

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 226
3382663

BETWEEN STEPHANIE MARTIN
 Applicant

AND SAS BUILDERS LIMITED
 Respondent

Member of Authority: Matthew Piper

Representatives: Applicant in person
 Justine Foden, advocate for the Respondent

Investigation Meeting: 11 December 2025 in Auckland

Submissions and other 16 December 2025, 24 December 2025 and 23 January
information received: 2026 from the Applicant
 16 December 2025 and 16 January 2026 from the
 Respondent

Determination: 16 April 2026

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] SAS Builders Limited (SAS) commenced a restructure in September 2024, which resulted in the termination of Stephanie Martin's employment. Ms Martin claimed the restructure process that was undertaken by SAS was unfair and that she was unjustifiably dismissed.

The Authority's investigation

[2] For the Authority's investigation written witness statements were lodged from Ms Martin and SAS's director Shaun Spillane. All witnesses answered questions under

oath or affirmation from me and the other party or its representative. Written submissions were lodged by both parties.

[3] As permitted by s 174E of the Employment Relations Act 2000 (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

[4] The issues requiring investigation and determination were:

- (a) Was Ms Martin's dismissal on the grounds of redundancy justified?
- (b) If SAS's actions were not justified (by dismissing the applicant), what remedies should be awarded?
- (c) If any remedies are awarded, should they be reduced (under s 124 of the Act) for blameworthy conduct by Ms Martin that contributed to the situation giving rise to her grievance?
- (d) Should either party contribute to the costs of representation of the other party?

Background

[5] Mr Spillane started SAS in 2021. By 2023 the company had grown well and Mr Spillane wished to improve its market presence, but felt he did not have the relevant marketing expertise so he decided to hire someone to perform this function.

[6] Ms Martin commenced employment with SAS as a Marketing Manager/Office Assistant in June 2023. Prior to this Ms Martin had successfully run and sold a business, and while working at SAS she was studying toward a tertiary qualification. She was described by SAS's owner Shaun Spillane as being a leader, highly competent and ambitious.

[7] When Ms Martin worked for SAS, it was a small business with relatively limited office support which meant that in addition to her work as Marketing Manager/Office Assistant, Ms Martin would from time to time undertake whatever kinds of work were required to keep things turning over. This was also true of Mr Spillane and the other people employed in the business's office.

[8] Mr Spillane said it was apparent to him from early in the working relationship that Ms Martin did not enjoy working on administrative tasks and that she wished to focus on work that would grow the business or otherwise add value, such as sales or working more closely with clients.

[9] In early 2024 Mr Spillane and Ms Martin had a number of conversations about her considering leaving the business. In April 2024 she tendered her resignation, which triggered a conversation with Mr Spillane regarding what it would take for her to stay. Mr Spillane regarded Ms Martin as a valuable employee that he did not wish to lose. This was particularly the case because Mr Spillane continued to believe that investment in marketing activities would pay dividends in the future.

[10] After some discussion Ms Martin agreed to withdraw her resignation on the basis that she would move toward undertaking sales work. Mr Spillane and Ms Martin had a range of discussions regarding how this would occur, but it was clear that Ms Martin wished to head in this direction and Mr Spillane regarded her as talent he wished to retain.

[11] As part of these discussions Mr Spillane and Ms Martin agreed that her pay would be increased while she undertook the work of her current role and began to learn and develop toward being undertaking a sales-based role in the future which, it was discussed, would have a commission component to its pay. Ms Martin said that her pay rise was a source of friction in her relationship with Mr Spillane and the tone of their relationship changed after a disagreement in July 2024 about how it should be implemented.

[12] Mr Spillane said that around the time of these discussions he sensed the market slowing and was apprehensive about how things would go but wished to come up with a solution that would mean Ms Martin was retained in the business and could grow in the way she wanted to.

[13] Unfortunately, soon after this sales slowed dramatically. Mr Spillane said the change was initially difficult to read because there were often variations in cash flow across months in the business, but by August 2024 he was starting to get nervous about the pipeline of work. He said that despite good work from Ms Martin on marketing

initiatives, larger jobs seemed to be slowing and there were fewer jobs on which meaningful margin could be made.

