

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 500
3297999

BETWEEN	THOMAS PATTON GREEN Applicant
AND	FISHER & PAYKEL APPLIANCES LIMITED Respondent

Member of Authority:	Peter van Keulen
Representatives:	Applicant in person Rebecca Rendle and Gioja Buckleton, counsel for the Respondent
Investigation Meeting:	7 March 2025 and 11 April 2025 in Nelson
Submissions received:	24 April 2025 and 22 May 2025 from the Applicant 8 May 2025 from the Respondent
Date of Determination:	18 August 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Thomas Green was employed by Fisher & Paykel Appliances Limited as a Customer Experience Technician from June 2023.

[2] On 3 and 4 January 2024 Mr Green injured his back whilst lifting appliances at work. As a result of his back injury Mr Green was subsequently off work on sick leave during which time he received ACC earnings related compensation.

[3] In the time he was away from work on sick leave Mr Green became concerned about the way Fisher & Paykel treated him. His concerns included that Fisher & Paykel contacted him in an oppressive and unnecessary way, blamed him for the accidents that occurred, refused to allow him to return to work on light duties, tried to create a basis to dismiss him for medical incapacity, failed to deal with his complaints about his line manager and created false disciplinary matters to dismiss him.

[4] All these matters culminated in Mr Green resigning, claiming he had no choice but to resign.

[5] On 22 April 2024 Mr Green raised personal grievances in connection with these allegations and claims that Fisher & Paykel had failed to pay him for medical costs associated with his injury, failed to pay his final pay on time and failed to provide correct information to ACC regarding the end of his employment.

[6] Mr Green then lodged a statement of problem in the Authority on 17 May 2024.

The Authority's investigation

[7] I investigated this employment relationship problem by receiving written evidence and documents, holding an investigation meeting on 3 March 2025 and 11 April 2025 and assessing the written submissions of the parties.

[8] In my investigation meeting, under oath or affirmation, witnesses confirmed their written statements and gave oral evidence in answer to questions from myself and the parties' representatives.

[9] As permitted by s 174E of the Employment Relations Act 2000 (the Act) I have not recorded all the evidence and submissions received, in this determination. I have set out my findings of fact and law, then based on this I have expressed conclusions on issues as necessary to dispose of the matter, and then I have specified the orders made as a result.

The matters investigated

[10] This employment relationship problem encompasses many allegations Mr Green has made about Fisher & Paykel's actions toward him whilst he was away from work due to his injury.

Issues with personal grievances and some of the claims raised by Mr Green

[11] Fisher & Paykel raised a timing issue in connection with some of the allegations made by Mr Green as they were not raised as personal grievances within the requisite 90-day period.¹ I also had concerns about whether some of the allegations could form part of the problem to be investigated – for example, alleged breaches of the Health and Safety at Work Act 2015.

[12] I addressed these issues during my management and investigation of this problem. My position is that I cannot investigate and resolve personal grievances or claims based on:

- (a) The accidents that caused Mr Green's injury – that is a personal grievance for failure to provide a safe workplace nor any claim based on alleged breaches of the Health and Safety at Work Act 2015 – the grievance was not raised in time, and I do not have jurisdiction over breaches of the Health and Safety at Work Act.
- (b) The restraint of trade clauses in Mr Green's employment agreement being unjustified – if this sounds as a personal grievance it was not raised in time. I also note here that Fisher & Paykel never actually enforced any restraint of trade clause against Mr Green so no claim arises in respect of whether the restraint of trade clause was enforceable.
- (c) Fisher & Paykel not allowing Mr Green to disengage from work whilst on sick leave – this can only constitute a personal grievance of unjustified action as there is no other basis to pursue this claim - this grievance was not raised in time.

¹ Employment Relations Act 2000, s 114.

- (d) Breach of privacy - I do not have jurisdiction over breaches of the Privacy Act 2020.

The personal grievances and claims that I investigated

[13] In contrast my position is that I can consider evidence in relation to matters that occurred more than 90 days before Mr Green raised his personal grievances on 22 April 2024. This is for two reasons; the evidence is part of the overall context of what occurred and some of the events will form part of a course of conduct that informs personal grievances that were raised in time.

[14] So, to understand what separate claims or controversies comprise the employment relationship problem that I have investigated, and this determination resolves, I will outline the various events Mr Green alleges occurred - excluding those events that inform the grievances or claims that I cannot investigate and determine (listed in para [12]). I will then group the allegations into relevant personal grievances or claims.

