IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE

[2025] NZERA 338
3292839

	BETWEEN	THOMAS FREW Applicant
	AND	OAKLEY'S WINDOWS & DOORS LIMITED Respondent
Member of Authority:	David G Beck	
Representatives:	Damien Pine, counsel for the Applicant Linda Mathieson, advocate for the Respondent,	
Investigation Meeting:	19 May 2025 in Christchurch	
Submissions Received:	23 May 2025 from the Applicant 23 May 2025 from the Respondent	
Date of Determination:	16 June 2025	

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Thomas Frew has been employed by Oakley's Windows & Doors Limited (OWD) in Ashburton on a full-time basis as an aluminium joinery fabricator since 22 February 2022. OWD is a small operation and the two shareholders David and Lorayne Oakley, work in the business.

[2] Mr Frew at the date of the investigation meeting was still employed but has not attended work since mid-November 2023 due to a combination of a dispute over his ongoing security of employment/hours of work and health reasons.

[3] Mr Frew is alleging actions and/or omissions of OWD have unjustifiably disadvantaged him and that good faith principles have been transgressed in the ongoing employment relationship. While currently not at work, Mr Frew has alleged that OWD have

been unreasonably conducting intrusive surveillance of him in a manner that has caused distress and allegedly in breach of privacy obligations owed to him.

[4] In contrast, OWD has cited an ongoing inability to resolve matters with Mr Frew and they suggest the surveillance was justified.

The Authority investigation

[5] At the half-day investigation meeting I heard evidence from Thomas Frew and his partner Donna Frew. David and Lorayne Oakley gave evidence for OWD. All parties provided written statements and answered questions during the investigation meeting. Given the complexity of the issues and evidence given, submissions were timetabled.

[6] As permitted by s 174E of the Employment Relations Act 2000 ("the Act"), I make findings of fact and law and outline conclusions to resolve the disputed issues and make orders but I do not record all evidence and submissions except to observe the parties assisted in giving evidence and submissions that I have carefully considered. Overall, as signalled to the parties given the unusual factual context including that although tenuous, the parties were still in an employment relationship; in investigating this matter I will be utilising s 160(3) of the Act. This provision allows the Authority to "concentrate on resolving the employment relationship problem, however described." [1]

Issues

[7] The issues to be decided are broadly:

(a) Has OWD breached any terms of employment or good faith duties owed to Mr Frew?

(b) Prior to resigning was Mr Frew the subject of employer actions and/or omissions that caused him detriment sufficient to establish a disadvantage grievance?

(c) If any of Mr Frew's claims are established what, if any, compensatory remedies or penalties should be awarded?

[1] Employment Relations Act 2000, Powers of Authority - s 160(3).

(d) If Mr Frew is successful in all or any elements of his personal grievances should the Authority reduce any remedies granted because of any contributory conduct?

(e) How costs are to be resolved.

What caused Mr Frew's employment relationship problem?

[8] Mr Frew commenced employment at OWD in February 2022.

[9] Mr Frew's job involved assembling aluminium window frames at OWD's factory alongside David Oakley and latterly a workshop manager. Mr Frew although not trade qualified, has a varied work background and is mechanically adept. OWD accepted that Mr Frew quickly picked up the job and was a productive worker. The job was full time 40 hours per week. The hourly rate paid was initially $24 that increased to $25 in September 2023.

[10] Mr Frew before commencing work signed an individual employment agreement (IEA) on 22 February 2022. Mr Frew says he was provided and paid 40 hours per week. The permissive hours of work clause indicated:

> HOURS OF WORK
>
> Your normal hours of work will be from 7am to 4pm Monday to Friday. You agree to work overtime as required.
>
> Operations may require us to extend working hours in some weeks and reduce hours in other weeks. While we agree to act reasonably, you agree to adjust your working hours as required, after consultation with you and after reasonable notice has been given.

[11] The IEA also under an initial "Terms of Employment " clause stated: "This agreement may be varied or updated in writing between us at any time" .

[12] Around late September 2023 Mr Frew acknowledged work orders were slowing down in response to election uncertainty in the construction industry and recalled Mr and Mrs Oakley advising of this during a regular Monday meeting and they suggested if matters worsened annual leave may have to be used. Mr Frew took annual leave up to 31 October but says he resolved to then offer to take a period of leave without pay to alleviate the situation. He says he preferred this as an option that would allow him to travel to Southland and assist

his father on a family farm and then he planned to take further paid leave later in the year. OWD also engaged a contractor between March-October 2023 to assist in the workshop but say they were keen to retain Mr Frew and the workshop manager in anticipation of orders picking up in early 2024.

