

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 148
3386724
3391564

BETWEEN WATERWARE SERVICES
LIMITED
Applicant

AND JEREMY CROXFORD
Respondent

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Applicant

AND WATERWARE SERVICES
LIMITED
Respondent

Member of Authority: Simon Greening

Representatives: Darren Yearsley for the Applicant
Fiona McMillan, counsel for the Respondent and Lucy
Larkin for the Respondent

Investigation Meeting: 10 and 11 February 2026 in Auckland

Submissions received: 23 February 2026 from both parties

Determination: 10 March 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Jeremy Croxford was employed by Waterware Services Limited (WSL) for 25 years. In 2012 he was promoted to General Manager. Mr Croxford's cousins, Darren Yearsley and Lisa Scholtens, are the directors of WSL.

[2] On 15 May 2025 Mr Croxford resigned. Mr Croxford's final day of employment with WSL was 19 May 2025.

[3] WSL has brought an application to the Authority seeking to recover monies from Mr Croxford. WSL alleged Mr Croxford owes WSL:

- (a) The sum of \$2,000 for personal expenses incurred on the work credit card.
- (b) The sum of \$1,939 for GST claimed on the sale of a vehicle.
- (c) The sum of \$61,090 in relation to overpaid bonuses.
- (d) The sum of \$19,453 for overpaid annual leave entitlements.

[4] In addition to the sums identified above, the parties have agreed that Mr Croxford owes WSL the sum of \$25,072.10 (agreed debt). Mr Croxford is currently repaying this sum to WSL by weekly instalments.

[5] At the start of the investigation meeting, counsel for Mr Croxford advised the Authority Mr Croxford accepts he owes WSL the sum of \$13,827 (agreed bonus overpayment).

[6] Initially the sum sought by WSL in relation to overpaid bonuses was \$61,090, however Mr Croxford accepts he owes WSL \$13,827, therefore the revised sum sought by WSL in relation to overpaid bonuses is now \$47,263.

[7] Mr Croxford has also brought an employment relationship problem to the Authority. Mr Croxford says that he was constructively dismissed by WSL on 15 May 2025.

[8] Mr Croxford seeks compensation pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act), lost remuneration for the period 19 May 2025 to 2 June 2025 and payment for an extended notice period equivalent to 4 weeks salary.

The Authority's investigation

[9] For the Authority's investigation written witness statements were lodged by Annette Holzmann, Amy Croxford, Jeremy Croxford, Darren Yearsley, Andrea Yearsley, and Lisa Scholtens. The witnesses answered questions from me under oath or affirmation, Mr Yearsley and Mr Croxford's legal counsel.

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

The issues

[11] The issues requiring investigation and determination are:

- (a) Whether Mr Croxford owes WSL the sum of \$47,263 for alleged overpaid bonus payments?
- (b) Whether Mr Croxford owes WSL the sum of \$19,453 for alleged overpaid annual leave entitlements?
- (c) Whether Mr Croxford owes WSL the sum of \$1,939 for GST claimed on the sale of a vehicle?
- (d) Whether Mr Croxford owes WSL the sum of \$2,000 spent on the work credit card?
- (e) Whether Mr Croxford was unjustifiably constructively dismissed by WSL?
- (f) If so, what remedies might Mr Croxford be entitled to?
- (g) If remedies are awarded, should any remedy be reduced pursuant to s 124 of the Act?
- (h) Can the Authority order Mr Croxford to repay the agreed debt and agreed bonus overpayment by way of instalment and with interest?
- (i) Should either party contribute to the legal costs incurred by the other party?

Whether Mr Croxford owes WSL the sum of \$47,263 for alleged overpaid bonus payments?

[12] There was no written individual employment agreement in place. There were no written bonus payment policies in place.

[13] Mr Croxford was the General Manager. His role included financial management responsibilities for WSL, including calculating and processing profit-share bonuses; maintaining payroll and leave records; and ensuring PAYE and GST compliance.

Bonus calculation method – 2012 to April 2020

[14] It is not disputed between the parties that Mr Croxford was entitled to a bonus as part of his salary package.

[15] In 2012 Mr Croxford was promoted to general manager. Mr Croxford and the directors were entitled to 5 percent of the net profit for each quarter.