[15] Specifically, the allegations Mr Green makes against Fisher & Paykel include that Fisher & Paykel:

- (a) Blamed him for his injury, which relates to an email sent by his line manager, Robbie Bowden, Regional Service Manager. In a related allegation Mr Green also says Fisher & Paykel sought to access his medical information to find a basis to blame him for the accident.
- (b) Sent him constant emails and contacted him whilst he was off work with his injury, with this comprising an aggressive non-caring bullying approach. This includes that Fisher & Paykel requested stock and parts from his work van, resulting in an employee turning up unannounced to collect items.
- (c) Failed to comply with the ACC return to work guidelines. Fisher & Paykel denied him the right to return to work on light duties, including by changing his job description to prevent this. This was all part of Fisher & Paykel conspiring to create a basis under which it could terminate his employment for incapacity.

- (d) Did not deal with his complaints about Mr Bowden.
- (e) Created false allegations relating to faking his injury, theft of stock and competing with the Fisher & Paykel business as an alternative plan to terminate his employment when Fisher & Paykel realised there would be difficulty with terminating his employment for incapacity.
- (f) Breached his privacy in connection with its investigation into the alleged competition with Fisher & Paykel and attempted to entrap him. Then it defamed him by distributing the recording obtained through the attempted entrapment amongst staff at Fisher & Paykel.
- (g) Carried out a flawed investigatory meeting where it had already predetermined that he was guilty of serious misconduct – thereby “railroading” him out of the company by leaving him with no choice but to resign under duress.
- (h) Failed to pay medical and specialist costs arising from his injury.
- (i) Failed to provide correct information to ACC regarding the end of his employment and his final payment, in retribution because Mr Green had resigned under duress.
- (j) Failed to pay him his final pay based on a false allegation of withholding company property.

[16] These allegations inform personal grievances for unjustified action causing disadvantage to terms and conditions of employment as follows:

- (a) Bullying, which can also be expressed as a failure to provide a safe workplace. This covers the allegations relating to oppressive contact by Fisher & Paykel after the accidents when Mr Green was on sick leave (paragraphs [15](a) and [15](b)).
- (b) Failure to allow Mr Green to return to work on light duties (paragraph [15](c)).
- (c) Failure to deal with complaints about Mr Bowden (paragraph [15](d)).

(d) Creating disciplinary issues and carrying out a flawed disciplinary process (paragraphs [15](e), [15](f) and [15](g)).

(e) Providing incorrect information to ACC regarding the end of Mr Green's employment.

[17] In terms of Mr Green's personal grievance for unjustified dismissal he was not dismissed but rather, he resigned. Mr Green claims that his resignation amounts to a dismissal because he resigned in response to a course of conduct by Fisher & Paykel that was designed to coerce him into resigning by leaving him with no choice – this is a constructive dismissal. Mr Green's allegations about a course of conduct by Fisher & Paykel are informed by all his allegations occurring prior to his resignation.

[18] Finally, Mr Green's allegations regarding Fisher & Paykel not paying his medical expenses and withholding his final pay arise as breach of contract claims.

The steps for determining this employment relationship problem

[19] The first step is a factual enquiry to determine if these alleged actions, that inform the grievances and claims, occurred. It is important to note here that many of Mr Green's complaints are based not only on his view of the actions but also his analysis of Fisher & Paykel's motives for doing these things.

[20] Based on events that did occur I will then decide if Fisher & Paykel's actions give rise to any unjustified disadvantage personal grievance, an unjustifiable dismissal personal grievance and/or breach of contract claims.

[21] If personal grievances and/or breach of contract are established, I will then consider what remedies Mr Green is entitled to.

What happened?

[22] On 3 January 2024 Mr Green attended a Fisher & Paykel customer repair that consisted of a double stack washer and dryer. To complete the repair Mr Green lifted the dryer off a stack connector above the washing machine. Having completed the repair Mr

Green then lifted the dryer back into position and in doing this he felt pain in his back. Mr Green thought he had pulled a muscle.

[23] On the morning of 4 January 2024 Mr Green was in some pain but thought he would be able to carry on working. In the afternoon Mr Green was repairing another double stack washer and dryer this time in a confined space. Whilst Mr Green was lifting the dryer and turning, he further injured his back.

