 Mr Uchida told Mr Watanabe not to come into work anymore because he was on an interim visa and should not be working. The following day Mr Watanabe went back into the workshop to finish a few tasks but did not work after that.

[71] Green Field issued a notice of cancellation of the consignment agreement dated 3 May 2023, with Mr Oku as its representative. Mr Uchida passed on that notice to Mr

Watanabe. The notice stated that Mr Watanabe's company was in default although, on the face of the translated consignment agreement, the agreement is with Mr Watanabe personally. The default is referred to as work being below par, customer complaints, misrepresentation (regarding ADHD and the other) and the agreement's duty to report. The notice requires Mr Watanabe to return to Japan and if he does not, the document will be notice of termination.

[72] Mr Nozawa's evidence was he had received a few calls from Mr N about Mr Watanabe's car being in an I Co parking space. After a couple of calls Mr N told Mr Nozawa that he had given Mr Watanabe permission to park there and said he did not want to be involved. Mr Nozawa understands there were different slants to the picture given to him by Mr N compared to that given to Mr Uchida.

[73] Other than the 17 April call, Mr Watanabe does not accept that any of the "default" issues were raised with him before the notice was issued.

[74] Mr Watanabe told the Authority he did not take the cancellation as a dismissal notice as the consignment agreement had finished on 31 March. That date had already passed. His understanding was that as of the end of March he was "promoted" (to chief mechanic) as a full time employee of Go Green. The termination from Green Field was thus of less significance.

[75] On 6 May 2023 Mr Watanabe messages Mr Uchida that, according to the notice:

...even if I don't return to Japan, I feel like my contract is being cancelled at this point... I have been seconded to Go Green as a full time employee of Greenfield since March 1st. Since I am an employee, I believe that a business outsourcing contract does not apply. ...

[76] He asks whether for his employment with Go Green the termination or contract is valid. Mr Uchida replies including:

Regarding employment at GO GREEN AUTOS, we are not in a position to hire.

Either way, the contract for both GO GREEN AUTOS GREENFIELD (*sic*) had ended.

[77] However, two days later Mr Uchida (seemingly after the immigration adviser said they could not cancel the visa application) emailed Mr Watanabe that Go Green will contact him again after the visa is secured. Mr Watanabe responds that he will

proceed with the visa application and notes that Mr M had given him permission to use the carpark.

[78] Mr Watanabe's conclusion around this time was that when his visa is granted he could start working again.

[79] Mr Watanabe sought payment for his actual time worked. He was unpaid for April work and the very start of May despite sending his hours through to Mr Uchida. Mr Uchida told the Authority he had a question about whether Mr Watanabe had completed the agreed job, so payment was not made. He emailed Mr Watanabe about whether the company's risk had been resolved, with reference to the cancellation notice. Emails about that continue into June. Mr Watanabe asked on 5 June about payment for the accommodation/rent allowance with figures provided. Mr Uchida responded including saying that there was not an obligation to pay the costs of Mr Watanabe's stay if he ignored the cancellation notice.

[80] Green Field eventually paid for Mr Watanabe's April/May time in August 2023.

[81] Mr Nozawa was not aware that the notice of cancellation was being sent but did know that Mr Watanabe was not being paid wages after he was sent home from the workshop.

Visa received

[82] On 27 June 2023 Mr Watanabe's work visa application, to allow him to work for Go Green, was approved by Immigration New Zealand. He asked Mr Uchida whether he could come into work now, with Mr Uchida responding that the first agreement (presumably the consignment agreement) was a fixed term and had already expired on 31 March 2023.

[83] Mr Uchida and Mr Watanabe spoke the same day with, according to the transcript, the latter confirming he had received his visa, including in the discussion (in translation):

Mr Watanabe - Is it okay if I return to work tomorrow?

Mr Uchida - No, you can no longer be hired at Go Green.

Mr Watanabe - Does that mean I'm fired?

Mr Uchida - That's right ...

[84] However, the discussion then continued for some time including Mr Watanabe mentioning he had Mr N's permission about the car. At one point he asks, if he is going to be fired could a letter please be sent. Later Mr Uchida says "let's communicate in writing" and "the rest will be in writing".

[85] On 30 June 2023 Mr Uchida told Mr Watanabe by email that a notice of dismissal was currently being prepared. However, nothing was forthcoming.

