

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 654
3310160

BETWEEN	TARAN DEED Applicant
AND	PROCRAFT CONSTRUCTION LIMITED (FORMERLY FARRAND BUILDING LIMITED) Respondent

Member of Authority: Andrew Gane

Representatives: Claudia Serra, advocate for the Applicant
Nick Farrand, for the Respondent

Investigation Meeting: 25 July 2025 via AVL

Submissions: 25 July 2025 from the Applicant
No submissions from the Respondent

Date: 17 October 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Taran Deed was employed by Farrand Building Limited as a carpenter on 13 November 2023, until his employment ended on 6 March 2024. On 25 October 2024 Farrand Building Limited changed its name to Procraft Construction Limited (PCL) and will be referred to as such throughout this determination.

[2] Mr Deed raised claims at the Authority alleging he was unjustifiably dismissed by PCL on 28 February 2024. Mr Deed sought remedies of reimbursement of wages

and compensation. He also sought recovery of unlawful wage deductions and penalties against PCL.

[3] PCL denied Mr Deed's claims and said its dismissal by redundancy was fair. It also said Mr Deed abandoned his employment.

The Authority's Investigation

[4] PCL did not lodge a statement in reply.

[5] Following a case management conference (CMC) held on 28 May 2025, it was agreed by the parties that the matter would be heard by audio visual link. PCL's director Nickolas Farrand appeared at the CMC and opposed Mr Deed's claims. Apart from attending the CMC, PCL lodged no documents with the Authority and took no further part in the Authority's investigation of Mr Deed's claims.

[6] I am satisfied that a copy of the notice of investigation meeting was served properly on PCL on 3 July 2025. PCL failed to attend or be represented at the investigation meeting, which proceeded in PCL's absence.¹

[7] In the course of investigating this employment relationship problem the Authority heard evidence from Mr Deed and he answered questions under affirmation from the Authority and his representative.

[8] As permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination does not record all the evidence and submissions received and fully considered during the Authority's investigation, but has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result.

Issues

[9] The issues for determination and investigation were:

- (i) Was Mr Deed was unjustifiably dismissed by PCL?
- (ii) If PCL's actions were found to be unjustified, what remedies, if any, should be awarded to Mr Deed, including:

¹ Employment Relations Act 2000, Schedule 2, clause 12.

- a) reimbursement of lost wages (subject to his evidence of reasonable endeavours to mitigate his loss); and
 - b) compensation under s 123(1)(c)(i) of the Act?
- (iii) If any remedies are awarded, should they be reduced under s 124 of the Act for any blameworthy conduct by Mr Deed that contributed to the situation giving rise to his grievance?
- (iv) Did PCL unlawfully deduct \$250.00 from Mr Deed's final pay and should it be ordered to repay this to Mr Deed.?
- (v) Did PCL fail to provide wage and time records in accordance with the Act?
- (vi) Should penalties be imposed on PCL for breaches of s 4 Wages Protection Act 1983 (WPA) and s 130 of the Act?
- (vii) Should either party contribute to the cost of representation of the other party?

Background

Mr Deed's employment

[10] PCL is a construction company that specialises in construction and renovations of new buildings and also provides commercial construction services to the broader Northland regions. Mr Farrand is the sole director and manager of PCL.

[11] Mr Deed was employed by PCL on two separate occasions. The first was between July 2022 and April 2023. The second was from 13 November 2023 until 6 March 2024.

[12] Mr Deed was employed on an individual employment agreement for his second term of employment. His full-time work hours were 40 hours per week at a pay rate of \$34 per hour.

[13] In early February 2024 Mr Deed was looking for employment security as he was in the process of applying for a loan and wanted to ensure the stability of his ongoing employment. Around this time, Mr Deed had a discussion with Mr Farrand about whether PCL had ongoing work. In response, Mr Farrand advised him that he had

months' worth of scheduled future work. This gave Mr Deed some assurance about his continued ongoing work for the company.

Mr Deed's termination

[14] On 28 February 2024 after work at 5.30 pm, Mr Farrand called Mr Deed and told him that PCL had recently lost some work contracts. As a result, Mr Farrand told Mr Deed his employment was terminated. During the telephone conversation Mr Farrand told Mr Deed his termination was company policy described as "last on first off".

[15] Mr Farrand followed up the phone call with a confirmation email later that night at 8.53 pm (termination email). The termination email confirmed Mr Deed was given two weeks' notice of the termination of his employment. It repeated that company policy dictates that "the last employee to join the company becomes the first one in line when a situation like this happens." In response, Mr Deed asked for an extension of the notice period, but this was declined by Mr Farrand.

