

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 280  
3295139

BETWEEN	SEOKTAE JUNG Applicant
AND	P & S FIRE CONTRACTING LIMITED Respondent

Member of Authority:	Robin Arthur
Representatives:	Seungmin Kang, counsel for the Applicant Kenton Starr, counsel for the Respondent
Investigation Meeting:	19 and 20 February 2025 in Auckland and by audio-visual link
Determination:	19 May 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Seoktae Jung applied to the Authority for findings he was unjustifiably dismissed from his role as a Junior Alarms Installer for P & S Fire Contracting Limited (PSFCL). He said the dismissal occurred on 24 February 2024, when he was sent away from a work site after an argument with the company's sole director and shareholder Pushpinder Singh. Alternatively, Mr Jung said he was unjustifiably suspended that day and, after an unfair disciplinary process, then unjustifiably dismissed on 8 March 2024.

[2] Mr Jung said he had also experienced an earlier unjustified disadvantage, because PSFCL failed to "proactively provide rest and meal breaks". Raising this issue had, he said, stoked tensions between him and Mr Singh which formed part of the events that led to his dismissal.

[3] PSFCL denied acting unjustifiably. It relied on its description of events in a letter, sent on 8 March 2024, which advised Mr Jung he was dismissed for serious misconduct because of Mr Singh's findings that:

On Saturday 24 February 2024 at the Grand Chancellor Hotel work site you yelled and swore at me, threw a ladder towards me (not hitting me), threatened to bankrupt me, and threatened to kill me if I caused you to be sent back to Korea.

You had communicated with a client (Argus Fire) about matters that were confidential and sensitive to P&S Fire Contracting Limited in breach of the terms of your employment agreement.

[4] The letter said Mr Singh considered the employment relationship was irreparably broken, referring to a submission from Mr Jung about the prospect of dismissal. It quoted Mr Jung as saying his actions were "frustrative expression" because he was very unhappy with his employment and he did not want to return to work because he had "lost trust and confidence" in Mr Singh.

[5] Mr Jung sought remedies of reinstatement, lost wages and compensation for distress he said was caused by not getting proper meal breaks, his dismissal or suspension on 24 February and confirmation of his dismissal through a disciplinary process and announcement of its final outcome in the 8 March letter. He also sought orders for penalties for alleged breaches of good faith, his employment agreement and the obligations to provide breaks.

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

[6] In investigating Mr Jung's application the Authority received written and oral evidence from the following five witnesses:

- Mr Jung;
- Mr Singh;
- Marcos Alves, a former PSFCL employee who had worked with Mr Jung and was involved in the events of 24 February 2024, as well as earlier discussions with Mr Jung and Mr Singh about work breaks;
- Damian Laing, a site supervisor for NZ Strong Group Limited, the project manager for the central Auckland hotel construction site where the events of 24 February occurred; and
- Marty Vroegop, a former manager of Argus Fire Protection, which had sub-contracted PSFCL to provide labour only services to help carry out Argus'

contract to install alarm systems at the central Auckland site where the events of 24 February occurred. Mr Vroegop attended the disciplinary meeting Mr Singh held with Mr Jung on 5 March about those events.

[7] Each witness came to the investigation meeting and answered questions, under affirmation, from me and the parties' representatives. Mr Jung's attendance was by audio-visual link from South Korea, where he is now resident. He was assisted in answering questions by an Authority-appointed interpreter of Korean.

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

[9] Findings are made and conclusions expressed on the evidential standard of the balance of probabilities. This is an assessment of what was more likely than not to have been the case. Differences of account in the written and oral evidence given by the witnesses may be resolved by reference to documents made at the relevant time rather than relying on the subsequent recall and assertions of witnesses.

[10] In this case text and email messages exchanged between Mr Jung and Mr Singh assisted with assessing some of their evidence. What Mr Alves, Mr Laing and Mr Vroegop each had to say was also helpful in providing context and descriptions of interactions between Mr Jung and Mr Singh. From Mr Alves and Mr Laing this involved evidence about what they saw and heard during some parts of events on 24 February, which was useful in assessing what Mr Jung and Mr Singh each said about what happened.

