

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 182  
3369783

BETWEEN                      GAETAN DUVAUX  
Applicant

AND                              MEGA LIMITED  
Respondent

Member of Authority:      Simon Greening

Representatives:            Aimee Cai, advocate for the Applicant  
Tim Clarke, counsel for the Respondent

Investigation Meeting:     23 and 24 February 2026 in Auckland

Submissions received:     23 February 2026 from the Respondent  
26 February 2026 from the Applicant

Determination:              27 March 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]      Gaetan Duvaux was employed by Mega Limited (Mega) in the position of senior web developer from 14 June 2023 until 22 November 2024.

[2]      Mega offers a cloud storage solution to its customers. Mr Duvaux worked in the technology department. The technology department is responsible for the development, operation and continuous improvement of Mega's technology platform.

[3]      During the period of Mr Duvaux's employment, there were over 180 people employed and working in the technology department.

[4]      In his role as a senior web developer, Gaetan was responsible for maintaining, improving and building on the front end of the Mega web application.

[5] There are two Webclient teams in the technology department. Gaetan's team leader was Joon Shin. Mr Shin reported to Allen Shegay (Engineering Manager, Webclient).

[6] Elizabeth Carter was employed by Mega as the financial controller during the period of Mr Duvaux's employment with the company.

[7] In her witness statement Ms Carter explains that between 2021 and 2024, Mega's revenue-per-employee metric declined substantially. By July 2024, with a headcount of 240 staff, revenue-per-employee had declined to \$25,023.

[8] The Board of Mega was not satisfied with the return on investment. In August 2024, Mega commenced a review of its operations to identify costs savings and operational efficiencies across the business.

[9] Following this review, the Board decided to commence a consultation process regarding a restructure of Mega's technology department.

[10] Andre Meister was employed by Mega in the position of Chief Technology Officer during the period of Mr Duvaux's employment with the company.

[11] On 4 November 2024 Mr Meister met with Mr Duvaux, and other employees affected by the proposal. During this meeting, information about the restructuring proposal was provided to Mr Duvaux. Mr Meister emailed a copy of the proposal to Mr Duvaux following this meeting.

[12] Mega asked employees to provide their feedback on the proposal by 13 November 2024.

[13] Mr Duvaux provided feedback on the proposal on 11 November 2024. Mega extended the timeline for feedback to 18 November 2024.

[14] On 18 November 2024 Mr Duvaux met with Mr Meister to discuss the proposal.

[15] Later that day Mr Meister sent an email to all affected employees, advising Mega's decision regarding the restructure and response to the feedback received on the proposal.

[16] Mega decided to disestablish 22 positions in the technology department. Mr Duvaux's position was disestablished.

[17] On 19 November 2024, Mega sent Mr Duvaux a letter confirming termination of employment by reason of redundancy. Mega paid Mr Duvaux in lieu of his contractual notice period, contractual and statutory entitlements, and an additional discretionary payment of \$5,055.60.

[18] On 30 January 2025, Mr Duvaux raised a personal grievance for unjustified dismissal with Mega and has brought his employment relationship problem to the Authority for determination.

[19] Mr Duvaux says the dismissal was unjustified. He seeks compensation for humiliation and injury to feelings, and reimbursement of lost wages following his dismissal. He also seeks a penalty pursuant to s 4 of the Employment Relations Act 2000 (the Act).

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

[20] For the Authority's investigation written witness statements were lodged by Mr Duvaux, Ms Carter, and Mr Meister. The witnesses answered questions from me under oath or affirmation and from the representatives.

[21] 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**

[22] The issues requiring investigation and determination are:

- (a) Was Mr Duvaux unjustifiably dismissed by Mega?
- (b) Did Mega breach s 4 of the Act and, if so, should a penalty be imposed?
- (c) If Mr Duvaux establishes a personal grievance, is he entitled to any of the following remedies:
  - (i) Compensation under s 123(1)(c)(i) of the Act.
  - (ii) Reimbursement of lost wages under s 128(2) of the Act.

- (iii) Should any remedy be reduced under s 124 of the Act for blameworthy conduct which contributed to the circumstances which gave rise to his grievance?
- (iv) Is either party entitled to an award of costs?

### **Was Mr Duvaux unjustifiably dismissed by Mega?**

[23] Under s 103A(2) of the Act, the statutory test for justifying a dismissal by way of redundancy is what a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred.<sup>1</sup>

#### *Genuine reasons*

[24] Based on the evidence before the Authority, I conclude there were genuine reasons for the restructuring because Mega explained and set out in detail the commercial drivers and rationale for the restructure in the proposal document.