The suggested variation

[13] The Oakleys' agreed to accept Mr Frew's offer of taking unpaid leave that they described as generous and they accepted the proposal. However, despite this seeming accord, on 7 November Mr Oakley emailed Mr Frew with a suggested formal variation to his IEA that proposed in summary that:

- The position status would change "from fulltime, Time Ongoing and Indefinite to Casual, as and when required."
- The casual arrangement would prevail retrospectively from 1 November 2023.
- Mr Frew would be paid out a final pay including accrued holiday pay on 16 November 2023.
- The casual arrangement would be "reviewed in January 2024".
- No set hours or days of work would be available but any offers of such could be declined by Mr Frew.
- Holiday pay would be paid at 8%.

[14] Lorayne Oakley who managed pay and employment related issues says OWD sought advice from their employment advocate who drafted the proposed variation. When answering my question of why the variation was necessary, given they had agreed to the leave without pay solution, Ms Oakley says she did not understand the variation was converting the job to casual and that they only wanted to retain Mr Frew once he had returned from leave without pay.

[15] In the event Mr Frew declined the variation by email of 14 November, although he conceded this was due to a concern that the pay rate offered was insufficient. Mr Frew then initiated a discussion that took place on 20 November.

20 November meeting

[16] The parties (Mr Frew and the Oakleys) met on 20 November. Although no contemporaneous notes of the meeting were taken the parties accepted that the meeting was amicable and after being unable to reach an agreement on the casual variation, Mr Frew suggested a solution was to make him redundant and this was conceptually agreed to by the Oakleys. The 20th of November 2023 was Mr Frew's last day of work after which he did not return due to the following events.

Post meeting communication.

[17] Despite indicating to Mr Frew that they were prepared to put together an offer of a redundancy compensation package, Ms Oakley says she had 'second thoughts' as they ideally needed to retain Mr Frew in employment. She says he then checked Mr Frew's employment agreement (which has no redundancy provisions), researched websites on redundancy definitions and sought further advice from OWD's advocate as she was confused on how to proceed.

[18] Unfortunately, the Oakleys did not express OWD's concerns in a timely or specific manner and after Mr Frew emailed them seeking an update on 29 November (he was by now in Southland helping on the family farm) the response by email of the same day, was:

> Hello Tom
>
> We are just confirming a few details.
>
> We will compose a redundancy letter for you to sign when you return.
>
> Thanks
>
> David Oakley
>
> Managing Director

[19] There was then a significant gap in communication that by 12 December had Mr Frew emailing for an update on the redundancy offer, noting three weeks had elapsed since their meeting. Again inexplicably, except that it was suggested this was following advice from their advocate, a letter over Mr Oakley's signature was emailed to Mr Frew later on 12 December. It failed to acknowledge Mr Frew's email and stated:

> To Tom
>
> Recently the Company has reviewed its Operation, and wish to inform you of the recommencemnt date for 2024,is: Wednesday 17th January, at 8am.
>
> Future hours of work will be adjusted if required, in accordance with your current employment contract.
>
> Ongoing Training will be initiated, giving you the ability to perform a more diverse range of tasks, in the factory, onsite and general maintenance work.
>
> Your co-operation during the downturn in Business and offer to take unpaid leave until Christmas was gratefully appreciated.
>
> Yours faithfully
>
> David Oakley

[20] Mr Frew says he was distressed by the above communication and felt misled by OWD and took time to process the situation. Mr Frew responded by email of 8 January 2024, indicating he was rejecting OWD's "offer dated 12 December 2023" and reiterated his view that he had an agreement (as per the 29 November email) to be made redundant and he stated: "I await the redundancy package offer to be email though [sic] to me". He also asked for a time sheet.

[21] I observe, that OWD's letter of 12 December above, contains no offer to Mr Frew and it is merely a statement that seeks to simply avoid the matter in dispute and is objectively an unrealistic construct.