### **The issues**

[11] The issues requiring investigation and determination were:

- (a) Did P&S Fire Contracting Ltd (PSFCL) unjustifiably disadvantage (or breach the terms of employment of) Mr Jung by failing to provide rest and meal breaks?
- (b) Did PSFCL unjustifiably dismiss or disadvantage Mr Jung by dismissing or suspending him on 24 February 2024?

- (c) In confirming Mr Jung's dismissal on 8 March 2024, and how that decision was made, had PSFCL done what a fair and reasonable employer could have done in all the circumstances at the time?
- (d) Should either party contribute to the costs of representation of the other party?

[12] Because of conclusions explained later in this determination it was not necessary to set out issues relating to the remedies and penalties Mr Jung has sought.

### **The employment context**

[13] Mr Singh incorporated PSFCL in 2021. Through the company he operates a business providing fire alarm installation services. At the times relevant here its workforce comprised Mr Singh, Mr Jung and Mr Alves. They were working across around five sites for various clients, including as a sub-contractor for Argus Fire on three sites. On some days Mr Singh, Mr Jung and Mr Alves worked together at a site. On other days they might be at different areas on the same site or working at a different site for some or all of the day.

[14] PSFCL recruited Mr Jung from South Korea. He was employed under an accredited employer work visa with a five-year term. Associated visas allowed for his wife and son to come to New Zealand.

[15] He signed his employment agreement in November 2023, with an agreed start date in January 2024. At Mr Jung's request Mr Singh provided some casual work in December, which included work on Saturdays. Mr Jung recorded his hours for that work in WhatsApp messages, for which he was paid in cash. Mr Singh said the cash payments were made because Mr Jung did not initially have an IRD number or a bank account.

[16] Mr Jung provided an IRD number and bank account number on 20 December. From 3 January 2024 onwards his wages were paid through the company payroll system.

### **Meal and rest breaks**

[17] PSFCL's employment agreement with Mr Jung included the following clause about breaks:

The employee is entitled to paid rest breaks and unpaid meal breaks based on the number of hours worked. Rest breaks are 10 minutes and meal breaks are 30 minutes. Breaks will be taken at times agreed to by the employer and employee or when the law says breaks must be taken.

[18] The law referred to in that clause is found in s 69ZD and 69ZE of the Act. This provides for a 10-minute paid rest break and a 30-minute meal break for work periods between 4 and 6 hours and two 10-minute paid rest breaks and a 30-minute meal break for work periods of between 6 and 8 hours. The timing of those breaks is also specified, except where an employee and employer have agreed on other times for breaks.

[19] Mr Jung said he did not get proper meal or rest breaks while working for the company from December 2023. This changed somewhat, on his account, after he raised this concern with Mr Singh on 20 January 2024. He said after that date they got a 15-minute break in the mid-morning and a lunch break at noon during weekdays but, in the afternoon, had no break. On Saturdays, however, he said they still did not get breaks because, although Mr Singh pressed them to get their work done by noon and go home, they often worked till the mid-afternoon without a break. He said the problem with breaks while working Saturdays was “the underlying issue” for the incident on 24 February 2024.

[20] Mr Singh accepted there had been a difference of understanding and information about breaks, with Mr Jung raising the issue on 20 January 2024. He said this occurred partly because he was often at a different site or somewhere else on the same site so sometimes did not know if Mr Jung and Mr Alves had taken breaks. On other occasions he thought they preferred to keep working so they could finish and go home earlier instead of taking a meal break.

[21] He said some break times were also adjusted to fit around the break times taken by other trades staff working on site, using the pause in their work as a time to get unimpeded access to areas of the site.

[22] Mr Singh thought he had resolved Mr Jung’s concern through their discussion on 20 January. In an extended WhatsApp message sent to Mr Jung and Mr Alves after they had finished work that day, Mr Singh wrote:

Thank you guys for today, sorry for any miscommunication or misunderstanding I would like to make it very clear from now, it’s better you guys take a break @ 12 pm every day. If we are working on Saturday just 7 to 12 for example then it’s your choice. But next time on any Saturday work

if we are working long hours it's better you guys stop @ 12 pm for half an hour lunch break. I hope it makes clear if you guys have any doubt or any questions please speak to me directly, don't be afraid to any ask me anything. ... Every normal day if we start 7am then stop 10 am for 15 minutes. And 12 or 12:30 pm for half an hour break.