[24] After completing the repair Mr Green left - the GPS records for Mr Green's work van show that he left the customer's house at 3:36 pm. Mr Green then went to his doctor but found that the doctor's surgery was closed for the Christmas/New Year holidays.

[25] Mr Green then drove home and, on the way home decided he should send an email to Mr Bowden to explain what had happened. In an email of 4 January 2024 at 5:11 pm after explaining what had happened on 3 and 4 January, Mr Green advised Mr Bowden that he thought he had pulled a muscle, and it was not severe. He then told Mr Bowden he would see his doctor on Monday, he would be off work on Friday (5 January) and Monday (8 January) and he would provide an update on Monday.

[26] Mr Bowden responded to Mr Green's email at 7:40 pm. In his email Mr Bowden stated that Mr Green had not advised him of any injury at the time, that he should not be lifting dryers alone and the incidents would need to be investigated. He concluded by telling Mr Green to do an incident report for each accident. I note here that incident reports are part of Fisher & Paykel's standard procedure for health and safety incidents and all employees have this procedure explained to them as part of their induction; this requirement is also referenced in the Fisher & Paykel Code of Conduct issued to employees as an attachment to their employment agreement.

[27] Mr Green did not respond to Mr Bowden's email, nor did he complete the incident reports. Then Mr Green did not contact Mr Bowden on the morning of Monday 8 January 2024; Mr Bowden called him and left messages for him. At this point Mr Bowden did not know what had caused Mr Green's injury as the incident reports had not been completed, the extent of Mr Green's injury, or even the time Mr Green was likely to be off work. So, Mr Bowden followed up with an email on 8 January at 12:19 pm. In his email Mr Bowden told

Mr Green that he needed to know what was happening as soon as possible and that the reports had not been lodged which was required at the time of the event.

[28] Mr Green did not reply to Mr Bowden's email of 8 January 2024, nor did he complete the incident reports as requested.

[29] On Thursday, 11 January 2024 Mr Green sent an email to Mr Bowden. In this email he advised that the first available doctor's appointment was 17 January 2024, but he had been triaged by the GP nurse who had referred him to an osteopath. He had also attended the hospital medical and injury centre, and he now had an injury report that signed him off work on leave from 4 January 2024 until 17 January 2024. Mr Green attached an invoice for the cost of the hospital appointment and the injury report. Mr Green concluded with "I am still in some pain... I should be able to return fully to work in due course... there is no major injury, just pulled a few muscles it seems."

[30] Mr Bowden responded with an email on 11 January 2024. In his email Mr Bowden stated:

Appreciate your reply Patrick.

I am concerned however with the lack of communication and the failure to complete an incident event so we can start the investigations. I have also advised you of other concerns prior to this event.

I will set up a meeting for you myself and HR to discuss our ongoing concerns.

I am away next week, so will book it for when I return.

[31] The next contact from Mr Green was on 17 January 2024 after his doctor's appointment. In an email to Mr Bowden, Mr Green advised that he would not be returning to work until at least 24 January 2024 when he was to return to his doctor for further assessment. Mr Green then attached and referenced invoices for various consultations he had completed in connection with his back injury and future consultations, requesting that Fisher & Paykel pay the amounts of the invoices to him as reimbursement for his expenses incurred to comply with Fisher & Paykel requirements.

[32] At this stage Mr Green had still not completed the incident reports so Mr Bowden sent an email on 17 January 2024 advising Mr Green that he was required to complete the incident reports as an investigation needed to be carried out as soon as possible. He also asked Mr Green to explain why he had been unable to do the reports earlier as requested.

[33] Mr Green did not respond to Mr Bowden's email of 17 January 2024, nor did he complete the incident reports. So, Mr Bowden sent a further email to Mr Green on 21 January 2024 telling him again that he was required to complete incident reports so the matter could be investigated and ACC updated. Mr Bowden advised Mr Green that whilst being off work on ACC he was still required to communicate with Fisher & Paykel.

[34] Again, Mr Green did not respond to Mr Bowden's email, and he did not complete the incident reports as requested. Mr Green did not provide an update to Mr Bowden after his doctor's appointment on 24 January 2024, so Mr Bowden sent Mr Green an email in the evening of 24 January asking for an update. Mr Green responded to this email stating:

2 more weeks of 100% injury leave. Then a plan of adjusted duties as described in the medical form.

Once I have come off 100% injury leave, I should be in a position to be available for some work communications, and alternate duties or administrative tasks.