[16] Between 2012 and April 2020, Mr Croxford said bonuses were calculated based on the profit figure at some point during the quarter.

Bonus calculation method – from April 2020

[17] At a Board meeting in April 2020, the directors agreed to change the bonus calculation method.

[18] The key change involved the timing of the bonus calculation. The bonus calculation would now be based on the profit figure at the end of each quarter.

Was Mr Croxford overpaid bonus payments amounting to \$47,263?

[19] Ms Holzmann is a self-employed business consultant specialising in SME accounting. In June 2024 Ms Holzmann was engaged by the directors to assist with accounting and cash-flow issues WSL was experiencing.

[20] Commencing in June 2024, Ms Holzmann undertook a review of WSL's financial position and accounts.

[21] Ms Holzmann identified an issue with the timing of the bonus calculation which she brought to the attention of the directors.

[22] The issue Ms Holzmann identified was when Mr Croxford was calculating the net profit figure for each quarter, some expenses which would reduce the profit had not been processed when the profit figure was determined. Mr Croxford's profit calculations overstated the bonus payments he and the directors received.

[23] Transactions processed after the date the profit figure was determined had not been factored into Mr Croxford's bonus calculations since April 2020.

[24] Mr Croxford and the directors were not aware of this issue until Ms Holzmann brought it to their attention.

[25] Mr Croxford's profit bonus for the period April 2020 to March 2025 was \$232,655.

[26] WSL's position is that, recalculated to account for the expenses issue identified by Ms Holzmann, Mr Croxford's entitlement to a profit bonus for this period was \$185,392.

[27] Therefore, WSL says Mr Croxford owes the company \$47,263.22.

[28] The difference between the parties is the profit figure for each quarter during this period.

[29] WSL relied on the profit figures showing in the Sybiz accounting system for each quarter.

[30] Mr Croxford did not provide workings to explain why his profit figures were different to those recorded in the Sybiz accounting system.

[31] WSL says that Mr Croxford should have understood that calculating profit figures for each quarter before all expenses for that quarter had been recognised, would necessarily overstate the net profit and therefore the bonus payable.

[32] WSL says Mr Croxford has a background in accounting and was ultimately responsible for preparing the profit calculations.

[33] Mr Croxford was not able to reconcile the different profit figures he used to calculate bonus payments with the profit figures showing in Sybiz.

[34] I have considered Mr Croxford's submission, that he was following WSL's instruction regarding the bonus calculation method.

[35] To follow the bonus calculation method, the profit figure would be determined after all expenses for that quarter had been accounted for. However, based on the accounting information stored in Sybiz, the expenses for each quarter were not always correctly accounted for. I also note the directors relied on the calculations provided by Mr Croxford when determining the bonus payments to be paid.

[36] It is reasonable to conclude that WSL is able to rely on the profit figures showing in Sybiz. These figures were reviewed by Ms Holzmann.

[37] Therefore, Mr Croxford was overpaid bonus payments amounting to \$47,263.

[38] WSL says the Authority should make an order that Mr Croxford pay WSL this amount by applying the doctrine of unjust enrichment.

Was Mr Croxford unjustly enriched?

[39] In *Commissioner of Inland Revenue v Stiassny* the Court of Appeal held that a claimant must demonstrate three things in order to make out a claim for unjust enrichment.¹

[40] In the context of this employment relationship problem, this means WSL must establish that Mr Croxford has been enriched, that his enrichment was gained at WSL's expense, and Mr Croxford's enrichment at WSL's expense was unjust.² If each element is established, then the question arises, whether there are any defences Mr Croxford might have to WSL's claim.

[41] Mr Croxford accepts he was enriched due to the overpayment of bonuses he received, and these overpayments were gained at WSL's expense.³

[42] The issue is whether WSL made a mistake in relying on Mr Croxford's bonus calculations and making bonus payments accordingly, that it would now be unjust for Mr Croxford to retain these bonus payments.

[43] WSL needs to be able to point to a particular mistake of fact that contributed to the overpayment.⁴

[44] WSL points to Mr Croxford's bonus calculation method and says the mistake was the way in which Mr Croxford determined the profit figure each quarter.