[23] Mr Alves confirmed, in his evidence, there had been a disagreement between Mr Jung and Mr Singh when they were working on Saturday, 20 January, because Mr Singh wanted to carry on working, to get finished, and Mr Jung had wanted to take the break. However, Mr Alves also said they had only skipped rest or meal breaks "once or twice" on other occasions in order to finish early. He said he brought his own lunch to work and encountered no problems in taking his rest or meal breaks. He also considered Mr Jung's concerns were resolved by Mr Singh, on the basis described in Mr Singh's 20 January text message.

[24] Weighing the evidence of Mr Jung, Mr Singh and Mr Alves about whether breaks were taken, along with what text message exchanges showed, there was nothing to substantiate this was a significant or ongoing issue after 20 January.

[25] Mr Jung had not established a grievance of unjustified disadvantage regarding arrangements for breaks. While arrangements may initially have less than ideal, Mr Singh had addressed and resolved Mr Jung's concern when it was raised.

### **Underlying tensions**

[26] There were, however, two other aspects of the working relationship which did contribute to later developments.

[27] Firstly, Mr Singh was concerned Mr Jung was struggling with some tasks, appeared not to be as experienced in installation work as he had claimed when seeking the job, and was not communicating clearly in WhatsApp messages he sent to Mr Singh about work done. Although both spoke English, the fact that Mr Jung's first language was Korean and Mr Singh's home tongue was Punjabi meant some of what was written in their messages might not have been clear to the other party.

[28] For his part Mr Jung was concerned about what he saw as blunt comments Mr Singh had made about the quality of his work. They had talked on 24 January about those concerns. Mr Singh thought this had cleared the air. In a message he sent Mr Jung later that day Mr Singh wrote: "I am glad we talked today about the important

things and I really trust I will see the improvements. And also I am glad you are understanding now a lot.”

[29] A second tension in the working relationship concerned Saturday work. Mr Jung had become unhappy about ongoing Saturday work, particularly if it extended into the afternoon. While nominally voluntary, Mr Jung felt under pressure to agree if asked to work on Saturdays. Mr Singh had work completion deadlines to meet in the company’s contracts with clients at each site and was relying on his two staff, Mr Jung and Mr Alves, to work the extra hours needed. In a WhatsApp message to Mr Jung and Mr Alves on 16 February, thanking them for good work done at a site that day, Mr Singh also referred to being “definitely under pressure” until work at three sites was completed and said: “So please be mindful that there is a tornado coming”.

### **Heated outburst on 24 February**

[30] These tensions about working weekends and clear communication about work done contributed to a heated outburst from Mr Jung on 24 February, sparking the disciplinary process that ended with his dismissal.

[31] On the morning of Saturday 24 February Mr Jung and Mr Alves travelled together into work at the central Auckland site, arriving around 8am. They then both went up to level 9 with Mr Singh to drop off some equipment. Mr Alves stayed working on level 9 while Mr Jung, carrying a ladder, and Mr Singh walked down to level 4.

[32] Mr Singh wanted to look at work Mr Jung had done on level 4 on 20 February. At 4.06pm on that day Mr Jung had sent Mr Singh a text saying “finish now”. Mr Singh was not sure whether that meant Mr Jung was finishing work for the day or had finished all the work that needed to be done on that level.

[33] This doubt arose because of an incident in the previous week where Mr Jung had sent a message saying some work at another site was “done”. Mr Singh had told the client that the work was complete but was then annoyed to later find out that part of the work remained undone.

[34] On 24 February, however, Mr Singh found the work Mr Jung had been doing on Level 4 on previous days was finished. He told Mr Jung he was checking that work because of the confusion on 20 February about Mr Jung’s message that some work had

been “done” when it was not. This led to an exchange of words where Mr Jung said Mr Singh should be thankful that he completed the work and Mr Singh responded it was not about being thankful but about having good communication so correct updates could be given to the client.