[35] On 25 January 2024 Mr Bowden sent a letter to Mr Green. In this letter Mr Bowden stated:

I am writing to you because it has been difficult to communicate with you while you are on sick leave. ... To recap:

- After the initial incident occurred you went home and didn't let me know that you had injured yourself. This meant that jobs were not able to be reallocated in a timely manner.
- An incident wasn't logged in Safe Smart and our provider InjuryAssist wasn't contacted.
- You returned to work the next day and felt that you had aggravated your injury. You went home and didn't let me know. Again, this meant that jobs were not able to be reallocated.
- You emailed myself at 5.11 pm on the 4th Jan about the injury, approx. 30 hours after the original event.
- It took multiple follow ups on my part to obtain a medical certificate.

- I have since been in contact with you, but as mentioned above, communication has been difficult.

As you have claimed a workplace injury, it is important that you follow our processes including letting me know of an injury as soon as possible, logging an incident into Safe Smart, and contacting InjuryAssist. Safe Smart assists us to investigate and understand what went wrong. This detail is used to communicate between our H&S teams and ACC. InjuryAssist is your first port of call for immediate medical advice and assisting you to get medical advice sooner. The other reason for these is that we work in conjunction with ACC, which means providing them with the right detail about your claim.

[36] Mr Bowden then finished the letter by requesting permission to contact Mr Green's doctor to understand the extent of his injury and work out how Fisher & Paykel could support Mr Green's return to work.

[37] Mr Green responded to Mr Bowden's letter with an email on the same day. In this email he stated:

- (a) He did not agree with Mr Bowden's letter, nor did he agree with the details Mr Bowden had implied.
- (b) He had communicated with Fisher & Paykel in a timely fashion, notifying Mr Bowden immediately upon being injured and providing all documents from medical appointments.
- (c) It was stressful receiving numerous emails from Mr Bowden, Fisher & Paykel inventory and finance as well as co workers demanding he carry out work duties and then accusing him of being non-communicative. This was in the context of being injured and on "100% no work orders so I can mend".
- (d) He was very concerned about Mr Bowden's approach to him as an injured person. He was on 100% injury leave with a back injury and he was not capable of meeting all the work tasks that had been required by numerous Fisher & Paykel staff.
- (e) Whilst he was on 100% injury leave, he was in no position to do anything other than provide medical information as required to substantiate his 100%

medical injury leave and he could not spend hours as required by Fisher & Paykel working to correct the “investigation preface”.

- (f) Once he was off the 100% no work order from his doctor then he would be available during the agreed return to work plan hours to deal with work related tasks approved by his doctor.
- (g) The next step was for Fisher & Paykel to provide a list of alternative duties to him so his doctor could review and determine what would be acceptable work duties for him to perform as part of a return to work plan.
- (h) Once he was on partial duties, he would immediately be able to “clarify, document, investigate and perform work related tasks that are required”.

[38] Mr Bowden then responded the next day, in an email on 26 January 2024. In this email Mr Bowden clarified matters for Mr Green, stating:

Thank you for coming back to me.

From our perspective, the letter was to inform you of our processes – had our processes been followed, along with appropriate and timely communication from you, the likelihood would be that you wouldn’t have heard from other team members and messages to you would have been minimal. What we are asking you is simply keep us informed and follow our processes. We don’t intend investigating whether you followed our processes post injury or not as we now have set our expectations and hopefully this has given you clarity. What we will be investigating is from a Health and Safety perspective eg how we can keep you safe at work which can mean looking at the root cause of how you became injured hence the need to submit a H&S incident form. We do investigate most injuries so we can reduce risk to our people when they are on the job.

[39] What followed after this was an exchange of emails in which Mr Bowden sought contact details for Mr Green’s doctor and advised Mr Green that there were no light duties for him. In response Mr Green did not provide the contact details for his doctor and asserted he would return to light duties for five hours per day as his doctor had indicated, consisting of work he believed he could do such as replying to the emails he had received whilst he was on leave and doing a stock take of his work van.

[40] Despite being told, in writing, not to start his proposed light duties Mr Green went ahead and started responding to various emails he had received whilst he was on leave, recording the time he spent on each.

[41] To advance matters on Mr Green's return to work Mr Bowden then wrote a letter for Mr Green's doctor that he gave to Mr Green. In this letter he described Mr Green's role as:

[Mr Green] works as a full time Customer Experience technician, duties include:

- Travelling to circa 9 customers homes per day to fix their whiteware appliances, this could mean physically moving, lifting, or installing washing machines, fridges, ovens etc which can range from 60Kg, through to over 100Kg.