[45] Mr Croxford's understanding of the change to the bonus calculation method is set out below:

(a) From 2012 to 2020 Mr Croxford says:

The journal entries and the bonuses were paid when WSL had the funds to do so.⁵

¹ *Commissioner of Inland Revenue v Stiassny* [2012] NZCA 93 at [92].

² Above n 1 at [92].

³ Submissions of Counsel for the Respondent, 23 February 2026, at [40].

⁴ *Foai v Air New Zealand Ltd* [2012] NZEmpC 57 at [63].

⁵ Witness Statement, Mr Croxford, at [50].

(b) At a Board meeting in April 2020, Mr Croxford says:

In a Board meeting in April 2020, the bonus calculation method changed. The journal for the calculation of profit share would be processed in the quarter which the bonuses were awarded.⁶

(c) Mr Croxford says this change to the bonus calculation method created an issue that neither he nor the directors were aware of at the time:

We now know this creates an issue, as transactions processed after the date the profit was calculated would have had a negative impact on the profit in that quarter, did not affect the bonus calculations.⁷

[46] From April 2020 Mr Croxford did not account for all of the expenses in a quarter before determining the profit figure.

[47] WSL says it made a mistake by relying on Mr Croxford's profit figures, and overpaid bonuses to the directors as well as Mr Croxford.

[48] Up until April 2020, Mr Croxford's bonus calculations were correct. This means Mr Croxford calculated the profit figure correctly by taking into account all of the expenses for that particular quarter.

[49] Counsel for Mr Croxford submits the bonus payments were not paid as a result of a mistake on Mr Croxford's part.⁸

[50] However, the difficulty with this submission is that in his witness statement Mr Croxford accepts the profit figures he based his bonus calculations on, were incorrect:

The profit amounts for each quarter will be different now than they were when the bonuses were calculated, creating differences between what I calculated and what they (WSL) believe it should be.

[51] I am satisfied that WSL has established a mistake of fact that contributed to the overpayment, and therefore Mr Croxford's enrichment at WSL's expense was unjust.

Does Mr Croxford have a defence?

[52] Mr Croxford submitted that in the event the Authority makes a finding that he was unjustly enriched, then the equitable defence of change of position applies.⁹

⁶ Above n 5 at [51].

⁷ Above n 5 at [52].

⁸ Above n 3 at [43].

⁹ Above n 3 at [51].

[53] In *The National Bank of New Zealand Limited v Waitaki* the Court of Appeal explained this defence and said:¹⁰

It is a defence to a claim for repayment of money paid under a mistake that the defendant's position has so changed that it would be inequitable in all the circumstances to require restitution in whole or part.

[54] Mr Croxford says this equitable defence should apply because:

- (a) WSL's directors had full knowledge of the facts in relation to profit calculations and bonus payments.
- (b) He followed the bonus calculation method as prescribed by the board.
- (c) The directors also received inflated bonus payments, and they did not raise concerns with Mr Croxford at any time regarding the bonus amounts paid.
- (d) The directors had access to financial information and bonus payment amounts at all times.
- (e) Mr Croxford did not act in a dishonest manner in regard to the calculation of profit, and bonus payments which followed, for each quarter.

[55] There are two basic prerequisites which must exist before Mr Croxford could avail himself of the change of position defence.¹¹ The defence is not open to Mr Croxford if he changed his position in bad faith, and the defence is not open to Mr Croxford if he received the money by wrongdoing.¹²

[56] In short, Mr Croxford says he received the bonus payments in good faith and has spent the money he received.

[57] I am satisfied Mr Croxford spent the money he received from WSL in respect of overpaid bonus payments. Mr Croxford did not receive this money due to wrongdoing on his part.

[58] The issue is whether Mr Croxford received the payments in good faith.

[59] I accept Mr Croxford's submissions the directors had access to all relevant financial information and also received inflated bonus payments.

¹⁰ *The National Bank of New Zealand Limited v Waitaki International Processing (NI) Limited* [1999] 2 NZLR 211 (CA) at [11].

¹¹ Above n 4 at [66].

¹² Above n 4 at [66].

[60] However, the concept of good faith in this context goes to the issue of reliance and misrepresentation.

[61] Mr Croxford owed the directors a duty not to misrepresent the profit figures and bonus calculations which followed.¹³

[62] The directors of WSL were entitled to rely on the financial information being provided by Mr Croxford because he was the general manager which included the responsibilities of a financial controller.