Mr Deed's notice period

[16] Although Mr Deed was upset by his situation, he was determined to work out his two weeks' notice period.

[17] On 5 March 2024 Mr Deed was working at a site when he was approached by Mr Farrand. Mr Farrand criticised him in front of other workers alleging his work was not up to standard.

[18] Later that evening, Mr Deed said he felt upset by Mr Farrand's behaviour and sent a text message to Mr Farrand stating that he felt "gutted" and "hung him out to dry". This was because he had been dismissed by PCL and then publicly criticised about his work. Mr Farrand responded saying the decision to dismiss Mr Deed was not personal, but he needed to improve his work ethic whilst working out his notice.

[19] Mr Deed stated he felt that Mr Farrand's comments were unfair and very personal, and that his behaviour was bullying. On 6 March 2024 at the end of the day Mr Deed sent a text message to PCL's operations manager, and advised him that he was unable to return to the workplace for the final four days of his notice period due to the way Mr Farrand was treating him. Mr Deed's final day of work was 6 March 2024.

Post employment

[20] After his employment ended with PCL Mr Deed started employment at a wood processing company on 13 March 2024. His new hourly rate was \$25 per hour, a \$9.00 per hour decrease of income.

[21] On 14 March 2024 Mr Deed discovered PCL deducted \$250.00 from his final pay for petrol and tool reimbursement. Mr Deed had not previously had money deducted from his pay, nor was he asked if he consented to any such deduction.

[22] When Mr Deed questioned Mr Farrand regarding the amount, Mr Farrand claimed he was responsible for a missing ladder. Mr Deed advised Mr Farrand he had nothing to do with any missing ladder.

[23] On 28 March 2024 Mr Farrand notified Mr Deed that he had been overpaid by \$725.27 prior to his dismissal on 16 February 2024. He was not provided any further detail on how this sum was made up. As it was the long weekend, and he was away with friends camping, Mr Deed advised he would look at his bank statements and come back to Mr Farrand.

[24] Mr Farrand also claimed Mr Deed abandoned his employment. On 1 April 2024 Mr Farrand suggested PCL would take legal action to recover the overpayment debt and loss of income as a result of Mr Deed's alleged abandonment of his employment. Mr Deed did not have any funds available following his dismissal, and sought time to repay any legitimate overpayment.

[25] On 3 April 2024 Mr Deed's representative wrote to PCL raising a personal grievance for unjustifiable dismissal. The letter formally requested Mr Deed's wages and time records to facilitate an investigation into the alleged overpayment. No response was received.

[26] On 23 July 2024 Mr Farrand publicly confronted Mr Deed at a supermarket where Mr Farrand allegedly spoke in an intimidating manner, while loudly accusing Mr Deed of theft. Mr Deed reported the incident to the Police.

Unjustified dismissal

The test for justification

[27] In considering a personal grievance for redundancy the Authority must apply the test for justification set out at s 103A of the Act. When considering whether redundancy decisions were justified, the Authority must determine whether the employer's actions, and how the employer acted, met the objective statutory standard being what a fair and reasonable employer could have done in all the circumstances at the time.²

[28] The Authority must assess the reasons given to the employee by the employer including the business reasons and decide on an objective basis, whether the employer's actions were reasonable. If an employer can show the redundancy was genuine and that notice and consultation requirements have been met, the s 103A test may well be satisfied.³

[29] In reaching its decision on the scope of the application of s 103A of the Act to redundancy dismissals, the Court of Appeal placed emphasis on the Act's legislative context. In particular, the Court referred to the strengthening in 2004 of the provisions relating to the duty of good faith and to the requirement in the Act's objects of "acknowledging and addressing the inherent inequality of power in employment relationships".

The duty of good faith

[30] A fair and reasonable employer is expected to comply with its statutory obligations which include good faith obligations. Failure by an employer to comply with these obligations may fundamentally undermine its ability to justify a dismissal or other action "because a fair and reasonable employer will comply with the law."⁴

Assessment

[31] Mr Farrand's termination email on 28 February 2024 gave the following reasons for terminating Mr Deed's employment:

² Employment Relations Act, s 103A.

³ *Grace Team Accounting Ltd v Brake* [2014] NZCA 541, [2015] 2 NZLR 494 at [85].