Skillset required:

- Technical resolution to ensure customer satisfaction.
- Able to physically lift and manoeuvre heavy appliances within customers homes – this could mean they are dealing with small spaces, or having to move large items such as fridges.

[42] In this letter Mr Bowden asked Mr Green's doctor for information about Mr Green's likely return to work, including what Fisher & Paykel could do to support Mr Green. Mr Green responded to this letter after he had seen his doctor and told Mr Bowden that his doctor still supported him doing administrative or light duties for five hours per day with a review in March 2024 and a possible gradual return to full duties. Mr Green finished by advising Mr Bowden that he would "appreciate communications, a return to work plan" and that in the interim he would do duties that he felt were in line with his doctor's advice that he had previously told Mr Bowden of.

[43] Mr Bowden's response was to advise Mr Green again that there were no light duties for him to perform.

[44] There was clearly an impasse over Mr Green's possible return to work particularly as that related to any light duties. In the end Mr Green requested a meeting with Mr Bowden's manager, Eugene Woolley and HR. This was arranged for 16 February 2024.

[45] Around the time that Mr Green was exchanging emails with Mr Bowden over his potential return to work on light duties, Elizabeth Reed, Senior People and Capability

Business Partner, became concerned about Mr Green's potential involvement in another business; this raised two concerns, first, the business might be competing for Fisher & Paykel repair and installation work and second, Mr Green might be working whilst he was signed off on sick leave.

[46] Ms Reed's concerns arose because she discovered that Mr Green had registered a company called Hightech Electrical Solutions Limited on 24 January 2024.² Further enquiries by Mr Bowden and Ms Reed indicated that Mr Green had recently updated the website of a business he had previously operated, Suntricity to include Hightech Electrical services.

[47] Mr Bowden then arranged for a third party to call Hightech Electrical to see if it was operating and if so, who was involved. That contact revealed that Mr Green was operating as Hightech Electrical although he refused to do a repair on a Fisher & Paykel appliance. Mr Bowden then arrange further contact, this time by email through the updated Suntricity website. Mr Green responded to an email enquiry and agreed to undertake an installation of a Bosch appliance on 19 February 2024.

[48] Fisher & Paykel decided it would advance the concerns it had about Mr Green operating an appliance installation and repair business through Hightech Electrical.

[49] On 16 February 2024 Mr Green met with Ms Reed and Mr Woolley, in response to Mr Green's request. Mr Green had called the meeting as he wanted Fisher & Paykel to deal with concerns he had about Mr Bowden's actions toward him. This meeting did not advance Mr Green's complaints about Mr Bowden as Mr Green would not set out his concerns. Mr Green's approach was that Mr Woolley and/or Ms Reed should have been aware of his concerns as part of their supervision of Mr Bowden's interactions with him.

[50] Ms Reed and Mr Woolley then used the meeting on 16 February 2024 to notify Mr Green of Fisher & Paykel's concerns about his possible actions with the Hightech Electrical business. They outlined the concerns and told Mr Green that he would receive a letter with the information that it had and an invitation to an investigatory meeting.

² What caused Ms Reed to check the Companies Register in respect of Mr Green – relating to the name on Mr Green's CV when he applied for the job at Fisher & Paykel - was discussed in evidence but is not relevant for my determination of this employment relationship problem.

[51] Mr Woolley then sent Mr Green a letter dated 16 February 2024 that set out the concerns over the operation of Hightech Electrical with relevant information. Mr Green was invited to a meeting as part of Fisher & Paykel's investigation into the concerns. The investigation meeting was scheduled for 21 February 2024.

[52] The investigation meeting took place on 21 February 2024. Mr Green attended with Ms Reed, Mr Woolley and Mr Bowden from Fisher & Paykel.

[53] In this meeting Fisher & Paykel attempted to ask Mr Green various questions about Hightech Electrical and what he was doing with the business. Mr Green did not answer many of the questions, and most cases he simply pushed back at Fisher & Paykel asking about the evidence or proof it had. As an example, the first question Mr Green was asked about was him agreeing to install an appliance, to which he asked who made the enquiry for the installation several times, which was then followed by questions about who sanctioned the enquiry, so in the end Mr Green did not respond to the allegation that he had accepted work installing an appliance whilst he was on sick leave.