[22] In a further letter of response of 11 January over David Oakley's name, OWD indicated:

> Dear Tom
>
> In response to your latest Email of 8 January 2024 – after seeking independent, professional advice, there is no Redundancy Package:
>
> (a) There is no Redundancy offer/Clause in your Employment Contract.
> (b) As per correspondence dated 12 December 2023, a recommencement date of Wednesday 17th January 2024 had been communicated, along with further training to be initiated to give you the ability to perform a more diverse range of tasks that aligns with any alteration to the direction of the Business, when and if necessary.
> (c) Future hours of work will be adjusted if required, in accordance with your current employment contract.
>
> Please advise if you would like to discuss the above when the Business reopens Monday 15th January after 8;30 am.

Yours faithfully

David Oakley

Director

The personal grievance

[23] Mr Frew says he did not subsequently meet with the Oakleys prior to advancing a personal grievance. Initial brief correspondence from Mr Frew's lawyer of 17 January headed "Redundancy" asked for their client's personal file in order to better advise him and noted "our client is currently on sick leave as a result of workplace issues."

[24] Mr Oakley responded by an emailed letter of 18 January, noting he had been made aware of the lawyer being appointed by Mr Frew and Mr Oakley asked: "What Are the "workplace issues" claimed by your client?" and sought clarity on the documentation the lawyer was seeking – the letter ended:

> I was advised by text message on Wednesday 17th January by your client at 7.36am: "Will not be in today, taking a sick day." Work was to commence at 8am.

[25] In response later on the same day, Mr Frew's lawyer sought specific documentation relating to the employment relationship (including the employment agreement) and noted they were aware of a previous discussion "making our client redundant" and the proposed alteration of duties or hours worked.

[26] OWD's advocate in a letter of 23 January, repeated in what was an objectively disingenuous suggestion, that OWD was unaware of Mr Frew's concerns and workplace issues (relating the latter to Mr Frew's absence on sick leave). The advocate then backgrounded matters from her client's perspective. This background was presented to suggest the initial agreement and discussion on making Mr Frew redundant had not occurred and that her client was "blindsided" by the content of the lawyer's correspondence. The letter suggested issues with Mr Frew's absence on sick leave and sought clarity on his intention of returning to work.

[27] By way of a further letter of 26 January to OWD's advocate, Mr Frew's lawyer noted documentation sought had not yet been provided and he broadly identified the personal grievance as a belief that OWD "has conducted itself in a manner likely to mislead" in breach of good faith obligations and that this had caused Mr Frew to be unjustifiably disadvantaged

and his health had been impacted by the stressful situation created. The letter then recounted background events (as traversed above) and concluded by acknowledging while there was no obligation on an employer to provide redundancy compensation, OWD's 11 January 2024 letter "ignores previous representations made to our client regarding termination of his employment" and it was not open to OWD to renege on representations made.

[28] By a response letter of 5 February, OWD's advocate provided an alternative narrative and lengthy rebuttal to the alleged personal grievance raised and suggested that Mr Frew was not engaging in constructive dialogue to maintain his reciprocal good faith obligations. The letter concluded by inviting Mr Frew to return to work "normal working hours" and sought an assurance whether Mr Frew intended to resign or return to his role.

[29] On 5 February OWD without consultation, removed Mr Frew from their payroll and processed his final pay.

[30] I was not provided with Mr Frew's response but note the parties attended two unsuccessful mediations that did not resolve matters before the matter was brought before the Authority for resolution.

[31] I record that OWD raised a potential breach of good faith against Mr Frew and sought a compensatory remedy under s123(1)(c)(ii) of the Act and a penalty. In a directions notice of 31 January 2025, Authority Member Baker, observed the former remedy only applied to an action by an employee and on the latter noted that no proper application had been made under s 135(5) of the Act within 12 months seeking a penalty. Member Baker noted that s 124 of the Act was a better vehicle for assessing any contributory conduct of an employee – I concur with this analysis.

[32] In the interim up to the investigation meeting, Mr Frew has remained on sick leave and was put back on OWD's payroll system and, he provided the Authority with medical information governing his ongoing absence.

[33] On the latter issue, that I do find somewhat extraordinary, the Oakleys said at the investigation meeting they have not initiated a process to end the employment relationship on the potential ground of medical incapacity as they fear a further personal grievance from Mr Frew and were looking to the Authority to resolve this issue. This included OWD not

asking Mr Frew for any further details of his medical situation and not pressing him further on a prognosis of a return-to-work date.

[34] At the investigation meeting, Lorayne Oakley said OWD was willing to have Mr Frew back at work but David Oakley contradicted this statement saying it was not feasible because of the personal grievance.