[63] The directors of WSL reasonably expected Mr Croxford would take more care in calculating the bonus payments amount to which they, and Mr Croxford, were entitled.

[64] The effect of Mr Croxford's carelessness in this respect, misled or was likely to mislead the directors, which was not consistent with the duty of good faith he owed them.¹⁴

[65] The evidence does not support the conclusion that Mr Croxford deliberately misrepresented the financial situation to the directors. However, the bonus calculations provided by Mr Croxford to the directors, on which they relied in making payments, misrepresented the correct profit figure for each quarter.

[66] WSL made the bonus payments based on a mistake. The mistake arose because they relied on financial information they received from Mr Croxford which misrepresented the correct profit figures for each quarter.

[67] Therefore, Mr Croxford did not receive the bonus payments in good faith, and the equitable defence of change of position does not apply in Mr Croxford's case.

[68] Mr Croxford is ordered to pay WSL the sum of \$33,436 in respect of overpaid bonus payments.

¹³ *Avon County Council v Howlett* [1983] 1 All ER 1073 (CA) at [1086].

¹⁴ Employment Relations Act 2000, s 4(1)(b).

Whether Mr Croxford owes WSL the sum of \$19,453 for overpaid annual leave entitlements?

[69] WSL says Mr Croxford took 33 days of annual leave over and above the statutory entitlement.

[70] Mr Croxford says that WSL is relying on the staff calendar to establish Mr Croxford's annual leave entitlement, and the staff calendar is not correct because he had to cancel leave on 30 of these days.

[71] I accept based on the evidence, by way of email traffic statistics, provided by Mr Croxford, that it was reasonable to cancel leave for 30 of these days because he did undertake some work for WSL on each day.

[72] Mr Croxford accepts the 33 days of annual leave was not recorded in WSL's payroll system, and neither were 30 of these days recorded as cancelled in WSL's payroll system.

[73] I accept Mr Croxford had two ad-hoc days off. This leaves 6 April 2021, a day Mr Croxford did take as annual leave but not recorded in WSL's payroll system.

[74] WSL also says that Mr Croxford cashed up annual leave over and above the statutory annual leave entitlement.

[75] I have reviewed the information provided by WSL, extracted from the MYOB system.

[76] Based on this information, I make the following findings:

- (a) In 2021, Mr Croxford cashed out 9 days over and above his annual leave entitlement.
- (b) In 2022, Mr Croxford cashed out 8 days over and above his annual leave entitlement.
- (c) In 2023, Mr Croxford cashed out 2 days over and above his annual leave entitlement.

[77] Mr Croxford did not record annual leave in the payroll system for 6 April 2021.

[78] In his position as general manager, Mr Croxford was responsible for the payroll system. Mr Croxford was responsible for entering information into the payroll system and recording his leave.

[79] Mr Croxford has been unjustly enriched because he received additional annual leave, in the form of cashed up annual leave payments, that he was not entitled to.

[80] Mr Croxford had an obligation to act in good faith towards WSL by ensuring annual leave was correctly recorded in the payroll system, and therefore the equitable defence of change of position does not apply.

[81] Mr Croxford has received annual leave payments from WSL, for 20 days in total, to which he was not entitled.

[82] I order Mr Croxford to pay WSL the sum of \$11,789.69 in respect of overpaid annual leave entitlements.

Whether Mr Croxford owes WSL the sum of \$1,939 for GST claimed on the sale of a vehicle?

[83] WSL sold a vehicle to Mr Croxford in 2016. GST was not paid on the sale value of the vehicle at the time it was sold.

[84] It came to the attention of WSL that GST should have been paid on the sale value of the vehicle.

[85] The claim now made by WSL that Mr Croxford should pay GST in respect of the sale does not succeed because the claim was filed by WSL outside the statutory time limit.¹⁵

[86] Although WSL says the GST issue only came to their attention in 2025, I find the decision to not pay GST on the sale of the vehicle rests with a decision of the directors made in 2016.

¹⁵ Limitation Act 2010, s 11.

[87] If s 11 of the Limitation Act 2010 does not apply, it would be inequitable to require Mr Croxford to pay this sum to WSL given the historical nature of the transaction and the decision of the directors, in regard to GST, made at the time.