[14] On 7 August 2024 SAS placed an advertisement on TradeMe to recruit for a new Admin support/PA role which would manage Mr Spillane's administrative work including dealing with inquiries, his emails and his calendar. Mr Spillane said the purpose of creating the role was that it would mean he could focus on chargeable work and sales to sure up the company during what was becoming a difficult period. Ms Martin was aware of the advertisement when it was placed and was listed as the person applicants should contact.

[15] On 15 August 2024 Ms Martin and Mr Spillane met at a local café to discuss her role and the business generally. At that point in time, Mr Spillane said that he was still reasonably confident that business would again pick up, but he also wanted to describe to Ms Martin the pressure the business was facing.

[16] As part of this conversation Mr Spillane asked Ms Martin if she was willing to undertake the Admin support/PA work rather than go through with hiring someone new into the role. Mr Spillane said that Ms Martin was adamant that she would not be interested in doing that kind of work. Mr Spillane understood Ms Martin's position in this regard was reflective of her drive to focus on sales and add commercial value to the business.

[17] Mr Spillane also told the Authority that privately he agreed Ms Martin would not be a good fit as his PA because her level of ambition and autonomy would have made it difficult for her to operate purely in a support capacity under his direct instruction. He considered that if Ms Martin were his PA it could lead to conflict between them. Mr Spillane also told the Authority that as far as he knew Ms Martin did not have the accounts or administration experience that would be needed to undertake the role and that continuing to pay her at her new a higher hourly rate would not be reasonable in the circumstances.

[18] Over the next month or so, the business failed to secure any new work which had meaningful margin and Mr Spillane considered that in a further month there would be very little work left that would generate enough profit to support the business. He

assumed Ms Martin was aware of this because a shared whiteboard in the office showed the jobs that were currently being undertaken and which had been signed up, or work prospects.

[19] On 17 September 2024 Mr Spillane made an offer of employment to a person who had applied for the new Admin support/PA role, which was accepted by that person on 22 September 2024. The new person was due to start on 1 October 2024 and it is notable that the person accepted their role and commenced employment during the restructure process described below.

The redundancy process

[20] On 18 September 2024 SAS commenced a restructure process in which it proposed to disestablish Ms Martin's role. A letter given to Ms Martin that day said that the company had been affected by a slowdown in work and that changes were being considered to respond to these market conditions. In short, Mr Spillane proposed to reduce overheads by disestablishing Ms Martin's marketing role. He said he would post some marketing material on an ad hoc basis until conditions improved.

[21] The letter recorded that "in the absence of any redeployment opportunities" a notice of redundancy may be issued.

[22] On 27 September 2024 Mr Spillane, Ms Martin and their respective advisors met to discuss the proposed change. Although Mr Spillane had expected to be receiving feedback at this meeting Ms Martin had a range of questions and concerns she wished to raise.

[23] One of these concerns was that when they had met on 15 August 2024, and Ms Martin had indicated she did not wish to take on administrative work, this was not being put to her as an alternative to potentially being made redundant. Ms Martin said that, rather, she had understood the conversation to reflect a request from Mr Spillane that she undertake additional work to support the business.

[24] On 30 September 2024 Mr Spillane again wrote to Ms Martin, this time summarising what had been discussed in their meeting on 27 September 2024 and providing further information and clarifications regarding the justification for the

proposal. In this letter Mr Spillane acknowledged that the 15 August 2024 meeting was not part of the consultation, rather he said he was wanting to let Ms Martin know what he was thinking and give her the option of doing the work before he appointed an external candidate. Mr Spillane reiterated that he had received a clear impression from Ms Martin that she did not wish to undertake the administrative work they work.

[25] The 30 September 2024 letter also elaborated on Mr Spillane's reasoning in hiring the Admin support/PA role as being to allow him to be more hands on with projects and pursuing sales. He also reiterated his understanding that Ms Martin did not want to perform the administrative duties which would be done by the new role.

[26] Ms Martin did not provide any further feedback and on 3 October 2024 Mr Spillane wrote to her confirming that her employment would terminate for redundancy, and that she would be paid two weeks' notice. Ms Martin, therefore received her usual wages until 18 October 2024.