The harassment/privacy breach claims

[35] While Mr Frew was on sick leave it is alleged that the Oakleys intruded on his right to privacy by photographing him at various community events involving a hobby interest they all shared during the period April – July 2024.

[36] Loryane Oakley sought to justify these actions as a legitimate concern that Mr Frew's leave of absence on medical grounds was not genuine. However, despite making such observations and seeking comment from community group members, OWD waited until 27 February 2025 before disclosing the images and statements they had assembled. The disclosures accompanied an email of 27 February from OWD's advocate to Mr Frew's lawyer that were provided to assess their client's credibility and capacity to work while on unpaid sick leave. While inviting Mr Frew's response, rather than seek to meet and discuss OWD's concerns, the images were provided to "help progress talks in mediation effectively."

[37] The disclosures included a statement by a community member that Loryane Oakley had informed her that Mr Frew was absent from work due to ill health. This elicited a further personal grievance from Mr Frew, communicated by his lawyer in an email of 26 March 2025. The grievance indication noted the photos were unauthorised in breach of Mr Frew's privacy, and so was the disclosure of his health status and asserted the actions constituted unwarranted harassment. In a further twist prior to the investigation meeting on 14 May as part of a common bundle of documents, OWD disclosed a social media exchange with a community member of observations of Mr Frew at a community event. Initially the exchange was redacted but when I directed the full exchange be produced it revealed Lorayne Oakley had made a derogatory comment about Mr Frew.

Paid sick leave and payment on public holidays.

[38] Mr Frew says that from the period 22 August 2024 he became entitled to a further 10 days paid sick leave but OWD withheld this payment until 15 May 2025 after communicated demands; that occasioned legal costs. In regard to public holidays Mr Frew is claiming for all public holidays falling between and including the period 17 November 2023 and 25 April 2025.

[39] On the latter issue, OWD's advocate contends that s 12 of the Holidays Act 2003 (HA) that defines what factors to apply when it is not clear what would otherwise be a working day should be read to exclude Mr Frew's entitlements to be paid on public holidays as he had been on unpaid leave and had no indication of a return to work. Further OWD submit no work pattern was evident or roster in place due to Mr Frew's prolonged absence.

[40] From the evidence and the IEA applying to Mr Frew, it is difficult to determine any dispute about what a working day would normally be. Mr Frew's hours of work states unambiguously: "Your normal hours of work will be 7am to 4 pm Monday to Friday" - a standard 40 hours per week and there was no suggestion this was subject to a roster. Therefore, the factors contained in s 12 (3) (a)-(c) HA to assist with a dispute are not relevant here and the overall qualifying subsection as follows is s 12(3)(d) that unambiguously includes that being on sick leave when the day the holiday falls would otherwise be a working day is still qualification to be paid the public holiday.[2]

[41] I find that OWD must pay Mr Frew at his relevant daily pay of eight hours at $25 per hour for all public holidays that fell during his period of leave without pay and sick leave on the basis he is still in an employment relationship. In regard to the legal costs Mr Frew has expended in pursuing what is a minimum entitlement, the Authority will deal with that in considering costs.

Unjustified disadvantage claim and/or breach of good faith?

[42] In *Spotless Facility Services NZ Ltd v Mackay,* the Employment Court sets out the definitional elements of an unjustified disadvantage claim as:

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[2] Holidays Act 2003, s 12(3)(d): "whether, but for the day being a public holiday, an alternative holiday, or a day on which the employee was on sick leave or bereavement leave, the employee would have worked on the day concerned.".

> Turning to the statutory definition of a disadvantage grievance, s 103(1)(b) of the Act allows an employee to bring a personal grievance if the employee's employment, or one or more conditions thereof, is or are affected to the employee's disadvantage by some unjustifiable action by the employer. The issue of whether the action in question is unjustified requires a consideration of the test of justification as provided in s 103A of the Act.
>
> The meaning of "conditions" of employment is well established. It includes all the rights, benefits and obligations arising out of the employment relationship; the concept is necessarily wider than the terms of an employment agreement.
>
> I also observe that the statutory context within which this assessment must arise includes the obligation in s 4(1A)(b) that the parties be active and constructive in establishing and maintaining a productive employment relationship, in which they are, amongst other things, responsive and communicative. [3]

[43] The definition above envisages a distinct form of personal grievance that can be pursued when, as is here, the employment relationship is still 'on foot.'