⁴ *Simpsons Farms Ltd v Aberhart* [2006] ERNZ 825 (EmpC) at 842 [65].

This difficult decision was made due to contracts that we had been made to believe we were in line for, falling through, and because of this we are in a very difficult situation where we are required to reduce our work force.

[32] Mr Farrand did not lodge a statement in reply nor give evidence at the investigation meeting to provide further context for these reasons. As such the limited information within the email could not be tested.

[33] Mr Deed gave evidence that although Mr Farrand's email suggested the company was not in a good financial position, it appeared PCL was still operating in a financially viable way. This was confirmed by Mr Deed's evidence where he said later in the year the company was re-branded with a name change, a new website and newly branded vehicles. Mr Deed also believed PCL had hired more employees as a result of the rebrand.

[34] On the evidence before me I cannot conclude on an objective basis that the redundancy was for genuine business reasons. As PCL has not shown that the redundancy was genuine the s 103A test is not satisfied.⁵

[35] To ensure a redundancy process is procedurally fair, employers must comply with their good faith obligations contained in s 4 of the Act. The statutory obligations of good faith require employers to provide affected employees with access to information relevant to the continuation of the employee's employment and an opportunity to comment on the information before the decision is made.

[36] Consultation may be viewed as a continuum which has key components such as the provision of adequate and comprehensible information, and the allowance of sufficient time for employees to understand, consider and respond to what is being proposed by the employer regarding their jobs. The integrity of consultation depends on the key components of a composite process being present together. Inadequate information, or insufficient time, or consultation on only part of the employer's plans, will by themselves be defects tending to undermine the entire process.⁶

[37] Mr Deed stated that PCL failed to undertake a fair and reasonable process, including the failure to adequately consult with him over the proposal to make his role redundant.

⁵ *Grace Team Accounting Ltd v Brake* [2014] NZCA 541, [2015] 2 NZLR 494 at [85].

⁶ *Unite Incorporated and Others v Hospitality Services Limited* [2021] NZERA 276.

[38] Mr Deed also submitted that although he was advised that the loss of the contracts was the financial basis for making his position redundant, the company did not provide sufficiently any information for him to be able to genuinely engage with the proposal.

[39] Section 4(1A)(c) of the Act required PCL to provide access to Mr Deed to all information relevant to any decision that was likely to have an impact on the continuation of his employment and to provide him an opportunity to comment on the information prior to any decision being made. The detail contained in that email was minimal. No information was provided such as would have allowed, for example, Mr Deed to provide meaningful feedback as to savings that might be made having regard to the stated cashflow or quality issues.

[40] I accept there was no consultation with Mr Deed, on the economic consequences of the loss of a contract and how this had affected the business. The 28 February 2024 termination email did not include any financial information and for this reason, I conclude that PCL's approach did not comply with s 4(1A)(c) of the Act.

[41] To ensure that the redundancy process is procedurally fair, employers should ensure they comply with their good faith obligations when making selection decisions. In accordance with s 4(1A)(c) of the Act the proposed selection criteria should be consulted on. The final selection criteria should be applied fairly and consistently to make a redundancy decision and affected employees should have an opportunity to respond and discuss assessments.

[42] In proposing to make Mr Deed's role redundant, PCL did not set out any selection criteria as part of its proposal to assess who should be made redundant, nor did it consult with Mr Deed on any selection criteria prior to making him redundant.

[43] In *Stellar Elements NZ Limited v Amesbury*⁷ the Employment Court agreed with the following submissions of counsel, regarding selection criteria, noting:

Selection of an employee for redundancy must be carried out in good faith with reference to relevant criteria and without reference to irrelevant criteria.

⁷ *Stellar Elements NZ Limited v Amesbury* [2024] NZEmpC 136 at paragraph [48].

[44] During the 28 February 2024 telephone conversation terminating Mr Deed's employment, Mr Farrand told Mr Deed his termination was company policy, described as "last on first off". PCL's termination email later that night stated:

Company policy dictates that the last employee to join the company becomes the first one in line when a situation like this happens.

[45] No such provision was reflected in Mr Deed's individual employment agreement, and no company policy document was provided to him.

[46] While it was likely PCL's intention was to communicate the basis for the redundancy and how Mr Deed's position had been selected, this occurred post the selection process and did not allow him an opportunity to comment.

[47] Mr Deed stated there were seven staff at the time employed by PCL and other builders were employed on similar terms and conditions.