[35] Mr Jung, according to Mr Singh, then became angry, yelling and swearing at him, telling him to “fuck off”. Mr Singh said Mr Jung had also thrown the ladder he was carrying along the corridor towards Mr Singh.

[36] Mr Singh said he told Mr Jung: “I can’t work with you like this” and walked away. He said Mr Jung followed him along the corridor and said: “Okay, I will see you in the court”.

[37] Mr Singh said he was afraid for his safety and, while walking down the stairwell, tried to phone the Police but the call was disconnected.

[38] In Mr Jung’s account, their discussion on Level 4 was preceded by Mr Singh also referring to “frivolous issues” about work that needed to be fixed on other levels. Mr Jung said Mr Singh was angry at him because the work on level 4 was finished, saying Mr Jung always gave him wrong information.

[39] Mr Jung said that, after several minutes of being criticised, “I could no longer tolerate it and raised my voice saying ‘what the fuck are you doing’ and ‘let’s meet in court’”. He said he only said those words “out of frustration arising from all the rest and meal break issues throughout my employment”. He denied throwing the ladder at Mr Singh.

[40] When he reached the ground level Mr Singh went to the site office and called Mr Laing to come outside. Around this time Mr Jung also arrived at the ground level and was yelling at Mr Singh.

[41] Mr Singh phoned Mr Alves, asking him to come to the ground floor, and then phoned the Police. While waiting for the Police to arrive, Mr Singh waited in the site office. He also called Mr Vroegop, of Argus Fire, telling him what had happened.

[42] Outside Mr Alves spoke with Mr Jung, standing between him and where Mr Singh was in the site office.

[43] The accounts of Mr Alves and Mr Laing confirmed Mr Jung had continued yelling angrily at Mr Singh, including when Police officers arrived at the scene and interviewed them separately.

[44] In an email Mr Jung sent on 29 February he confirmed that on 24 February he had shouted at Mr Singh, saying that he would “bankrupt” him and “if you destroy my life, I will kill you”. He denied throwing the ladder at Mr Singh.

[45] A Police record of the officers attending the work site on 24 February said they had arrived at 8.38am, were told contradicting accounts of what had happened, checked no one had sustained injuries and left after advising both parties to seek legal advice regarding employment-related issues.

[46] After the Police left Mr Laing, in his capacity as the site manager, told Mr Jung, Mr Singh and Mr Alves to “go home and come back Monday and start again”.

[47] Before leaving the site Mr Singh asked Mr Jung to hand over keys to a work van. The van was parked at Mr Alves house as Mr Jung had driven there that morning so they could travel into the central city together in the other work van used by Mr Alves. Mr Jung agreed to give the van keys to Mr Alves. Mr Alves dropped him off at home.

### **Disciplinary process**

[48] After talking with Mr Vroegop, and getting some legal advice, Mr Singh sent an email to Mr Jung later that day. In his email Mr Singh said Mr Jung was “suspended, with pay, pending a formal investigation” because the events at the site earlier in the day were “dangerous, threatening and unacceptable”. He asked Mr Jung to confirm availability for a meeting at 8am on Tuesday, 27 February and said he was welcome to seek advice and bring a representative to the meeting.

[49] Mr Singh’s message said he and Mr Vroegop from Argus Fire would attend the disciplinary meeting and Mr Jung could be dismissed “if we conclude that serious misconduct has occurred”.

[50] At Mr Jung’s request the disciplinary meeting was delayed until 5 March. He was accompanied by an advocate and, by telephone connection, his counsel also attended. Mr Singh was there with Mr Vroegop and PSFCL’s counsel.

[51] In the intervening days Mr Jung had written to Mr Vroegop, giving his view of the issues and criticising Mr Singh and the company's business practices. In a sentence which became significant later, Mr Jung referred to the five construction sites where PSFCL was working at that time.

[52] Mr Vroegop responded to Mr Jung's with a question: "Is there anything in additional [sic] you want to talk to me about other than [sic] what you already explained.?"