[25] The commercial factors behind Mega's decision to embark on a restructure included:

- (a) The concern that a significant increase in employees working in the technology department in the previous three years had not caused the expected corresponding rise in revenue.
- (b) The revenue-per-employee metric had decreased substantially over this three-year period.
- (c) Salary expenses constituted a significant portion of overall costs in the technology department. Combined with the inability to safely reduce infrastructure cost without directly affecting customer service, the Board formed the view that a reduction in salary expenditure in the technology department was the only viable option for reducing costs across the business.
- (d) The proposal affected 45 positions in total, including 23 positions in New Zealand, and explained the possible changes across five categories:
  - i. Product development reduction.
  - ii. Facilitation role disestablishment.
  - iii. Management reduction.
  - iv. Content team reduction.

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<sup>1</sup> *Grace Team Accounting Ltd v Brake* [2014] NZCA 541 at [81].

v. UX Research disestablishment.

- (e) Mr Meister was asked by the Board to carry out scenario planning to explore the possibility of reducing the \$28 million salary expense to \$17.5 million, \$14.5 million or \$13 million.

[26] Mr Duvaux submitted his feedback on the proposal. Mr Duvaux did not question the genuineness of the reasons underpinning Mega's proposal to make his position redundant.

[27] Once the genuineness of a redundancy is established, if an employer concludes the position occupied by an employee is surplus to its needs, the Authority is not to substitute its business judgement for that of the employer.<sup>2</sup>

*Consultation and consideration of Mr Duvaux's feedback*

[28] On 4 November 2024, Mega started consulting with employees whose roles had been identified as being at risk, including Mr Duvaux, about the proposal to restructure the technology department.

[29] The initial deadline for feedback was 13 November 2024. This date was extended after Mega considered initial feedback and amended the proposal to retain an additional Web role, resulting in a 14-day consultation period.

[30] Mr Duvaux also met with Mr Meister on 18 November 2024 to provide further feedback.

[31] On 18 November 2024, Mega provided a detailed written response to affected employees outlining its response to the feedback received.

[32] Mega's consideration of the feedback was comprehensive in nature, in particular:

- (a) It explained why alternative cost-cutting solutions proposed by affected employees were not viable.
- (b) It discussed proposals to reduce hours and considered alternative working arrangements as an option to reduce the number of possible redundancies.

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<sup>2</sup> *Scarborough v Micron Security Products Ltd* [2015] NZEmpC 39 at [37].

- (c) It explained why alternative cost-cutting solutions would not achieve the savings required from the restructure, including: removal of staff benefits, voluntary redundancy, relocation of a datacentre, and contract renegotiation.
- (d) It provided its response to concerns that had been raised about timing and communication of the restructure announcement, and the impact of the restructure on product quality and user experience.
- (e) It explained that because the primary goal of the restructure was to save money, there were very few opportunities for redeployment. It noted in the same document that hiring freezes had been instituted, and new role requests had been rejected.
- (f) The response also specifically addressed feedback from Mr Duvaux regarding the risk to the Password Manager project if the redundancies led to the loss of key skills. Mr Duvaux worked on this particular project.

[33] In conclusion, Mega provided sufficient information to Mr Duvaux and a reasonable opportunity to comment on its proposal. Mega genuinely considered the feedback it received from affected employees regarding the proposal.<sup>3</sup>

#### *Selection criteria*

[34] Mega proposed the disestablishment of six web developer positions. There were twelve web developers based in New Zealand.

[35] Mr Meister says the criteria was applied across all web developer roles, including both junior and senior positions. This was on the basis that the functions performed were materially the same, and the distinction in title primarily reflected experience.

[36] In the proposal document, Mega explained the selection criteria and the process for applying the selection criteria.

[37] Paragraph 6.1 of the proposal document records:

Where several employees within a team/department (“group”) hold similar roles of which only some are proposed to be disestablished, a selection process was carried out to determine which employees are proposed to be made redundant. This is the case within the Web team.

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<sup>3</sup> *Simpsons Farms Ltd v Aberhart* [2006] ERNZ 825 at [62].

The selection process followed for the proposal involves the use of a set of criteria which are quantified values rated by the relevant managers and used to rank employees in order of best fit for the remaining roles.

[38] The selection criteria used by Mega is set out below:

- (a) Performance. Higher performance in an employee's role would result in a higher rank. Performance ratings included a judgement of the employee's technical skills, contributions, soft skills, attitude and engagement in the role.
- (b) Criticality / risk. This criterion measured the risk of business disruption, loss of critical knowledge, or loss of critical skills, if the employee were to leave the business. Employees were ranked higher where the perceived organisational risk from losing that employee was greater.
- (c) Cost. This criterion assessed the relative cost to Mega compared with other employees within the same skill area. Employees with lower relative cost were ranked higher.
- (d) Length of service. Where performance, criticality, and cost did not sufficiently differentiate between employees, preference was given to those with longer service, in recognition of their institutional knowledge.