[48] Mr Deed, as an employee had an expectation that in good faith PCL would undertake a reasonable redundancy process. He was not provided with access to sufficient information relevant to PCL's decision to dismiss him, prior to the decision being made. He was also not afforded an opportunity to comment or to provide feedback before the decision to dismiss him was made.

[49] The action taken by PCL did not adequately or sufficiently meet the requirements of s 4(1A) of the Act. Compliance with those requirements was not to an extent that was reasonable in the circumstances and having regard to the objectives and purposes of consultation. I find that Mr Deed was not adequately consulted on the selection criteria prior to making his role redundant.

[50] As part of PCL's redundancy process, Mr Deed was entitled to expect he would be adequately consulted on possible redeployment and any alternative proposal to make him redundant. PCL failed to propose any redeployment options to Mr Deed.

[51] I find PCL's dealings with Mr Deed through the redundancy process were deficient as outlined above. I find PCL did not fairly consider alternatives to redundancy for Mr Deed.

Conclusion on unjustified dismissal

[52] In the circumstances I find that Mr Deed, through no fault of his own was subjected to a truncated redundancy process where it had been predetermined that his position that was superfluous to the needs of PCL. There was no consultation and no genuine appraisal of alternatives to redundancy.

[53] The failings by PCL in the redundancy process were more than minor procedural flaws. Clearly PCL has failed to show the redundancy was genuine and that notice and consultation requirements of s 103A of the Act and s 4(1A) of the Act have been met, meaning its action was unjustified and breached Mr Deed's employment agreement. Mr Deed did not have a fair opportunity to address the process before the conclusion to terminate his position was reached.

[54] It is possible that even if PCL had carried out a fair restructuring process Mr Deed may still have been made redundant, however no such process was carried out.

[55] PCL has not demonstrated that its actions and how it acted in the lead up to Mr Deed's termination were what a fair and reasonable employer could have done in the circumstances. Because of these various failures it follows the dismissal was unjustified. While Mr Deed failed to work out his full notice period, the Authority does not accept PCL's suggestion that this constituted an abandonment of his employment. I find Mr Deed's termination for redundancy was unjustified and his personal grievance for unjustifiable dismissal succeeds.⁸

Personal grievance remedies

[56] As Mr Deed has been successful with his unjustified dismissal claim I must turn to consider what remedies he may be entitled to. I may award any of the remedies provided for under s 123 of the Act.

Reimbursement of wages

[57] Mr Deed seeks reimbursement \$4,680.00 in lost wages for the earnings he has lost as a result of his unjustified dismissal pursuant to ss 123(1)(b) and 128 of the Act.

⁸ Employment Relations Act, s 103A.

[58] Where the Authority finds that an employee has a personal grievance, and that the employee has lost remuneration as a result of the personal grievance, the Authority must order the employer to pay to the employee the lesser of a sum equal to that lost remuneration or to 3 months' ordinary time remuneration.

[59] Mr Deed stated he found employment shortly after his dismissal and fulfilled his common law obligation to mitigate his loss. Mr Deed was dismissed on notice. Mr Deed's income from his new employment mitigated his loss in part, however he is entitled to recover the \$9.00 decrease in his hourly rate at 40 hours per week for the 13 weeks after his employment ended.

[60] Mr Deed is entitled to \$4,680.00 (gross) in lost wages pursuant to ss 123(1)(b) and 128 of the Act.

Compensation for humiliation, loss of dignity and injury to feelings

[61] Mr Deed gave evidence about the effects of PCL's decision to dismiss him and Mr Farrand's behaviour after his termination. Mr Deed stated he was completely blindsided and devastated by the dismissal. He had not been made aware at any point prior to his dismissal that his employment was at risk. In fact, he had felt his employment was secure, as Mr Farrand had recently advised him that there was plenty of work coming up.

[62] Mr Deed said he found it hard to get over how he had been treated and it had damaged his confidence. He stated the dismissal and Mr Farrand's behaviour caused him significant stress, both physical and mental.

[63] I determine that an appropriate award to compensate for the effects on him, accepting his evidence, was \$15,000.00. PCL is ordered to pay to Mr Deed compensation of \$15,000.00.

Contribution

[64] Under the Act I am required to consider if remedies should be reduced for blameworthy conduct by Mr Deed that contributed to the situation giving rise to his grievance.⁹ Mr Deed was dismissed by redundancy and by definition redundancy is a

⁹ Employment Relations Act, s 124.

no-fault dismissal, therefore he did not contribute to his dismissal and warrants no reduction in remedy.