[86] At this stage Mr Watanabe approached lawyers, who raised personal grievances for unjustified disadvantage and discrimination on his behalf. Reference was also made to "potential unjustified dismissal" although Mr Watanabe is said to consider that he has not been officially dismissed given that he did not receive written notice of termination. The grievance letter of 14 July 2023 included a request that Mr Watanabe be allowed to return to work. Following are many emails about the issues with I Co and what Mr N's instructions were.

[87] Around this time Mr Uchida spoke to Mr N as I Co needed mechanics but Mr N said he did not want to be involved.

[88] Mr Watanabe maintained his desire to return to work.

[89] On 3 August 2023 Mr Nozawa confirmed in writing that Mr Watanabe would be able to return to work. Mr Uchida told the Authority Go Green needed another mechanic and Mr N said he was still in good communication with Mr Watanabe (so there was no problem there).

[90] A string of emails was exchanged between Mr Watanabe's representative and Mr Nozawa for Go Green. Go Green broadly outlined some concerns and indicated it did not want to hire Mr Watanabe at one point but was advised by its immigration advisor that it had to. Go Green was willing to have Mr Watanabe return if issues could be resolved, including by an expression of remorse from him.

[91] Go Green obtained representation and indicated it wished to investigate Mr Watanabe's disadvantage grievances. Mr Watanabe's lawyer communicated he was ready to work and saw him as being on suspension.

[92] The parties agreed to attend mediation, which was set for 28 September.

[93] On 12 September 2023 Go Green's lawyer wrote that Mr Watanabe's work visa was issued on 27 June and that is therefore the commencement date of his employment with Go Green.

[94] Go Green's lawyer also wrote on 15 September indicating that any termination of employment could not be used as a basis for a personal grievance due to a trial period in the employment agreement which was effective from the date of commencement of the employment relationship (being 27 June 2023). Further, "GGA's previous advice stands and the employment relationship between GGA and Mr Watanabe has been terminated for performance related issues, pursuant to the provisions contained in the Trial Period".

[95] Mediation occurred but resolution was not reached. Further grievances were then raised on Mr Watanabe's behalf with reinstatement sought. He then applied to the Authority.

[96] At some point Mr Watanabe applied for a migrant exploitation visa.

Closure of workshop

[97] The interim reinstatement determination of 31 January 2024 refers to Mr Nozawa's mentioning at a case management conference of the workshop being closed but there being nothing in the sworn evidence provided subsequently about that.³

[98] Evidence was received at the investigation meeting on that point. At about the end of November 2023 Go Green closed its workshop, reported to be largely the result of the loss of trust of Mr N and I Co leading to a substantial downturn in business. Proceedings by Mr Watanabe was described by Mr Uchida as one of the reasons they decided to close. It was perhaps surprising that having Mr U, who apparently worked well, did not prevent the downturn.

[99] Mr Nozawa's sense was that at least part of the reason for the decision to close the workshop was as a result of Mr Watanabe's statement of problem being lodged in the Authority on 23 November 2023. It was not his decision.

³ Above at n 1, at [76].

Interim reinstatement ordered

[100] The Authority ordered Go Green to reinstate Mr Watanabe on an interim basis to employment on the payroll by 5pm on 2 February 2024.

[101] Mr Watanabe's representative emailed Mr Nozawa for Go Green noting reinstatement to the payroll and providing bank account.

[102] Mr Nozawa accepts that Go Green did not comply with the order - there was no money left in the company to be able to pay.

Mr Watanabe's status from January 2023

[103] I move now to analyse the issues. Was Mr Watanabe an employee from the start of 2023 and if so, who was his employer?

[104] Employees are those employed to do any work for hire or reward under a contract of service.⁴ The real nature of the relationship is the critical focus when deciding whether someone is an employee or an independent contractor.⁵ I must consider all relevant matters including those which indicate the intention of the parties, although statements made by them about the nature of the relationship are not determinative.⁶

[105] What needs to be undertaken is a broad nuanced assessment, including an examination of the control exercised, whether the person was integrated into the organisation and whether they were really operating a business on their own account.

Intention of the parties

[106] According to Mr Uchida Green Field never hired a full time employee, with all those sent overseas being on consignment agreements like that of Mr Watanabe.

[107] The advertisement has features suggestive of both contracting and employment. Mr Uchida's view is that this was a process from a temporary (contracting) role to a permanent (employment) one, reflecting Japanese experiences. That was not Mr Watanabe's experience in Japan. In the absence of independent evidence and with a

⁴ The Act, s 6(1).

⁵ The Act, s 6(2).

⁶ The Act, s 6(3).

lack of clarity about the usage of terms, this context does not assist much in resolving the status question.