[53] Messages Mr Singh sent before the 5 March meeting identified the disciplinary issue as being Mr Jung's behaviour on 24 February but also said Mr Singh was concerned to have learned that Mr Jung had been "communicating directly" with Mr Vroegop of Argus Fire. Mr Singh told Mr Jung it was "inappropriate" to contact a client about workplace matters and said he understood Mr Jung had "disclosed sensitive and confidential information about [PSFCL]'s other clients to Argus Fire". He said this allegation would also be discussed at the disciplinary meeting.

### **5 March meeting**

[54] Notes of the meeting record Mr Jung's advocate asked if Mr Vroegop had any authority over Mr Singh. Mr Vroegop replied that he had authority over PSFCL's contracts with Argus, but not over its employment decisions, and was concerned with safety on the site and the reputation of Argus.

[55] The notes also record Mr Jung explained the 24 February altercation had begun after Mr Singh "nitpicked my work when we were checking the levels where work [was] completed". Mr Jung also confirmed that he had said "I will bankrupt you" and "if you send me back to Korea I will kill you" but said he now felt he had "made a mistake". He firmly denied throwing the ladder. His answers also indicated that he had understood Mr Singh's comment that "you cannot work for me like that" as meaning that he was being "fired".

[56] The notes also record Mr Vroegop asked "how do you feel about your future at [PSFCL]" and "do you want to continue working for Pushpinder [Singh]"? Mr Jung responded that he "won't work with Pushpinder anymore" but wanted to remain in the fire protection industry. His advocate also said that "to clarify, [Mr Jung] has lost all trust and confidence in his employment with PSFCL".

## **Disciplinary outcome and dismissal**

[57] The following day Mr Singh advised, by letter, his preliminary decision that the appropriate outcome was to dismiss Mr Jung for serious misconduct. He said the (accepted) threatening comments and (denied) throwing of the ladder were serious misconduct and Mr Jung's communication with Mr Vroegop was also serious misconduct because it risked damaging PSFCL's business interests.

[58] Mr Jung's advocate responded on 8 March to the preliminary outcome letter saying there had been no real investigation of the "underlying dynamics of this employment relationship which led up to the point of his frustrative expression" which was "taken out of context in isolation". The response also noted that it was PSFCL, not Mr Jung, who had involved Argus Fire by inviting Mr Vroegop to be part of the disciplinary process and Mr Jung had communicated with him on that basis.

[59] By letter sent later on 8 March PSFCL confirmed its preliminary decision and dismissed Mr Jung without notice for serious misconduct.

## **The test of justification**

[60] Mr Jung's claim he was unjustifiably dismissed had to be assessed in relation to both the substance of the concerns PSFCL sought to address with him in its disciplinary process and how that process was carried out.

[61] The test of justification set by the Act for making that assessment considers whether PSFCL's actions, and how it acted, met the objective standard of being what a fair and reasonable employer could have done in all the circumstances at the time.<sup>1</sup>

Factors in that test include:<sup>2</sup>

- (i) Whether PSFCL sufficiently investigated the allegations against Mr Jung before dismissing him;
- (ii) Whether PSFCL raised its concerns with Mr Jung and he then had a reasonable opportunity to respond to those concerns;
- (iii) Whether PSFCL genuinely considered any explanation Mr Jung gave before making any decision on a disciplinary outcome; and
- (iv) Whether there were any other factors appropriate to consider?

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<sup>1</sup> Employment Relations Act 2000, s 103A.

<sup>2</sup> Section 103(3) & (4).

[62] Defects in the process followed by PSFCL could result in the dismissal being found to be unjustified if those defects were more than minor and resulted in Mr Jung being treated unfairly.<sup>3</sup>

[63] In applying the test of justification, the Authority does not substitute its own view for that of the employer but, rather, considers whether what PSFCL did and decided was within the range of responses open to a fair and reasonable employer in that situation.

### **Suspension was not a dismissal**

[64] Mr Jung submitted he was unjustifiably disadvantaged by “being led believe” he had been dismissed at the work site on 24 February.