[39] Paragraph 6.3 of the proposal document records:

Where appropriate, we have taken a global approach to applying the above selection criteria within a group, i.e. we have applied them to all employees and contractors within the Mega group and selected those who rank lowest as candidates for the proposed redundancy.

[40] Mr Meister decided the final score for each employee. In Mr Duvaux's case, Mr Meister gave evidence that Mr Shin and Mr Shengay had input into parts of the scoring process.

[41] In its response to the feedback received from employees, Mega makes the following comment regarding the application of selection criteria:

Questions were received as to why the selection criteria were applied before informing people, and why initially only those specifically affected were informed. Announcing to everyone in the company that this was occurring and their role might be at risk would induce uncertainty and anxiety even in those who were not likely to be affected. Our view was that it was preferable to apply the selection criteria and determine those likely to be affected in advance, and inform them directly before a company announcement.

[42] Although selection criteria were set out in the proposal document, Mega made it clear in the proposal the selection criteria had already been applied.

[43] When Mr Duvaux received the proposal, his position had already been selected for possible redundancy because the selection criteria had been applied across the team of web developers, and he had one of the lowest scores.

[44] Mega says Mr Duvaux was provided with an opportunity, when he received the proposal and as part of the consultation process, to comment on both the selection criteria and its application to his position.

[45] Mr Duvaux's feedback to Mega focused on the application of the selection criteria to his position. Mr Duvaux outlined the selection criteria and explained the relevant experience and value he brought to the business using the criteria as sub-headings in his response.

[46] The key issue is whether Mega consulted on the selection criteria before the decision was made to make Mr Duvaux's position redundant.<sup>4</sup>

[47] I find that Mega did not adequately consult on the selection criteria because:

- (a) The selection criteria were not formulated on a provisional basis for consultation with affected employees prior to the proposal being issued. Instead, the selection criteria were applied by Mega, prior to the proposal being issued, to determine which positions might be disestablished.
- (b) The proposal refers to selection criteria, "quantified values" to be applied, and the "weight" to be assigned. However, the actual values (scores) were not provided to Mr Duvaux.
- (c) This meant Mr Duvaux was not able to meaningfully engage with the selection criteria.
- (d) Although Mega provided a fulsome response to employees based on the feedback received, it did not specifically address Mr Duvaux's feedback in respect of how the selection criteria applied to his position.

[48] I have considered a submission from Mega that if it had disestablished all of the Web team and undertaken a fully contestable selection process involving formal interviews and similar assessments, the outcome would have remained the same based on Mr Duvaux's overall scoring.

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<sup>4</sup> Employment Relations Act 2000, s 4(1A)(c).

[49] The difficulty with this submission is that it suggests Mr Duvaux could not have done anything to influence his score. Mr Duvaux did not know what his score was. Mega did not specifically respond to his feedback on the selection criteria and how it applied to his position. Therefore, Mr Duvaux did not have a fair opportunity to engage with the score assigned to him, including an opportunity to consider what additional feedback he could have provided in an attempt to change his score.

[50] I find the procedural defect concerning statutory consultation requirements in relation to selection criteria was not minor and resulted in Mr Duvaux being treated unfairly.<sup>5</sup>

### *Redeployment*

[51] I accept Mega's evidence there was only one position available for possible redeployment. I also accept Mr Duvaux's evidence that this position was not suitable for him.

## **Remedies**

### *Compensation for humiliation, loss of dignity and injury to feelings*

[52] The remedy of compensation is for the emotional harm suffered by the employee as a result of the personal grievance and not intended as a punitive action to signal disapproval of the employer's conduct.<sup>6</sup> In considering an award of compensation, the assessment required is the nature and extent of harm caused to the employee by the employer's breach.<sup>7</sup>

[53] I listened carefully to Mr Duvaux's evidence at the investigation meeting regarding the emotional impact the dismissal had on him. The timing of the dismissal, just prior to Christmas, caused significant stress and financial hardship for Mr Duvaux. Mr Duvaux's parents were also visiting New Zealand in January, which placed additional pressure on his financial situation. Mr Duvaux explained the detrimental impact of the dismissal on his emotional well-being. He was keen to remain employed and offered Mega the alternative the option of retaining him on a short-term contract in order to complete the Password Manager project.

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

<sup>6</sup> *Paykel Ltd v Ahlfield* [1993] 1 ERNZ 344 at [342].

<sup>7</sup> *Pyne v Invacare New Zealand Limited* [2023] NZEmpC 179 at [41].

[54] I have also considered the nature of the Mega's breach. This is the way in which it pre-selected employees for possible redundancy by applying the selection criteria before the proposal was issued. However, there were genuine commercial reasons underpinning the proposal. With the exception of the selection criteria, I find Mega also fairly consulted Mr Duvaux on the proposal.