Assessment

[44] The objective test to apply is to initially examine how OWD approached the situation when they signalled to Mr Frew in September 2023 that their business was floundering due to reduced customer orders and then assess as per s 103A of the Act if their actions "were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred". This includes how OWD managed what was objectively an opportunity to resolve matters by Mr Frew's generous offer of taking temporary leave.

[45] Unfortunately, instead of just accepting Mr Frew's neat solution, OWD objectively sought to press the matter to their further advantage by trying to secure an agreement to convert Mr Frew's permanent role into a casual one. The Oakleys during the investigation meeting, tried to portray this move as being of their advocate's making and they did not fully understand what they were doing being a small relatively inexperienced business not understanding the concepts involved between casual and permanent tenure.

[46] I found this explanation of the Oakleys to be less than credible as they had also engaged a contractor on a casual basis and the wording of the proposed contractual variation

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[3] *Spotless Facility Services Ltd v Mackay (No2)* [2017] ERNZ 64 at [49] – [51].

of 7 November 2023, albeit drafted by their advocate, is concise, in plain language and self-explanatory. Conversely, I also observe they must have been naïve to consider Mr Frew would accept the radical variation given it had no advantage over his then situation and provided no additional consideration for his surrendering permanent tenure. The fact that Mr Frew was willing to negotiate the hourly rate, however, does not demonstrate tenure was particularly an issue for him.

[47] Nevertheless, when it was clear Mr Frew would not agree to the variation, I accept his 'offer' to make himself redundant was on the surface unusual but a realistic assessment that his position was becoming tenuous. While the Oakleys affirmed the proposal and thus could be said to have consented to a view that the position was surplus to their requirements (given they had also firmly signalled beforehand that they preferred a casual arrangement), they did have a reasonable period to consider the benefits of Mr Frew's solution that in hindsight would have avoided this dispute. I also consider they did 'string' Mr Frew along by not confirming a redundancy compensation offer in a timely manner.

[48] I find though, apart from the stress and uncertainty created this was not a situation where Mr Frew altered his position or was significantly disadvantaged by the Oakley's change of position. He was on agreed leave without pay attending to personal matters. What complicates matters for OWD is their next step (the 12 December letter). This was extremely poor communication of their change of stance that initially sought to gain a further advantage by extending the leave without pay beyond what was envisaged; placed Mr Frew on notice of uncertain hours and sought to impose flexibility in his role. This was not a good faith approach and misleading by omission to be clear that the accord on disestablishing Mr Frew's role had been abandoned.

[49] It was not until Mr Frew in his email of 8 January sought to return to the accord he thought was still in place, that OWD explicitly resiled from their previous agreement that Mr Frew's position was redundant. This was communicated in OWD's 11 January letter in objectively misleading language. OWD avoided any mention of the accord made and simply stated Mr Frew's employment agreement had no redundancy provision and made the ambiguous statement that "there is no redundancy package." The only redeeming feature was that OWD did offer to convene a discussion with Mr Frew and they repeated that offer

through their advocate's letter of 5 February albeit after minimising OWD's contribution to the confusion and levelling a breach of good faith allegation at Mr Frew.

[50] What was pertinent in OWD's 5 February letter and not logically thought through, was the suggestion that Mr Frew had asked to be made redundant "instead of accepting the Casual Working arrangement". It logically follows that the option put of Mr Frew relinquishing his permanent role, indicates OWD sought to disestablish his permanent role and effectively make it redundant.

[51] Thereafter I find that OWD has failed to manage Mr Frew's absence on legitimate sick leave or to engage constructively with him. This has included inappropriate at the time undisclosed, surveillance of Mr Frew and use of social media communication on his health status. Likewise, Mr Frew has not been forthcoming to OWD on any medical prognosis of a return-to-work date and his desire to return or not. Mr Frew has allowed the stasis of the situation to advance his personal grievances, without declaring his intent that was encapsulated in his answer to a question put during the investigation meeting: of why was he not back at work – to which he replied he was still medically unfit but it was not his intention to return (as too much water under the bridge) but he had not resigned. I find there was a degree of belligerence in Mr Frew's position and he did not act in accord with his reciprocal good faith duty of being communicative and constructive over his ongoing ability to return to work.

[52] In concluding OWD did not act appropriately I have considered the fact that they are a small inexperienced employer but that has to be balanced against the fact they obtained and acted upon advice and continued to do so throughout the dispute.