[65] The available evidence did not support Mr Jung’s allegation that Mr Singh told him at the work site on 24 February that he was dismissed and not to come back to work the next working day. It was Mr Laing, in his capacity as site manager, who directed Mr Jung, Mr Alves and Mr Singh to leave the site and come back on Monday. It was a common-sense directive to have those involved leave and calm down. It applied equally to Mr Singh and, in the circumstances it was made, was not an action of the employer amounting to an unjustified disadvantage.

[66] Mr Jung also submitted a *de facto* dismissal had occurred when Mr Singh asked him for the key to the PSFCL work van he used (but on that day was parked at Mr Alves’ house). Mr Singh confirmed he did ask for the key. He said he did so because he was worried that Mr Jung, in his angry state, might damage the van. Mr Jung did not, however, hand over the key. Instead, he handed it to Mr Alves to keep. In that way Mr Jung had access to the van, if he needed it to recover any personal property, and, once the workplace issues were resolved, to use it for work purposes. This provisional removal of access to the van did not amount to a dismissal.

[67] The fact of suspension was confirmed by Mr Singh’s email messages later on the day of 24 February. As Mr Jung later admitted, he had made threats of physical violence against Mr Singh. The small size of the company workforce meant ongoing contact between Mr Jung and Mr Singh would have been inevitable if he was permitted to come to work each day until the disciplinary meeting was held. In such a small

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<sup>3</sup> Section 103A(5).

business there were not likely to be any suitable alternative arrangements. Even if working on different sites, it would be necessary to have contact because Mr Singh had to supervise and check the work. The length of suspension, on pay, was also contemplated to be short. The meeting was proposed for the second working day of the coming week, allowing a day for Mr Jung to seek advice and representation beforehand. In those circumstances, assessed as they are on a case-by-case base, the suspension was not an unfair or unreasonable action, and therefore not an unjustified disadvantage.

### **A fair disciplinary process**

[68] The steps PSFCL took to initiate and carry out a disciplinary process appeared to meet at least the formal procedural requirements of the Act.

[69] There were, however, two important criticisms of what PSCFL did, and how it did so, which required some further consideration.

#### *No requirement for an independent investigator*

[70] Mr Jung submitted PSFCL should have arranged someone else to be the decision-maker, not Mr Singh, because he was both witness and decision-maker on the allegation that Mr Jung had thrown a ladder at Mr Singh. It was an important factual point because throwing the ladder, if it happened as alleged, increased the severity of the physical threat to Mr Singh during the altercation with Mr Jung.

[71] The Act, however, specifically requires examination of the sufficiency of the employer's investigation to be calibrated with "regard to the resources available to the employer". It does not necessarily require an employer such as PSFCL, with one employer and two employees, to pay for an external human resources or legal adviser to investigate the situation and make the decision. Rather, the statutory standard remains a requirement to act fairly and reasonably within the level of resources that a company of its type could deploy to its investigation.

[72] In this situation, the allegation regarding the ladder was not corroborated by an independent witness or other evidence, such as marks on a wall that might have been visible if a ladder was thrown and hit or scraped a hard surface. A fair and reasonable employer, in Mr Singh's situation, could have acknowledged his allegation was not corroborated by any third person and then opted to set it aside, relying instead on evidence about other aspects of the encounter that were either admitted (by Mr Jung,

about what he said) and what was heard by others (such as Mr Alves and Mr Laing). Well advised, that could have been a safe, sensible course.

[73] The law, however, allows for a range of responses on the spectrum of fairness and reasonableness. It was not outside that range, in this case, for Mr Singh to rely on his own account in a way that might not have been acceptable if the alleged ladder throwing was the sole disciplinary charge and he was confirming only that action. Here there were the admitted verbal threats, which amounted to serious misconduct on their own account, and were consistent with the allegation of angrily throwing the ladder. The conclusion Mr Singh reached was one, in these particular circumstances, an employer acting fairly could reasonably reach.