[108] Mr Uchida told Mr Watanabe during the airport meeting in late December 2022 that the assignment agreement was in place for “the sake of it” or something similar and another agreement would be put in its place with Go Green later.

[109] Although Mr Watanabe says he did not really understand the consignment agreement’s reference to being assigned the whole work related to the New Zealand affiliated corporation, he was told it would be up to him how he ran the business in New Zealand.

[110] The consignment agreement is largely set up as a contractor basis although some points referred to below are suggestive of an employment relationship. The parties did not seemingly place reliance on the consignment agreement’s reference to a three month term with Mr Watanabe’s work continuing and no mention of the expiry.

[111] The immigration situation sees Mr Uchida initially asking Mr Watanabe to seek a working holiday visa, suggesting an employment relationship was envisaged. Then the intention was that once Mr Watanabe obtained his New Zealand work visa he would be in an employment relationship.

[112] Mr Nozawa says from Go Green’s understanding there was some contractual arrangement between Green Field and Mr Watanabe once Mr Watanabe arrived in New Zealand. He thought Green Field had dispatched Mr Watanabe for three months and once Mr Watanabe’s visa of three months expired and he had obtained a work visa he would work for Go Green.

[113] Despite being the sole director of Go Green, Mr Nozawa was not shown the offer of employment letter and employment agreement from Go Green around the time they were sent to Mr Watanabe. He was likely aware that an offer had been made at least during April 2023.

Control and integration

[114] Mr Uchida described Green Field dispatching mechanics. The plan actually more envisaged a move from Mr Watanabe being in a supported employment-type relationship to one where he was in charge of the Go Green business.

[115] The consignment agreement did not reflect the reality of the work – Mr Watanabe was not in charge of the whole work of Go Green. There were other staff. They all undertook the Go Green work.

[116] Support and some degree of supervision was also provided by Mr N with Mr Uchida describing Mr N working side by side with Mr Watanabe. The other mechanic and Mr N reported to Mr Uchida on Mr Watanabe's performance and conduct.

[117] Mr Uchida described a package of support although noting a support offer came from I Co or Mr N, rather than being sought by Green Field or Go Green.

[118] Mr Watanabe was orientated to the role by the other person working at the Go Green workshop, Mr M. From his New Zealand arrival Mr Watanabe received instructions from Mr M and later from Mr U when he arrived. There is an example of Mr Uchida cancelling one of his regular meetings with Mr Watanabe in April 2023 messaging him to "follow [Mr U's] instructions to carry out your work".

[119] Mr Uchida met weekly with Mr Watanabe for discussion including feedback from others. Mr Watanabe had to update Mr Uchida in a detailed manner, for example, about how many cars came in for warrants of fitness.

[120] Mr Watanabe was expected to be available regular business hours each day, from 9am to 6pm. He submitted time sheets indicating the hours he worked and tasks undertaken. During Mr M's time with the business until March 2023, Mr Watanabe let Mr M know if he was going to have a day off.

[121] The day to day work Mr Watanabe undertook was car maintenance, customer service and the like which matched the job description provided at the end of March with the Go Green employment agreement.

[122] The workshop was equipped so Mr Watanabe did not have to supply his own tools or computer. Mr Watanabe was able to use Go Green's courtesy car but it had to be available for customers. Mr Watanabe was paying for his own petrol when he used the car.

[123] Free accommodation was available for the first two and a half months, as part of the first workshop, with Mr Watanabe not having to pay for any electricity or water.

[124] Customers were billed in Go Green's name.

[125] Both Mr Uchida and Mr Nozawa gave evidence of being concerned about Mr Watanabe having a direct contractual relationship with their main client I Co. Mr Nozawa admitted in cross examination that he felt Mr Watanabe had a duty of fidelity such that he should not have contractual relationships with a (Green Field/Go Green) client. Mr Uchida considered it a conflict of interest for Mr Watanabe to have contractual relationships with clients about vehicles. This suggests a level of integration in keeping with an employment relationship and limits Mr Watanabe's ability to conduct work outside that for Green Field/Go Green.

Economic reality

[126] The consignment agreement specified a daily rate for maintenance services provided to Green Field not dependent on the number of vehicles serviced. No tax was deducted, Mr Uchida saying that was because this was an outsourced contract. The Japanese equivalent of GST, at the 10% rate, was added.

[127] The prices for work were already set without Mr Watanabe being entitled to change them. He did not have to pay rent for use of the workshop.

[128] Mr Watanabe was not operating his own business, did not invoice Green Field and did not carry on work for anyone else during his time working at the Green Field workshop.