[54] Mr Green repeated this pattern of avoiding answering questions with any detail by asking questions in response about the evidence, and diverting the topic to unrelated matters such as the first meeting or the validity of the enquiries made to Hightech Electrical about work. Mr Green also obfuscated asking Fisher & Paykel to explain questions, making plain denials without any explanation or simply not answering the questions. As an example, when asked how many companies he owned Mr Green's answer was "look on the company's office". When pushed on this he told Fisher & Paykel to do its diligence.

[55] After the meeting on 21 February 2024 at 12:39 pm Mr Green sent an email to Ms Reed, Mr Woolley and Mr Bowden in which he stated that he felt that he had no other choice but to resign, giving 30 days notice.

[56] During Mr Green's notice period he did not carry out any work for Fisher & Paykel and his work van was collected, with a stock check completed. There was some delay in returning other Fisher & Paykel property including an iPad and mobile phone – this appears to have arisen over Mr Green's need to keep these for communication over final matters with Fisher & Paykel such as his last pay and then over the delivery of a courier bag for the return.

[57] Mr Green's final pay was made in the pay period ending 30 April 2024, i.e. the pay period immediately after the termination date of his employment (as he was paid monthly). Ms Reed's evidence is that the final pay was Mr Green's accrued but untaken annual leave entitlements and this was correctly calculated through Fisher & Paykel's payroll system.

[58] Fisher & Paykel contacted ACC on 25 March 2024, immediately after the termination date to advise it that Mr Green's employment with it had ended.

Do any of these actions give rise to a personal grievance?

Did Fisher & Paykel bully Mr Green?

[59] Mr Green complains about being blamed for causing his injuries, persistent contact after his injuries when he was on 100% injury leave and being expected to undertake work for Fisher & Paykel particularly in relation to stock and parts.

[60] I find that Fisher & Paykel did not blame Mr Green for the accidents that caused his injuries. That Mr Green took this from an innocuous and factual email response by Mr Bowden to his email of the injuries he had suffered, is unfortunate – particularly as this appeared to set the tone for Mr Green's interpretation of Fisher & Paykel's subsequent actions.

[61] I find that Fisher & Paykel did contact Mr Green after his injuries whilst he was on sick leave. But, in the circumstances I find that this contact was justified as Fisher & Paykel did not know the extent of Mr Green's injuries and it was contacting him for updates and as part of the usual automated work queries (as that related to stock and parts) as it did not know what he could deal with.

[62] The simple point is this, Fisher & Paykel was reliant on Mr Green to inform it of his circumstances and complete the incident reports. Fisher & Paykel had no knowledge of what was going on, other than bare medical certificates that it received after some time had progressed. Fisher & Paykel had work assigned to Mr Green that needed to be reassigned and parts that needed to be provided so those jobs could be done. If Mr Green had simply called Mr Bowden and said he was unable to respond to emails and deal with any work matters then Fisher & Paykel would have stopped email communications, taken Mr Green's work van so

another employee could deal with parts and work on reassigned jobs and waited for the incident reports.

[63] Mr Green's failure to respond to Fisher & Paykel was informed by his view that being on sick leave meant he had no obligation to inform Fisher and Paykel of anything other than provide it with updated medical certificates in terms of the time he would have off work. The reference to "100% injury leave" encapsulates Mr Green's view and wrongly informed his response to Fisher & Paykel.

[64] Fisher & Paykel did not act in a way toward Mr Green in contacting him after his injuries, whilst he was on sick leave, that constitutes an unjustifiable action. Fisher & Paykel's actions in this regard do not amount to bullying or a failure to provide Mr Green with a safe workplace.

Did Fisher & Paykel not allow Mr Green to return to work on light duties?

[65] I find that Fisher & Paykel did refuse to allow Mr Green to return to work on light duties. But I also find that this refusal was justified in the circumstances.

[66] Mr Green's view that Fisher & Paykel was wrong to refuse him light duties was informed by some misconceptions:

- (a) Mr Green believed that as Fisher & Paykel was a large company it had numerous light task or administrative duties that provided opportunity for him to undertake work, such as working in a call centre. Mr Green was a repair technician and trained for this role. Fisher & Paykel's view was there were no light duties that pertained to repairs and this was justified.
- (b) Mr Green believed that Fisher & Paykel had to advise of what light duties he could do and then he would consult with his doctor and decide if he would do them. Fisher & Paykel wanted to understand the extent of Mr Green's injuries and the prognosis for return so that a plan for returning to work could be agreed collaboratively that was specifically tailored to Mr Green. Fisher & Paykel had obligations to Mr Green to protect his health and safety on any return. Fisher & Paykel's approach was justified.