Whether Mr Croxford owes WSL the sum of \$2,000 spent on the work credit card?

[88] WSL says Mr Croxford owes WSL the sum of \$2,000 for personal expenses incurred by Mr Croxford on the work credit card.

[89] Mr Croxford says Ms Scholtens verbally agreed to him spending this sum of money on mole maps, work clothing and a lunch.

[90] Ms Scholtens recalls having a conversation with Mr Croxford regarding purchasing a shirt for a work-related meeting in Wellington. Ms Scholtens does not recall approving Mr Croxford's personal spending on the credit card for mole maps or a lunch.

[91] WSL did not have any credit card policies in place. WSL did not have a fixed view regarding what personal expenses could be incurred on a work credit card, what expenses might need to be repaid by the individual, or how repayment might occur. In addition, loan accounts were maintained by the directors and Mr Croxford, and sometimes these loan accounts were used to reimburse WSL for personal spending on work credit cards.

[92] I accept Mr Croxford's submission he incorrectly categorised personal spending on his work credit card and there is an agreed debt (\$25,072.10) he is paying back to WSL on a weekly basis; therefore, it is illogical to suggest he would accept this agreed debt and then dispute \$2,000 without good reason.

[93] Given WSL's flexible approach to credit card spending and management of personal expenses incurred on the credit card along with Mr Croxford's acknowledgement of the agreed debt, and the lack of evidence in support of WSL's view that he did not obtain authorisation, I find Mr Croxford does not owe WSL \$2,000 for personal expenses incurred on the company credit card.

Whether Mr Croxford was unjustifiably constructively dismissed by WSL?

[94] Mr Croxford resigned on 15 May 2025. Mr Croxford says that he was constructively dismissed by WSL.

[95] In *Auckland Shop Employees' Union v Woolworths (NZ) Ltd*¹⁶ the Court of Appeal accepted that a constructive dismissal could arise in situations such as where:

- (a) an employer had given an employee an option of resigning or being dismissed; or
- (b) an employer had followed a course of conduct with the deliberate and dominant purpose of coercing the employee to resign; or
- (c) a breach of duty by the employer led an employee to resign.

[96] Mr Croxford maintains WSL followed a course of conduct with the deliberate and dominant purpose of coercing him to resign.

[97] The key facts supporting Mr Croxford's submission in respect of a course of conduct, follow:

- (a) In June 2024, Ms Holzmann was engaged by the directors to assist with accounting and cash-flow issues WSL was experiencing.
- (b) By December 2024, Ms Holzmann had identified a number of financial issues that needed to be addressed: Mr Croxford's personal spending on the work credit card, overpaid bonus payments, and annual leave entitlements incorrectly paid.
- (c) On 13 February 2025, Mr Yearsley had a meeting with Mr Croxford. Mr Yearsley accepts during this meeting he told Mr Croxford that he was "entitled". In context, Mr Yearsley used the word "entitled" referring to Mr Croxford's personal spending on the work credit card.
- (d) On 20 February 2025, Mr Yearsley had another meeting with Mr Croxford. Mr Yearsley accepts during this meeting he used the word "resentment". In context, Mr Yearsley used the word "resentment" referring to a number of challenging issues he was facing in life, including disappointment with the financial return he had received from WSL.

¹⁶ *Auckland Shop Employees Union v Woolworths (NZ) Ltd* [1985] 2 NZLR 372 at [139].

(e) On 25 February 2025, Mr Croxford read the minutes from a shareholder meeting which occurred the previous day. This email read:

It was unanimously agreed that the shareholders no longer have confidence in Jerry Croxford's ability to effectively operate in the role of General Manager.

A decision was made to seek specialist advice on how to address this issue and determine the appropriate next steps for the business.

...

Engage with a specialist advisor to explore solutions for the General Manager's position and the overpayment of salary/bonus.

(f) On 3 March 2025, Mr Croxford went on sick leave.

(g) On 9 March 2025, while on sick leave, Mr Croxford sent an email to the directors explaining why he was on stress leave. Mr Croxford concluded his email by writing:

Given where things stand, I accept that it's time to talk about what comes next. I'd like to hear what you're prepared to offer if I exit the company.

Since I do not have an employment agreement, I'm unsure what the starting point should be.