Conclusion

[129] Green Field utilised the contractor model in the consignment agreement to get mechanics to operate away from Japan, without initially being on a work visa. However, here there was a high level of control over Mr Watanabe and integration into the Green Field/Go Green business. Mr Watanabe did not get to the point of running his own business even if that was Green Field's ultimate goal.

[130] I have considered whether Mr Watanabe was employed by Go Green in this initial period but conclude that was not how the arrangement was set up. There were certainly elements of connection with that company but ultimately I conclude that the relationship was with Green Field from the time Mr Watanabe began work in January 2023.

[131] Further, the real nature of the relationship from the start of 2023 was employment between Green Field and Mr Watanabe.

Move to Go Green

[132] Go Green made Mr Watanabe an offer of employment as chief mechanic and provided an employment agreement. That was signed by Mr Uchida on behalf of Go Green.

[133] The commencement date for the employment is “when employee’s work visa application is approved by Immigration New Zealand”. That did not occur until 27 June 2023, almost two months after Mr Uchida told Mr Watanabe to depart from the workshop.

[134] I conclude that as of 27 June 2023 Mr Watanabe’s employment relationship with Go Green commenced although only in the sense that he was a person intending to work under s 6(1)(b)(ii) of the Act as he was never actually permitted to start work with Go Green. Examined below is when Green Field’s employment relationship with Mr Watanabe finishes which helps determine whether the two companies were his joint employers at any point.

Disadvantage issues

[135] Having heard and considered the evidence, I have concluded that the better approach is to deal with the questions of bullying, discrimination and pursuit of disciplinary allegations without process as part of the dismissal claim. The events Mr Watanabe relies upon occurred in the two weeks leading up to and at the time he was told to depart from the workshop and the themes continue to feature in Green Field and Go Green’s refusal to have him working.

[136] The Authority is entitled to find a grievance of a type other than that alleged.⁷ I conclude that Mr Watanabe was unjustifiably disadvantaged by Green Field and Go Green’s action in refusing to pay him from 1 May 2023 onwards. The remedies for that grievance are best globalised along with other grievances established.

⁷ The Act, s 122.

Dismissal

[137] All involved seem to have understood that the consignment agreement's term ended on 31 March 2023, which was the point at which Mr Watanabe's visitor visa also expired. He obtained an interim visa while a specific purpose work visa was being obtained. His work continued.

[138] On 1 May 2023 Mr Uchida told Mr Watanabe not to come into work. Mr Uchida followed up with the 3 May letter cancelling the consignment agreement. Subsequent communications were somewhat suggestive of dismissal having occurred but include the statement that as Mr Watanabe was in the process of applying for a visa, Mr Watanabe should contact him when it was issued. There were certainly on-going discussions about the events concerning I Co and Mr N, that suggest the parties saw some ongoing relationship between them.

[139] Mr Watanabe's request for notice of dismissal in writing was not met, despite Mr Uchida emphasising that communications needed to be in writing.

[140] Mr Nozawa then stepped into communications with Mr Watanabe, advising on 3 August 2023 that he could return to work for Go Green although this did not eventuate.

[141] On 15 September 2023 there was notice from Go Green's lawyer that the employment relationship between it and Mr Watanabe had been terminated for performance related issues.

[142] Determining when dismissal occurred is not a straightforward matter but I conclude:

- Mr Watanabe had an employment relationship with Green Field which continued after the notional expiry of the consignment agreement
- The sending of the consignment agreement cancellation notice in May 2023 did not complete the employment relationship with there being indications after that that Mr Watanabe should get in contact
- Go Green's employment relationship with Mr Watanabe then commenced on his receipt of a work visa on 27 June 2023

- An employment relationship was then running with both companies as joint employers.⁸ There was a sufficient degree of relationship between Green Field and Go Green, through Mr Uchida, to establish the element of common control.⁹
- Mr Watanabe was dismissed by both companies when he received the lawyer's letter of 12 September 2023.

Trial period does not impact

[143] Go Green points to Mr Watanabe's employment being covered by a trial period and thus him not being able to bring an unjustified dismissal personal grievance claim against it.

[144] A strict approach is taken to the application of trial periods as they remove what would otherwise be the employee's right to bring an unjustified dismissal personal grievance.¹⁰

[145] There is a serious question about whether the trial period was applicable - employment with the company Go Green was not to commence until the visa was obtained, namely 27 June 2023, and Mr Watanabe did not work for the company after that time. Mr Nozawa expressed the view that Mr Watanabe had not commenced work, under Go Green's employment agreement, when he communicated with Immigration New Zealand as did Go Green's legal representative in his letter of 12 September 2023.