Deduction

[65] It is unlawful to make deductions from an employee's wages without their written consent.¹⁰ PCL did not consult with Mr Deed, nor obtain his written consent, for the \$250 deduction from his final pay. Clause 19 of Mr Deeds's employment agreement is not relevant, as this was not "money owing".

[66] The unlawful deduction from Mr Deed's pay, at a time when he had just lost his job and his income had drastically decreased, caused him unnecessary financial hardship and distress. Mr Deed seeks to recover that \$250.00 sum from PCL. Based on the records provided to the Authority, this amount was deducted.

[67] I order PCL to pay Mr Deed the amount of \$250.00 (net).¹¹

Penalties

[68] Mr Deed alleges that PCL has breached various statutory requirements and as such is liable for penalties.

(a) An unlawful deduction of wages; and

(b) Failure to provide time and wage records and failure to provide holiday and leave records.¹²

[69] I am satisfied that PCL failed to comply with the WPA in that it made an unlawful deduction of \$250.00 his wages¹³ and as such has breached employment standards.¹⁴

[70] I am also satisfied that PCL failed to comply with s 130(2) of the Act in that despite Mr Deed requesting this information in the personal grievance letter of 3 April 2024, and the Authority directing PCL to provide this information in the written

¹⁰ Wages Protection Act 1983, ss 4 and 5.

¹¹ Wages Protection Act, s11.

¹² Employment Relations Act, s 130(2).

¹³ Wages Protection Act, s 4.

¹⁴ Employment Relations Act, s5.

directions of 2 December 2024 and 10 June 2025, PCL failed to provide Mr Deed a copy of his wage records.

[71] Having regard to the significance of the breaches I am satisfied that the imposition of a penalty is appropriate.¹⁵

[72] I have applied the four-step consideration of penalties as outlined by the Full Court in *Borsboom (Labour Inspector) v Preet PVT Ltd*¹⁶ and had regard to the mandatory considerations at s 133A of the Act.

[73] The maximum penalty in this case for a single breach is \$20,000.¹⁷ There are two breaches in relation to which I need to consider the issue of a penalty. The breaches are not trivial and compliance with the employment standards is of considerable importance.

[74] Standing back, and in comparison to other cases, I take a global view of the breaches of the employment standards and conclude that a fair penalty is \$2,000. \$1,000 of that sum is to be paid directly to Mr Deed. \$1,000 is to be paid to the Authority via the Crown account.

Summary of orders

[75] Procraft Construction Limited is ordered, within 28 days of the date of this determination, to make payment to Taran Deed:

- (a) \$4,690.00 (gross) as reimbursement of lost wages of 3 months' salary; and¹⁸
- (b) \$250.00 (net) recovery of wages: and¹⁹
- (c) \$15,000.00 as compensation for hurt humiliation and injury to feelings under s 123(1)(c)(i) of the Act: and²⁰
- (d) \$2,000.00 as a penalty to be paid as follows:
 - (i) \$1,000.00 to be paid to Mr Deed; and
 - (ii) \$1,000.00 to be paid to the Authority via the Crown account.

¹⁵ Wages Protection Act, s 13 and Employment Relations Act, s 135(2)(b)

¹⁶ [2016] NZEmpC 143.

¹⁷ Employment Relations Act, s 135(2)(b).

¹⁸ Employment Relations Act, ss 123(1)(b) and 128.

¹⁹ Wages Protection Act, s11.

²⁰ Employment Relations Act, s 123(1)(c).

[76] There is no counterclaim before the Authority in relation to the alleged overpayment PCL made to Mr Deed. As such, no offset can or should be made.

Costs

[77] As PCL did not participate in proceedings it is not appropriate to reserve costs in the circumstances.

[78] Mr Deed is entitled to a contribution to his costs as he has been successful. When considering costs, the starting point is the Authority's daily tariff, which is \$4,500 for a one-day investigation meeting. The investigation meeting was completed in half a day.

[79] PCL did not actively engage with proceedings and did not appear at the investigation meeting. The investigation meeting was held by AVL to reduce potential costs. In the circumstances it is appropriate to award \$2,250.00 in costs.

[80] Accordingly, within 28 days of the date of this determination Procraft Construction Limited is ordered to pay Taran Deed \$2,250.00 in costs and reimburse the Authority application of fee of \$71.55.

Andrew Gane

Member of the Employment Relations Authority