Let me know your thoughts, and we can take it from there.

I hope we can work through this in a way that is fair and respectful to everyone.

(h) On 13 March 2025, Mr Yearsley responded to Mr Croxford's email, inviting him to go through the bonus reconciliation with Ms Holzmann when he returned from sick leave.

(i) On 26 March 2025 Mr Croxford and his legal counsel met with Mr Yearsley to discuss spending on the credit card, holiday pay issues, and calculation of bonus payments.

(j) There were further conversations between WSL's legal counsel and Mr Croxford's legal counsel.

(k) Mr Croxford advised WSL that he would be returning to work on 8 May 2025.

(l) On 12 May 2025 WSL initiated a disciplinary process and invited Mr Croxford to a meeting. WSL raised concerns with Mr Croxford about:

- Misuse of the company credit card.
- GST deductions on personal expenses.
- Overpayment of bonuses.

- Annual leave.
- Failure to ensure compliance with financial, payroll and tax obligations.

(m) On 15 May 2025 responded in writing to the concerns WSL had raised with him and resigned on the same date.

[98] I find WSL did not follow a course of conduct with the deliberate and dominant purpose of coercing Mr Croxford to resign. My reasons follow:

- (a) WSL was engaging with Mr Croxford about its concerns, over a 3-month period, before it commenced a disciplinary process.
- (b) In April, WSL and Mr Croxford attended a private mediation session, funded by WSL, with the aim of resolving WSL's concerns.
- (c) Although there were two robust conversations between Mr Yearsley and Mr Croxford in February, a number of further meetings and conversations followed, including mediation, during which both Mr Yearsley and Mr Croxford engaged constructively in attempting to resolve the concerns arising from WSL's financial review.
- (d) Mr Croxford inadvertently read the board meeting minutes on 25 February, which recorded the board's loss of confidence in him as general manager, however this email did not trigger Mr Croxford's decision to resign.
- (e) Mr Croxford considered resigning from WSL in early March and wanted to discuss with WSL what an "exit" might look like, however he did not resign until May.

[99] In summary, there were cordial conversations between WSL and Mr Croxford between February and May regarding Mr Croxford's "on the record" proposal to exit the business and resolve outstanding issues regarding monies owed to WSL.

[100] Alternatively, Mr Croxford submits WSL breached s 4 of the Act, the breach of good faith was serious, and it was reasonably foreseeable he would resign.

[101] Mr Croxford points to the following examples which demonstrate WSL's breaches of s 4 of the Act:

- (a) His conversation with Mr Yearsley on 13 February 2025 where Mr Yearsley accused Mr Croxford of being "entitled". I accept Mr Yearsley's evidence that he used the word "entitled" because, in context, he was referring to Mr Yearsley use of the company credit card.
- (b) During another conversation in February, Mr Croxford asserted that Mr Yearsley told him he wanted to "punish him". Mr Yearsley denies saying this to Mr Croxford.
- (c) Following his conversation with Mr Yearsley, Mr Croxford called Ms Scholtens. During this call Mr Croxford recalls Mr Scholtens telling him:¹⁷

I should not leave Waterware until I found another job. My understanding from this was that the directors wanted me gone, but they were open to waiting until I found another job.
- (d) WSL did not actively communicate with Mr Croxford regarding the concerns he raised with WSL by email on 9 March 2025.
- (e) Following a period of sick leave Mr Croxford advised WSL he was ready to come to work. A few days after receiving this email, WSL sent Mr Croxford a letter inviting him to a disciplinary meeting.
- (f) WSL did not communicate with Mr Croxford, before the directors concluded they no longer had confidence in his ability as a general manager.
- (g) Because the directors had concluded WSL no longer had confidence in Mr Croxford's abilities as a general manager, Mr Croxford was of the view that any disciplinary process and outcome was predetermined from the outset.

[102] WSL did not breach s 4 of the Act. My reasons follow:

- (a) WSL did constructively engage with Mr Croxford between February and May.

¹⁷ Above n 5 at [50].