[146] Trial periods are to allow the employer to give the employee "a go... [and] assess to determine a prospective employee's suitability for permanent employment".¹¹

[147] There are other grounds to doubt the applicability of the trial period, as set out in the interim reinstatement determination, including if I am wrong on Go Green not

⁸ *Hutton v Provencocadmus Ltd (in rec)* [2012] NZEmpC 207 at [98], citing the Supreme Court of South Australia's decision in *Golden Plains Fodder Australia Pty Ltd v Millard* [2007] SASC 391 at [35] and [69].

⁹ *Orakei Group (2007) Ltd v Doherty* [2008] ERNZ 345 at [56].

¹⁰ *Smith v Stokes Valley Pharmacy (2009) Limited* [2010] NZEmpC 111.

¹¹ Hansard, Employment Relations Amendment Bill 2008 — First Reading, Hon Kate Wilkinson, Volume 651, page 318.

being in an employment relationship with Mr Watanabe's employer prior to 1 or 27 March 2023.¹²

[148] I also conclude that the trial period was not validly utilised. The trial period specifies that the employee may be dismissed on notice or payment in lieu. No notice period is identified in that clause but the termination clause requires one month's notice in writing.¹³ Mr Watanabe did not work out a notice period and was not paid out one month's pay.

[149] The trial period does not prevent Mr Watanabe's dismissal claim.

Fixed term not valid

[150] Go Green also relies on Mr Watanabe's employment being limited to a fixed term period. There are restrictions on the use of fixed term employment agreements.¹⁴ Before the parties agree that an agreement will end on a specific date the employer must:

- (a) have genuine reasons based on reasonable grounds for specifying that the employment will come to an end in that way; and
- (b) advise the employee in writing of when and how their employment will end and the reasons for their employment ending in that way.¹⁵

[151] Genuine reasons cannot be to exclude or limit the employee's rights under the Act or to assess suitability for permanent employment.¹⁶

[152] Mr Watanabe was advised via the offer letter and the agreement that his employment with Go Green was for a fixed term and the period after which it would end.

[153] The difficulty for Go Green is whether there was a genuine reason for Mr Watanabe's employment to end in 12 months. The reason given in the agreement is to:

¹² Above at n 1, at [52].

¹³ Employment agreement, cl 11.

¹⁴ The Act, s 66.

¹⁵ The Act, s 66(2) and (4).

¹⁶ The Act, s 66(3).

... help put Go Green ... in orbit by providing short-term operational assistances as a seconded chief mechanic from Greenfield Co Ltd.

[154] The assessment of the reason is not assisted by the agreement's signatory being uncertain as to whether he knew or intended it to be for one year.

[155] Mr Nozawa was not aware of the terms of the agreement at the time it was offered.

[156] The reason is to provide operational assistance to essentially work for, Go Green. The agreement does not specify why operational assistance is only needed for 12 months.

[157] It may be suggested that the period related to Mr Watanabe's specific purpose work visa which included a condition that the work was for a fixed term. But the agreement does not state that. Even if that is the underlying reason, the Employment Court had made obiter comments that a temporary work visa might not be considered to be a genuine reason for a fixed term.¹⁷

[158] In addition Mr Uchida queried Mr Watanabe on 27 June 2023 whether his visa had been granted for two years, likely indicating the parties did not intend for the a 12 month term to be enforced.

[159] In conclusion the reason identified for the fixed term has not been established as a genuine one and so the fixed term is not valid. Mr Watanabe had on-going employment.

Unjustified dismissal personal grievance

[160] Having rejected these arguments the question becomes was the dismissal by both companies unjustified?

[161] The test is what a fair and reasonable employer could have done under s 103A(2) of the Act.

[162] The Authority must consider whether before dismissing:

- (a) having regard to the resources available, the employer sufficiently investigation the allegations;

¹⁷ *Restaurant Brands Ltd v Gill* [2021] NZEmpC 186.

- (b) raised its concerns with the employee;
- (c) gave the employee a reasonable opportunity to respond; and
- (d) genuinely considered the explanations.¹⁸

Process

[163] Although there were extended ad hoc communications, there was a lack of proper disciplinary process. Initially what Mr Uchida saw as performance issues with Mr Watanabe were portrayed as concerns about sales performance. The message Mr Watanabe got was – sales are down, work harder.