Was Ms Martin unjustifiably dismissed?

[27] An employer is entitled to restructure its operations in order to realise efficiencies and cost savings. In order to do so it must undertake a fair process compliant with s 4 of the Act and have genuine reasons for the change.¹

[28] This means SAS was obliged to provide Ms Martin with sufficient detail about the proposed change which may affect her role and an opportunity to comment on its proposal before deciding whether to proceed with it². As the Employment Court said in *Gafiatullina v Propellerhead Ltd*³:

[110] It is now well established that the relationship between ss 4 and 103A requires a fair and reasonable employer to behave in a manner consistent with the statutory duty of good faith when undertaking a redundancy process. Section 4(1A)(c) requires an employer who is proposing to make a decision that will have an adverse effect on the continuation of an employee's employment to provide them with access to information relevant to the continuation of their employment and an opportunity to comment on this information.

[111] The case law illustrates the proactive approach to redeployment required by the duty of good faith. A fair and reasonable employer will consult and explore reasonable opportunities for redeployment for the affected employee.

¹ *Grace Team Accounting Ltd v Brake* [2015] 2 NZLR 494

² Section 4(1A)(c) of the Act

³ [2021] ERNZ 654

Differences in the terms, duties, remuneration and skillsets required may or may not be an encumbrance on redeployment; what is required is for an employer to identify and consult with the employee on the reasonableness of redeployment in the circumstances. An employer's assessment of suitability for redeployment is not to be conducted unilaterally outside of the restructure consultation. [citations omitted]

[29] SAS had genuine commercial reasons for the changes it made to its internal structure. Business was tough at the time, and it was reasonable to restructure its roles in order to ensure its commercial priorities, namely Mr Spillane being able to work on the tools and generate leads, were able to be achieved.

[30] However, employers must consider redeploying employees whose roles are disestablished as a result of a restructure. This obligation is consistent with an employer's obligation to avoid the termination of the affected employee's employment. Mr Spillane's conversation with Ms Martin on 15 August 2024 was not sufficient to discharge this obligation because at that time no restructure had been proposed.

[31] Rather, when the decision was made to disestablish Ms Martin's role, SAS was required to consult with her regarding whether any alternatives existed to which she could be redeployed.

[32] Mr Spillane's view was that Ms Martin would not be a good fit for the Admin support/PA role. By failing to discuss this with her before already appointing someone else to the role within days of proposing to disestablish her position, Ms Martin did not have the benefit of seeking redeployment into that Admin support/PA role. The evidence demonstrated that Ms Martin's experience both in running businesses and managing the various systems and software required to perform the PA/admin role would have meant she was capable of performing it.

[33] Ms Martin's evidence was that if she had been offered redeployment to the PA/Admin role she would have taken it in order to avoid the termination of her employment. Although it was not reflective of her ideal role or aspirations to work in sales, she said that she would have stayed and done it rather than being out of a job. The fact that the role may have been at reduced hours and a reduced rate of pay would have been a matter that would have needed to have been discussed between the parties. SAS's actions meant that this discussion never occurred.

[34] In order to justify Ms Martin's dismissal, SAS was obliged to discuss redeployment with her prior to terminating her employment. By hiring a person into the only role to which Miss Martin could potentially have been redeployed at the time that it did, SAS deprived Ms Martin of the opportunity to be redeployed.

[35] Accordingly, SAS failed to comply with the good faith and procedural fairness obligations that were required for it to be able to justify Ms Martin's dismissal.

[36] Ms Martin was unjustifiably dismissed and she has established her personal grievance claim.

Remedies

[37] Given Ms Martin has a personal grievance for unjustified dismissal, she is entitled to consideration of remedies.

Humiliation, loss of dignity and injury to feelings

[38] Ms Martin seeks compensation for humiliation, loss of dignity and injury to feelings pursuant to s 123(1)(c)(i) of the Act. In assessing whether such an award should be made, the Authority must quantify the harm and loss caused by any humiliation, loss of dignity and injury to feelings arising out of the unjustified actions.⁴

[39] Ms Martin told the Authority she found SAS's actions shocking and experienced panic attacks and a feeling of overwhelm. She said her redundancy had impacted on her family life and she felt apprehensive about seeing Mr Spillane in public after her dismissal.