(c) Mr Green believed that Fisher & Paykel were using any authorisation to access his medical records as a basis to investigate him rather than plan his return to work. In his oral evidence Mr Green said that he needed to protect himself as Fisher & Paykel wanted their investigatory team to take control and access of all his medical records to dissect them to find ways to blame him (for his injuries) and show that this was all his fault. There was simply no evidential basis for this conclusion.

(d) Mr Green believed that Mr Bowden unilaterally altered his job description and exaggerated his duties in relation to lifting, in the letter for his doctor to ensure his doctor would not approve his return to work. I do not agree and conclude that Mr Bowden's letter was factual and a genuine attempt to engage with Mr Bowden's doctor over Mr Green's possible return to work. Fisher & Paykel's actions were justified.

[67] Fisher & Paykel did prevent Mr Green from returning to work on light duties but in the circumstances, this was justified. This is because Fisher & Paykel did not have suitable light duties for Mr Green and, in any event, Fisher & Paykel did not know what Mr Green could do on any return to work.

Did Fisher & Paykel fail to deal with Mr Green's complaints about Mr Bowden?

[68] I find that Fisher & Paykel did not fail to deal with Mr Green's complaints about Mr Bowden. Fisher & Paykel met with Mr Green, tried to understand what the concerns or complaints were but it did not receive adequate information. Fisher & Paykel then told Mr Green if he wanted them to investigate anything he would need to provide that information, preferably in writing.

[69] There was no failing by Fisher & Paykel in terms of Mr Green's complaints about Mr Bowden – Fisher & Paykel had no information to do anything with and Mr Green did not then provide any information. Mr Green's view that Fisher & Paykel should have been aware of Mr Bowden's actions and therefore aware of what he was concerned about, was misplaced and this informed an unreasonable expectation of what Fisher & Paykel should have done.

[70] Fisher & Paykel did not act unjustifiably in respect of Mr Green's complaints about Mr Bowden.

Did Fisher & Paykel create disciplinary issues and carry out a flawed disciplinary process?

[71] I find that Fisher & Paykel did not create disciplinary issues to investigate in respect of Mr Green. Fisher & Paykel had genuine and credible concerns that it was investigating.

[72] I also find, that as part of that investigation Fisher & Paykel did not entrap Mr Green nor did it defame him.

[73] What is clear to me from the evidence is the following:

- (a) Mr Green operated a business, Suntricity, prior to being employed by Fisher & Paykel.
- (b) In his CV Mr Green recorded dates in relation to companies and businesses that indicated he had either ceased owning the companies or ceased operating them (if he did still own them) before he was employed.
- (c) In 2024 Mr Green reactivated these businesses by incorporating a company for Hightech Electrical and updating the Suntricity website so that he could operate an appliance installation and repair service. I note here that there is no evidence to show either way whether Mr Green was operating the Suntricity business whilst he was employed by Fisher & Paykel.
- (d) In February 2024 Mr Green was operating the Hightech Electrical business by at least receiving and responding to queries for installation work – there is no evidence to show he undertook any installation or repair work in February 2024 whilst employed by Fisher & Paykel, but he clearly agreed to do at least one installation on 19 February 2024.
- (e) When Fisher & Paykel became aware that Mr Green was operating Hightech Electrical this raised numerous valid concerns for it. These included the extent of Mr Green's injury and his status as being signed off work on sick leave as

well as concerns about honesty and compliance with the code of conduct and employment agreement – particularly as that related to conflicts of interest and undertaking outside work.

- (f) When Mr Green was asked about the Hightech Electrical business rather than explain what he was doing and what he intended to do with the Hightech Electrical and Suntricity businesses Mr Green turned the events to blame Fisher & Paykel. In essence he sought to deflect from his own actions - in doing so he affirmed to himself he had done nothing wrong - and focus on his firmly held belief that Fisher & Paykel was wrong and acting as part of a bigger plan to terminate his employment. As part of this deflection, the meeting on 19 February 2024 involved obfuscation, avoidance, taking technical points, and putting Fisher & Paykel to proof rather than answering questions – all this did was frustrate Fisher & Paykel and did not advance the investigation.