[164] No formal advice was given to Mr Watanabe that his employment was in jeopardy before a process commenced nor clear written advice of what the concerns were. The matters outlined in the consignment agreement cancellation notice were insufficiently specific. There was a reluctance to clarify issues with Mr N and I Co. Indicative of the lack of investigation was the confusion at the Authority's investigation meeting about what the problems actually were with the car purchase or swap and motor bike.

[165] Green Field and Go Green did not adequately investigate, let Mr Watanabe know what its concerns were, adequately hear and consider what he had to say and follow up on points he raised.

Reasons for dismissal

[166] The lawyer's letter of 15 September 2023 does not specify the grounds for dismissal other than "performance issues", relying instead on the trial period. The only written communication attempting to capture the reasons for concern is the 3 May 2023 consignment agreement cancellation notice which mentions:

- A complaint from I Co about not being able to get in touch with Mr Watanabe
- A complaint that Mr Watanabe had re-leased a vehicle leased from I Co without Green Field's permission and damaging that vehicle
- Using I Co's carpark without permission

¹⁸ The Act, s 103A(3).

- Misrepresentation about past history and health problems.

[167] The notice is well before the 15 September letter which confirms dismissal. But Mr Watanabe had not undertaken any work for Green Field/Go Green since the notice so events before then are very largely the basis for the decision. The first item in the list above appears not to have been pursued later as there is little or no material about it in the parties' communications over the next few months.

[168] Mr Nozawa's evidence was of Mr Uchida telling him that Mr Watanabe was dismissed because of the ADHD, the matter in his history and performance issues.

(i) *Issues with I Co*

[169] Noone at the Authority's investigation meeting could provide a particularly coherent account about the specific issues with I Co or Mr N. It appears different slants may have been provided to different people. For example, Mr N also confirmed in writing to Mr Watanabe, when he offered to pay for the carpark, not to worry about it as it was not a problem.

[170] In the early months of 2023 Mr Nozawa thought that the carpark and motor bike issues were the problem but more recently had understood Mr Uchida's concerns were about Mr Watanabe having direct arrangements with I Co, an important Go Green client.

(ii) *Misrepresentation*

[171] Mr Watanabe did not disclose his ADHD initially to Green Field. However he was not asked to make any medical declaration and so from a New Zealand legal perspective, did not misrepresent himself to Green Field.

[172] The explanation about the Japanese subsidy to assist those employing people with disabilities seems somewhat remote to the situation – Mr Watanabe was not going to be working in Japan, he was not set up initially by Green Field as an employee and Mr Uchida was not aware until later about Mr Watanabe's disability certificate.

[173] Mr Nozawa's perception is that Mr Watanabe's ADHD did not affect his work.

[174] Green Field did not ask Mr Watanabe to declare aspects about his past history in his application process or before he departed Japan.

[175] Mr Watanabe reports disclosing his health situation to the doctor for the purposes of his assessment for immigration purposes and did tell Immigration New Zealand about his past history.

[176] In addition the 27 March 2023 letter of offer which Mr Uchida signed (on behalf of Go Green) records that they were aware of Mr Watanabe's other historical personal issues, not the ADHD matter.

Conclusion

[177] There are insufficient grounds on which to justify a dismissal. Therefore Mr Watanabe was unjustifiably dismissed by his joint employers Green Field and Go Green.

Remedies

[178] For his personal grievances Mr Watanabe seeks lost wages and compensation under both s 123(1)(c)(i) and 123(1)(b).

[179] Reinstatement is no longer sought. I withdraw the order for interim reinstatement made in the first determination.

Lost wages

[180] Mr Watanabe seeks lost wages for 53 weeks from 3 May 2022 until the end of the original period set for the investigation meeting (9 May 2023). At \$29.66 per hour for average of 40 hours a week as set out in the employment agreement, that totals \$62,879.20 gross. And annual leave, if 8% is included, gives a total of \$67,909.54 gross.

Mitigation

[181] Attempts to find other work were difficult. On his specific purpose work visa Mr Watanabe was tied to working for Go Green. He could not legally work for anyone else.

[182] On some work visas it is possible to relatively easily seek a change of condition relating to work for a particular employer. However, I accept submissions for Mr Watanabe that that was not the case here. Reliance is placed on Immigration Instructions which the Minister of Immigration has the authority to certify pursuant to

s 22 of the Immigration Act 2022.¹⁹ The visa Mr Watanabe was on was for a specific purpose or event. Another employer would be unlikely to meet that specific purpose or event.