[40] The evidence established that how SAS had conducted the restructure process, its failure to consult with Ms Martin regarding redeployment and the resultant decision to dismiss her caused her distress which should be compensated by an award under s 123(1)(c)(i) of the Act.

[41] Ms Martin's evidence warranted an award of \$10,000 in distress compensation.

⁴ *Richora Group Ltd v Cheng* [2018] NZEmpC 113

Lost wages

[42] SAS's unjustified actions meant Ms Martin was not redeployed to an alternate role it created in the business, when a proper discharge of its obligations would have meant she would have been. This means that Ms Martin has a valid claim to lost wages despite the restructure itself having genuine commercial reasons and she can recover the remuneration she has lost as a result of the personal grievance.⁵

[43] Ms Martin sought lost wages for the period 17 October to 31 March 2025, less the income she said she received during that period from an alternative role she started on 30 November 2024. Ms Martin said this alternative role paid less than her role at SAS and did not offer her fixed hours.

[44] Ms Martin told the Authority she took steps to mitigate her loss by applying for alternative roles after her employment ended, but the documentary evidence produced and Ms Martin's oral evidence regarding the steps she took was of limited probative value. Ms Martin also continued to study toward a tertiary qualification at the time her employment ended, which would have consumed her energy.

[45] The evidence of both parties was that Ms Martin did not enjoy administrative work and she was only continuing to work at SAS in order to pursue a sales-oriented position. This reflected her desire to add value and earn at higher levels. These motivations remained intact for Ms Martin at the time her employment ended. When this is considered together with the fact that Ms Martin and Mr Spillane would likely have had friction in their relationship because of their differing approaches to work and conflict, which each described in detail to the Authority, a counter-factual emerges where it is more likely than not that Ms Martin would not have remained employed with SAS for longer than six weeks.⁶

[46] Accordingly, the evidence supports the conclusion that an award of six weeks' wages at the rate of pay of the new role appropriately reflects the likely quantum of remuneration actually lost by Ms Martin as a result of SAS's unjustified actions.

⁵ Section 128 of the Act.

⁶ *Sam's Fukuyama Food Services Ltd v Zhang* [2011] NZCA 608 at [37].

[47] Had Ms Martin been appointed to the new Admin support/PA role, she would have earned wages at the rate and hours applicable to that role. Six weeks' lost remuneration is therefore calculated based on the new wage rate, which equals \$4,872.00. Orders are made in that amount pursuant to s 128 of the Act.

Contribution

[48] Where it has awarded remedies in respect of a personal grievance, the Authority must, in deciding both the nature and extent of the remedies to be provided, consider the extent to which the actions of the employee contributed towards the situation that gave rise to the grievance.

[49] Where there is relevant contribution, the Authority may reduce the remedies awarded. In this regard, more than simple cause and effect is required. The employee's actions must be blameworthy or wrongful which, when assessed in a commonsense way, contributed to the situation giving rise to the grievance.

[50] Although Ms Martin had indicated to Mr Spillane on various occasions that she did not wish to undertake PA/Admin work, such indications were not blameworthy conduct nor did they change the fact that SAS was obliged to undertake a fair redeployment process.

[51] Accordingly, Ms Martin's remedies should not be reduced for contribution.

Costs

[52] Ms Martin was not represented at the investigation meeting and is therefore not entitled to recover costs in relation to representation.

[53] Ms Martin is entitled to recover the fee she incurred in respect of the lodgement of these proceedings in the Authority.

Summary and orders

[54] Within 28 days of the date of this determination, SAS Builders Limited is ordered to pay Stephanie Martin:

- (i) \$10,000.00 under s 123(1)(c)(i) of the Act as compensation for humiliation, loss of dignity and injury to feelings;
- (ii) \$4,872.00 (gross) under s 128 of the Act as lost wages; and
- (iii) \$71.55 as reimbursement of the lodgement fee

Matthew Piper
Member of the Employment Relations Authority