- (b) Although the minutes from a meeting in February recorded the directors' loss of confidence in Mr Croxford's ability as a general manager, WSL continued to actively engage with Mr Croxford with a view to resolving their financial concerns.
- (c) During February there were robust conversations between Mr Croxford and Mr Yearsley, but context is important in determining whether Mr Yearsley "crossed a line" by failing to communicate in a constructive manner with Mr Croxford. Contextual factors include Mr Yearsley and Mr Croxford are cousins, they had worked together for 25 years, a financial review had revealed Mr Croxford's spending on the company credit card, and overpayment of bonuses. By this time Mr Croxford had accepted he owed WSL approximately \$25,000 for personal expenses incurred on the credit card, and approximately \$19,000 for over paid bonuses. Given the context and background of these conversations, standing back, I find that Mr Yearsley did not cross that line.
- (d) Mr Croxford was invited to attend a disciplinary meeting. WSL was justified in inviting Mr Croxford to a disciplinary meeting. WSL had serious financial concerns regarding Mr Croxford's conduct. Given the family context, initially WSL sought to resolve matters with Mr Croxford, between February and May, by engaging through facilitated mediation and then a series of meetings, in which both parties were legally represented. By May, matters had not been resolved, and WSL therefore initiated a disciplinary process.

[103] Mr Croxford was not constructively dismissed because:

- (a) He decided to resign in May, after receiving a letter from WSL which initiated a disciplinary process.
- (b) Although counsel for Mr Croxford suggests a course of conduct between February and May that led to a constructive dismissal, there was not sufficient proximity between what Mr Croxford says was the repudiatory conduct, and his decision to resign.¹⁸

¹⁸ *Fredericks v VIP Frames and Trusses Ltd* [2015] NZEmpC 203 at [37].

(c) WSL was justified in its decision to investigate reasonably serious allegations. Although Mr Croxford was very upset by this decision, it does not amount to a constructive dismissal.

(d) Mr Croxford resigned because WSL initiated a disciplinary process.¹⁹

Can the Authority order Mr Croxford to repay the agreed debt and agreed bonus overpayment by way of instalment and with interest?

[104] As noted earlier in the determination, the parties have already agreed:

(a) Mr Croxford owes WSL the sum of \$25,072.10 (agreed debt).

(b) Mr Croxford owes WSL the sum of \$13,827 (agreed bonus overpayment).

[105] Mr Croxford is paying back the sum identified at paragraph [104](a) by way of weekly instalments.

[106] WSL says the weekly instalment payment is too low, and Mr Croxford should also pay interest on the sums agreed.

[107] WSL has asked the Authority to determine whether these sums should be repaid earlier to WSL, or at a different weekly rate and/or with interest.

[108] The Authority does not have an express statutory power to order a repayment plan in respect of money owing by a former employee. The statutory provisions which refer to payment by instalments, refer to sums owed by employers to employees.²⁰

[109] However, WSL has been deprived of the use of money in relation to the agreed debt and agreed bonus overpayment. Therefore, WSL is entitled to interest on what is owed.

[110] Mr Croxford is ordered to pay interest on the agreed debt and agreed bonus overpayment. Interest must be calculated and paid on the sum of \$38,899.10 using the civil debt calculator. Mr Croxford is ordered to pay this interest sum within 90 days of the date of this determination.²¹

¹⁹ *ANZ Sky Tours Limited T/A ANZ Sky Tours v Wei* [2021] NZEmpC 76 at [49].

²⁰ Employment Relations Act 2000, s 131(1A).

²¹ www.justice.govt.nz/fines/civil-debt-interest-calculator.

Summary and orders

[111] Mr Croxford is ordered:

- (a) to pay WSL the sum of \$47,263 in respect of overpaid bonus payments by 30 December 2026; and
- (b) to pay WSL in respect of overpaid annual leave entitlements in the sum of \$11,789.69, by 1 August 2026; and
- (c) to pay interest on the agreed debt and agreed bonus overpayment. Interest must be calculated and paid on the sum of \$38,899.10 using the civil debt calculator. Mr Croxford is ordered to pay this interest sum within 90 days of the date of this determination.²²

Costs

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

[113] If the parties are unable to resolve costs, and an Authority determination on costs is needed, WSL may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination.

[114] From the date of service of that memorandum, Mr Croxford 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.

[115] 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.²³

Simon Greening
Member of the Employment Relations Authority

²² www.justice.govt.nz/fines/civil-debt-interest-calculator.

²³ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.