[183] Mr Watanabe did apply for a Ministerial special direction to allow his specific purpose work visa to continue

[184] Mr Watanabe has applied for a migrant exploitation visa but as at the time of the investigation meeting that was still being processed. Such a visa is open, thus not tied to a particular employer. Mr Watanabe also obtained an additional driving licence category for class 2 trucks so he could extend his employment prospects.

[185] Mr Watanabe attempted to obtain work or at least payment through his interim reinstatement application. That was granted but still did not result in him actually being paid.

[186] Mr Watanabe was also hospitalised for a period of some six weeks for reasons relating to his employment, so was unable to work in that period anyway.

[187] This is an exceptional situation. Mr Watanabe spent a lot of money and effort in trying to get himself to a position where he was lawfully able to work in New Zealand but failed to achieve that goal by the time of the investigation meeting. This includes instructing representatives. He looked for work and took reasonable steps to mitigate his loss.

Conclusion

[188] Subject to consideration of contribution below, Green Field and Go Green are liable to pay Mr Watanabe \$62,879.20 gross in lost wages for time he did not work from May 2023 onwards. On top of that they should pay holiday pay at the rate of 8% which totals \$5,030.34.

¹⁹ <https://www.immigration.govt.nz/opsmanual/#64777.htm>

Compensation under s 123(1)(c)(i)

[189] Mr Watanabe moved his life to New Zealand with the intention of working in the workshop. He refers to spending thousands of dollars on immigration advisor and immigration filing fees. He only had four months' work.

[190] Mr Watanabe's visa and financial situation have been and potentially continue to be precarious. He was unable to work as outlined above. He had the prospect of deportation hanging over his head at one stage. He believes Mr Nozawa's comments to Immigration New Zealand caused this although Mr Nozawa denies that there was any intention on his part for that outcome, saying he only answered the questions asked.

[191] In addition Mr Watanabe identifies a factor in his background which he understandably considers may make getting a new visa and/or gain new employment difficult.

[192] Being unable work has put severe financial pressure on him, necessitating loans from friends and family members to try to make ends meet and cover his legal costs. He did later obtain legal aid.

[193] Mr Watanabe acknowledges that he became mentally unwell. He knew he was not complying and that affected him mentally.

[194] Mr Watanabe was isolated, not knowing people in New Zealand other than those he had come into contact with through work. The You Tube videos referred to in the interim reinstatement determination illustrate desperation on Mr Watanabe's part.

[195] Mr Watanabe was hospitalised for almost six weeks after he suffered an acute mental health event. Health documentation around that time records him as being of no fixed abode. I am satisfied his health event is related to the situation he found himself in, in New Zealand, without work and without support. He describes the warning that he needed to leave the country as the last straw.

[196] The failure by Go Green to reinstate Mr Watanabe on an interim basis to the payroll as ordered by the Authority is another factor contributing to his injured dignity.

[197] Mr Watanabe has been debilitated, from a health, financial and immigration perspective, by the companies' actions. He is alone in New Zealand with little English

ultimately abandoned from a practical perspective by those who brought him over. The harm to Mr Watanabe is extreme.

[198] I am considered whether to make separate awards against Green Field and Go Green. However, the consequences of the companies' actions are intertwined and it is difficult to separate the impact of the actions by the two, including due to Mr Uchida acting on behalf of both at points.

[199] An award of \$30,000 is warranted before the contribution assessment.

Compensation under s 123(1)(b)

[200] Mr Watanabe incurred significant costs both in obtaining his specific purpose work visa with Go Green and in remaining in New Zealand following his dismissal, despite the prospect of deportation. He should be reimbursed for these costs as had he not been dismissed the costs incurred in applying for the specific purpose work visa would not have been wasted.²⁰ His struggles to remain in New Zealand would not have occurred if he had not been dismissed.

[201] Invoices have been provided regarding the amounts incurred on immigration advice, legal advice related to the immigration situation, translation of documents for immigration purposes and immigration filing fees. These amount to a total of \$22,648.75.

Contribution

[202] The evidence was unsatisfactory to establish that a deduction should be made for Mr Watanabe's conduct to remedies which would otherwise be awarded to him. To do so blameworthy conduct which contributed to the situation giving rise to the dismissal needs to be shown.

[203] The situation regarding Mr N's seemingly inconsistent messages to Mr U, Mr Nozawa and Mr Watanabe does not assist regarding the matters relating to I Co.

[204] I have found Mr Watanabe did not misrepresent his health or other personal situation.

²⁰ *MGK Homes Ltd v Yoon* [2023] NZEmpC 217.

[205] Orders for grievance remedies are made below.