Summary

[53] Having found objectively, that OWD acted inappropriately in their dealings with Mr Frew on an ongoing basis. I determine that he has established an unjustified disadvantage claim and is entitled to a consideration of remedies. Given Mr Frew's continued unavailability to be employed by OWD he is not seeking an award of lost wage but is seeking to be compensated under s 123(1)(c)(i) of the Act for "humiliation, loss of dignity and injury to feelings" and a penalty for OWD's failure to provide him with wage, time and holidays records in a timely fashion. Mr Frew has also established he was not paid appropriately for

public holidays that fell during his continued period of employment that has not been interrupted by him being on sick leave. These claimed remedies are discussed below.

Compensation for hurt and humiliation.

[54] Mr Frew and his partner Donna Frew gave evidence of the impact of OWD's machinations and the uncertainty and distress it created at a time when Mr Frew was also struggling with health issues.

[55] Mr Frew was entitled to feel he had been treated shabbily after initially providing OWD with an ideal solution to their work scheduling difficulties. He was met by a calculated attempt to casualise his employment and Mr Frew was willing to engage in a helpful manner but he was met with naivety by the Oakleys in them expecting he would relinquish a full time role for no consideration, then once they mutually agreed to an avowedly pragmatic solution of declaring his position redundant the Oakleys reneged on this accord and once again embarked on pressuring Mr Frew into accepting casualisation of his role. These were actions that undermined the ongoing nature of the employment relationship and not acts of a fair and reasonable employer. I find Mr Frew understandably felt distressed by the turn of events leaving him isolated and confused.

[56] Further, OWD embarking upon personal surveillance of Mr Frew and partially disclosed his health status and employment dispute to others. This was causative of distress and humiliation.

Finding

[57] I am convinced that at the time, Mr Frew suffered humiliation, loss of dignity and injury to feelings but has now moved on as matters have been identified and on a resolution path. Considering the unusual circumstances and the aggravating factor of the unwarranted personal surveillance, I consider in all the circumstances that Mr Frew's evidence warrants compensation of $10,000 under s 123(1)(c)(i) of the Act.

Penalties

[58] Mr Frew has claimed a penalty action against OWD for non-disclosure of employment records in a timely fashion but this was not sufficiently particularised in the application to the Authority.

[59] I am not convinced OWD have been properly placed on notice of the breaches claimed and decline to order such by use of the discretion available to the Authority under s 160(3) of the Act. It is my view that the compensatory remedy provided adequately addresses the employment relationship problem as presented. This finding, however, does not condone the inappropriate actions of OWD in initially not providing documentation requested.

Contribution

[60] Section 124 of the Act states that I must consider the extent to which, if any, Mr Frew's actions contributed to the situation that gave rise to his personal grievance and then assess whether any calculated remedy should be reduced. I have considered in this context the relevant factors summarised by the Employment Court in *Maddigan v Director General of Conservation.* [4]

[61] Mr Frew had a reciprocal good faith duty to be active, communicative and responsive in keeping OWD apprised of the reasons for his continued absence. He failed in this duty and given his evidence that he had no intention of returning to work and was voluntarily prepared to be made redundant all this did was unnecessarily prolong and contribute to the dispute. However, given I have found the predominant causative factor was the manner by which OWD handled the issue of the ongoing security of Mr Frew's employment I consider only a modest reduction in the remedy granted is warranted and fix that at 10%.

Orders

[62] I have found that:

a. Thomas Frew was unjustifiably disadvantaged in his employment with Oakley's Windows and Doors Limited.

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[4] *Maddigan v Director General of Conservation* [2019] NZEmpC 190 at [71] – [76].

b. Oakley's Windows and Doors Limited is ordered to pay Thomas Frew the amount below within 28 days of this determination being issued:

(i) $9,000 compensation without deduction pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000; and:

(ii) To pay Mr Frew his relevant daily pay for all public holidays that have fallen and not been paid for, during the period of Mr Frew's employment with Oakley's Windows and Doors Limited.

Costs

[63] Costs are reserved.

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

[65] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Thomas Frew may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of this determination. From the date of service of that memorandum Oakley's Windows and Doors Limited will then have 14 days to lodge any reply memorandum. Upon request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[66] The parties can expect the Authority to determine costs, if asked to do so, on its usual "daily tariff" basis unless circumstances or factors, require an adjustment upwards or downwards.[5]

David G Beck
Member of the Employment Relations Authority

[5] For further information about the factors considered in assessing costs see: *www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1*