*Unfair criticism about contact with Mr Vroegop*

[74] Mr Jung submitted PSFCL had unfairly relied on his contact with Mr Vroegop as a second instance of serious misconduct. He correctly identified that it was PSFCL who brought Mr Vroegop into the process, with the disciplinary letter to Mr Jung implying that Mr Vroegop would be one of the decision-makers. In the first part of that letter Mr Singh referred to himself in the first person (“I”) but, after saying Mr Vroegop would attend the disciplinary meeting, continued by saying “we” could conclude serious misconduct occurred and “we” could decide to terminate your employment.

[75] In that circumstance it was not unreasonable for Mr Jung to seek to provide his side of the story to Mr Vroegop, as a potential decision-maker and as a representative of the entity for which PSFCL was working. Mr Vroegop encouraged that approach by asking, by email, whether Mr Jung wanted to tell him anything more.

[76] The disciplinary meeting notes, and his own oral evidence, indicated Mr Vroegop was also, in fact, involved as more than an observer. He gave Mr Singh some advice about how to handle the disciplinary process, from his own prior experiences as a manager. He also asked Mr Jung some pertinent questions during the 5 March meeting, including about whether Mr Jung wanted to keep working for PSFCL.

[77] PSFCL also clearly exaggerated the sensitivity of Mr Jung’s reference to five client sites in his letter to Mr Vroegop. Mr Jung disclosed no detailed or compromising information about the terms or finances of the work being done at those sites. As established by Mr Vroegop’s evidence, PSFCL’s work on three of those five sites were

for Argus Fire anyway. He knew about that work anyway. It was also no surprise to him, as he acknowledged in his oral evidence, that PSFCL did work for other clients.

[78] In that light, the company's conclusion about the second allegation could amount to an unjustifiable action. As a defect in the process, it was more than minor because the allegation was confirmed as a reason for dismissal. And, because PSFCL itself chose to involve Mr Vroegop in the process, Mr Jung was treated unfairly by the company's conclusion that he acted improperly in communicating with Mr Vroegop.<sup>4</sup>

[79] The allegation and conclusion on it did, however, need to be seen in the context of the disciplinary process and outcome as a whole. This is what the phrase "in all the circumstances at the time the dismissal or action occurred" used in s 103A of the Act contemplates.

[80] The second allegation was, plainly, an unnecessary makeweight. There was no real doubt PSFCL could have decided on dismissal for serious misconduct relying on the first allegation alone, specifically in relation to the admitted conduct. In that context no additional disadvantage to Mr Jung resulted from the second allegation. No different outcome would, on the balance of probabilities, have resulted.

### **Reasonable decisions on serious misconduct and dismissal**

[81] On his admitted conduct PSFCL's conclusions that Mr Jung committed serious misconduct by his behaviour towards Mr Singh on 24 February 2024, and should be dismissed for it, were within the range of responses reasonably open to a fair employer in all the circumstances at the time.

[82] Another employer may have taken a more lenient approach, but the law does not require PSFCL to have been more tolerant, only to be fair and reasonable in however it did respond. A particular difficulty was the lack of any contrition by Mr Jung who, in a reversal of the usual disciplinary process, declared *he* had lost trust and confidence in the employment relationship. This limited the range of responses that PSFCL could then reasonably be required to make. It did not, for instance, then have to think so much about what it could do to restore the relationship.

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<sup>4</sup> Employment Relations Act 2000, 103A(5).

[83] Accordingly, Mr Jung has not established that PSFCL acted unjustifiably in deciding to dismiss him. His application to the Authority is declined.

### **No remedies or penalties**

[84] Because of the conclusions reached, it was not necessary to consider Mr Jung's claims for remedies and penalties against PSFCL.

### **Costs**

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

[86] If unable to do so, and an Authority determination on costs is needed, PSFCL 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, Mr Jung would then have 14 days to lodge any reply memorandum. If requested by the parties, an extension of time to resolve costs between themselves may be granted.

[87] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate for the two-day investigation meeting held, unless particular circumstances or factors required an upward or downward adjustment of that tariff.<sup>5</sup>

Robin Arthur  
Member of the Employment Relations Authority

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<sup>5</sup> See [www.era.govt.nz/determinations/awarding-costs-remedies](http://www.era.govt.nz/determinations/awarding-costs-remedies).