[74] To conclude, there was a basis for Fisher & Paykel’s concerns – I note here that Mr Green believed one of those concerns was theft of company property but that was not alleged. Fisher & Paykel was entitled to investigate as it did. The only difficulties in the investigation arose through Mr Green’s reluctance to engage and openly discuss what had occurred and what the solution might be going forward. Fisher & Paykel did not act unjustifiably in its investigation.

Did Fisher & Paykel provide incorrect information to ACC regarding the end of Mr Green’s employment?

[75] I find that Fisher & Paykel provided the correct information to ACC regarding the end of Mr Green’s employment, and it did so in the correct time frame.

Did Fisher & Paykel carry out a course of conduct that was designed to coerce Mr Green into resigning by leaving him with no choice?

[76] I have found that Fisher & Paykel did not:

- (a) Blame Mr Green for the accidents that caused his injuries.

- (b) Bully Mr Green or contact him unnecessarily when he was on sick leave – Fisher & Paykel was only concerned with Mr Green completing incident reports, advising it of his medical status, getting his work reassigned and then later facilitating a return to work.
- (c) Indicate that Mr Green was incapable of returning to work nor did it suggest to Mr Green that he might be subject to a process of incapacity such that he could be dismissed. Fisher & Paykel was merely trying to ascertain what had happened and what the extent of Mr Green's injuries were as that impacted his return to work.
- (d) Incorrectly decide there were no light duties for Mr Green to undertake on a return to work basis. Fisher & Paykel could not agree light duties where there none available and it did not know what Mr Green could do.
- (e) Act unjustifiably in investigating the concerns it had about Mr Green's operation of Hightech Electrical.

[77] Based on this I conclude that there is no evidential basis to find that Fisher & Paykel carried out a course of conduct designed to coerce Mr Green into resigning. Fisher & Paykel's actions toward Mr Green were genuine and justified – that Mr Green perceived them differently is not Fisher & Paykel's fault.

[78] Mr Green's resignation is not a constructive dismissal.

Conclusion on personal grievances

[79] There is no basis for any of Mr Green's personal grievances with Fisher & Paykel.

Mr Green's breach of contract claims

Mr Green's medical expenses

[80] Mr Green has sought payment of medical expenses he has incurred and some costs he says he will incur. These expenses relate to surcharges imposed by various medical providers above the amount paid by ACC.

[81] Fisher & Paykel has no obligation to pay these expenses for Mr Green either under the Accident Compensation Act 2001 or under Mr Green's employment agreement. One purpose of the Accident Compensation Act is for medical costs to be met by ACC without any need for individuals to pursue other parties through some fault based liability.

Mr Green's final pay

[82] Fisher & Paykel correctly paid Mr Green his final pay and there is no money owed to him.

Summary

[83] It was apparent to me in my investigation of this problem that Mr Green had firmly held and unrealistic views of Fisher & Paykel's obligations to him and similarly unrealistic views of Fisher & Paykel's motivation and intentions when it dealt with him whilst he was on sick leave.

[84] Mr Green clearly believed he should not be contacted whilst on what he called "100% injury leave" and that he had no obligation to respond to Fisher & Paykel during this time except to give it medical information limited to how long he would be absent from work. This set a wary approach by Mr Green to any contact from Fisher & Paykel and a readiness to interpret communications as attacks on him. Mr Green read tone and purpose into emails and contact from Fisher & Paykel that was simply not there and had no evidential basis to support.

[85] Mr Green's view of Fisher & Paykel's motives and intent culminated in a belief for him that Fisher & Paykel wanted to dismiss him through a process (first for fault for the accident, then incapacity, and then false allegations of competing, faking injury and stealing company property) or alternatively that Fisher & Paykel wanted to place him under enough pressure that he would resign. I find no basis for this; it is simply not supported on the evidence despite Mr Green's firmly held belief and conviction on this.

[86] Whilst Mr Green believes he was treated unjustifiably by Fisher & Paykel when he was on sick leave for injuries sustained at work, I do not agree with him. Mr Green has not established personal grievances for unjustified action causing disadvantage or unjustified dismissal. Mr Green has not established breaches of contract by Fisher & Paykel.

[87] This employment relationship problem is resolved in favour of Fisher & Paykel.

Costs

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

[89] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Fisher & Paykel 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 Green will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[90] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.³

Peter van Keulen
Member of the Employment Relations Authority

³ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1