[55] Mr Duvaux received a proposal from Mega regarding the proposal to disestablish his position. He was given the opportunity to comment on the proposal and did so. It was not a situation where employment came to an end abruptly or the employee did not have an opportunity to engage with their employer about a proposal to terminate employment.

[56] Taking all of these factors into account, I consider an award of \$8,000 as compensation under s 123(1)(c)(i) of the Act to be appropriate in this case.

[57] Within 28 days of the date of this determination I order Mega to pay Mr Duvaux the sum of \$8,000 as compensation pursuant to s 123(1)(c)(i) of the Act.

#### *Reimbursement of lost wages*

[58] The Authority must order the employer to pay the lesser of a sum equal to that lost remuneration or to three months' ordinary time remuneration, subject to contribution and the discretionary power in s 128(3) to order an employer to pay a greater sum.<sup>8</sup>

[59] I have considered a submission from legal counsel for Mega that the consequences of procedural fairness in a redundancy setting should lead to a personal grievance for unjustified disadvantage being established, not unjustified dismissal.

[60] In *Innovative Landscapes 2015 Ltd v Popkin* the Employment Court said:<sup>9</sup>

Section 103A(5) provides that the Court must not determine a dismissal (or action) to be unjustifiable solely because defects in the process followed by the employer if the defects were minor and did not result in the employee being treated unfairly. It follows, by necessary implication, that defects which are not minor, and which did result in the employee being treated unfairly, may give rise to a finding of unjustified dismissal.

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<sup>8</sup> Employment Relations Act, s 128.

<sup>9</sup> *Innovative Landscapes (2015) Limited v Popkin* [2020] NZEmpC 40 at [15].

[61] I have also had regard to the following legal principle, that where a dismissal is regarded as unjustified purely on procedural grounds, allowances must be made for the likelihood that if a proper process had taken place, the employee would still have been dismissed.<sup>10</sup>

[62] If Mega had followed a procedurally appropriate process in regard to when the selection criteria was applied, engaged with his response to the criteria and its application to his role, and provided the scores, it is possible Mr Duvaux would have had a fair opportunity to influence his score and may not have been dismissed.

[63] This is not a case where Mr Duvaux's dismissal was likely inevitable.<sup>11</sup>

[64] Mr Duvaux seeks the sum equivalent to 10 months' salary in respect of lost remuneration resulting from the dismissal. Mr Duvaux provided evidence to the Authority regarding his search for new employment between November 2024 and February 2025.

[65] The steps Mr Duvaux took in the period after the loss of his job were reasonable, and therefore he is entitled to recover his losses for the three-month period following his dismissal.<sup>12</sup>

[66] Mr Duvaux primarily worked on the Password Manager project. I accept Mr Meister's evidence that Mega has decided to not invest further in this project at present. I also note Ms Carter's evidence that there have been further restructurings at Mega, since Mr Duvaux's dismissal, reducing the headcount from 240 in July 2024 down to 138. It also remains unclear how Mr Duvaux's ongoing employment with Mega would have been affected if it had adequately consulted with him regarding the selection criteria.

[67] Moderation is also an important principle to consider when setting awards for lost remuneration.<sup>13</sup>

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<sup>10</sup> *Sam's Fukuyama Food Services Ltd v Zhang* [2011] NZCA 608 at [26]; *Butler v Ohope Chartered Club Inc* [2021] NZEmpC at [16]-[32]; and *Faitala v The Pacific Island Business Development Trust* [2026] NZEmpC 53 at [74].

<sup>11</sup> *Idea Services Limited v Wills* [2025] NZEmpC 28 at [98].

<sup>12</sup> *Maddigan v Director-General of Conversation* [2019] NZEmpC 190 at [164].

<sup>13</sup> Above n 9 at [25].

[68] For these reasons I decline to exercise my discretion and award a sum greater than three months' ordinary time remuneration.

[69] Within 28 days of the date of this determination I order Mega to pay Mr Duvaux the sum equivalent to three months' ordinary time remuneration.

**Should any remedy be reduced under s 124 of the Act?**

[70] Mr Duvaux did not contribute to the situation that gave rise to the personal grievance he has established. Accordingly, no reduction in remedies is made under s 124 of the Act.

**Did Mega breach s 4 of the Act and, if so, should a penalty be imposed?**

[71] There is no evidence to support a claim that Mega breached s 4 of the Act. This claim does not succeed.

**Summary and orders**

[72] Within 28 days of the date of this determination Mega is ordered:

(a) to pay Mr Duvaux the sum of \$8,000 pursuant to s 123(1)(c)(i) of the Act;  
and

(b) to pay Mr Duvaux the sum equivalent to 3 months' ordinary time remuneration.

**Costs**

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

[74] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Duvaux 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, Mega 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.

[75] 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.<sup>14</sup>

Simon Greening  
Member of the Employment Relations Authority

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<sup>14</sup> For further information about the factors considered in assessing costs see:  
[www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1).