Accommodation reimbursement

[206] Turning now to arrears issues.

[207] At the interview/s in Japan there was discussion about the Auckland workshop coming with accommodation so Mr Watanabe did not need to worry about accommodation. Mr Uchida acknowledged the situation was a “bit vague” about whether there was an offer to pay accommodation – Green Field knew there was available at the current workshop. There was nothing in the agreement about accommodation. Mr Uchida says there was a chance of moving premises so no guarantee of accommodation available at new premises.

[208] Mr Uchida told the Authority Green Field could not pay until it had information where and how much rent was being charged. When it was pointed out to him in cross examination that Mr Watanabe had emailed with the amount sought, Mr Uchida replied that a receipt or invoice was expected. This supports there being an understanding that Green Field would pay for Mr Watanabe’s accommodation at least for a time. Mr Watanabe accepted in cross examination that he should have provided his accommodation contract to Mr Uchida.

[209] Green Field should pay the accommodation for Mr Watanabe from 18 March 2023 until shortly after Mr Watanabe’s visa was obtained at which point he should have started work with Go Green who had not committed to the payment.

[210] At half of the actual cost of \$165 per week for 14 weeks totals \$1,155.

Leave

[211] Green Field did not pay Mr Watanabe for holiday pay on the work he did between January and May 2023. Using the 8% figure, based on the exchange rate Japanese yen to New Zealand dollars at the start of the investigation meeting, Green Field owes Mr Watanabe \$1,170.68 gross for holiday pay.

[212] Mr Watanabe did not claim pay for four public holidays in the January to April 2023 period although these would usually have been working days. At the same exchange rate, Green Field owes Mr Watanabe NZ\$859.66 for public holiday pay.

Good faith

[213] Good faith issues have been satisfactorily dealt with under Mr Watanabe's personal grievance claims and remedies awarded there. I do not to reconsider them here.

Orders

[214] I order that:

- (a) Green Field Ltd and Go Green Autos Ltd are jointly and severally liable to pay Ryo Watanabe the following sums within 28 days of the date of this determination:
 - (i) \$62,879.20 gross in lost wages;
 - (ii) On top of that figure they are to pay holiday pay at the rate of 8% which totals \$5,030.34;
 - (iii) \$30,000.00 without deduction as compensation; and
 - (iv) \$22,648.75 for reimbursement of immigration related expenses.
- (b) Green Field Ltd is to pay Mr Watanabe within 28 days the following sums:
 - (i) NZ\$1,170.68 gross as holiday pay;
 - (ii) NZ\$859.66 gross as public holiday pay; and
 - (iii) \$1,155.00 without deduction for accommodation.

Persons involved

[215] Mr Watanabe seeks findings that Mr Nozawa and Mr Uchida are, under s 142W of the Act, persons involved in breaches of employment standards. This means that if wages and other money payable to Mr Watanabe are not made by the relevant company the individuals may be pursued for payment under s 142Y.

[216] Mr Nozawa is the sole director of Go Green and has been for Mr Watanabe's whole period of employment. He was not involved in paying Mr Watanabe as Mr

Watanabe received no pay from Go Green, never getting to the point of actually starting work for that company. Mr Nozawa was involved in making salary payments to others for Go Green from its New Zealand bank account. He is also involved in making other payments on behalf of that company.

[217] However, it is not established that there was a breach of employment standards by Green Field so no order is made regarding Mr Nozawa.

[218] Mr Uchida is an executive of Green Field and a shareholder of Go Green. He signed Mr Watanabe's letter of offer and employment agreement with Go Green so was acting on behalf of that company. He was the person authorising the making payments on behalf of Green Field to Mr Watanabe. Here, he made decisions about whether those payments would continue and delayed the payment for April 2023 until August 2024. Regardless if Mr Uchida is a director of Green Field or not, I conclude that he occupied a position in that company to exercise significant influence over the management or administration of it.²¹

[219] In breach of employment standards obligations there is unpaid holiday pay owing for the period from January to April 2023, the holiday pay, public holiday pay and accommodation allowance which is Green Field's responsibility. I find Mr Uchida is a person involved in those breaches under s 142W of the Act as he aided and abetted or procured the breaches by failing to arrange for payment.

[220] If Green Field defaults in payment for those amounts then Mr Watanabe may pursue Mr Uchida personally for payment of them.

Costs

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

[222] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Watanabe may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Green Field and Go Green then has 14 days to lodge any reply

²¹ The Act, s 142W(3)(e).

memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

Nicola Craig

Member of the Employment Relations Authority