

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 265
3321360

BETWEEN GREGORY BRIAN CLARKE
Applicant

AND OMNI HEALTH LIMITED
Respondent

Member of Authority: Peter Fuiava

Representatives: Mark Donovan, counsel for the Applicant
Alison Maelzer and Bridget Perkins, counsel for the
Respondent

Investigation Meeting: 18 September 2025 in Auckland and by audio-visual
link

Submissions and other information received: 10 and 24 October 2025 from the Applicant
17 October 2025, 30 January, and 3 February 2026 from
the Respondent

Determination: 1 May 2026

DETERMINATION OF THE AUTHORITY

What is the employment relationship problem?

[1] Gregory Clarke's claims involve unjustified dismissal and unjustified disadvantage. Having previously been employed as the chief operating officer for Omni Health Limited (OHL or the company), which operates a network of GP clinics in New Zealand, Mr Clarke says that his dismissal on the grounds of redundancy was not procedurally or substantively justified and that OHL's failure to provide him with access to information relevant to the continuation of his employment was a breach of good faith under s 4 of the Employment Relations Act 2000 (the Act).

How has the Authority investigated?

[2] Mr Clarke's case comprises witness statements from himself and his wife, Faye Clarke. For OHL, witness statements were provided from its chief executive officer and managing director, Mark Wills, and OHL executive business partner, Karolina Slack, who attended the investigation meeting by AVL as she lives in the United States.

[3] All witnesses answered questions under oath or affirmation from me and the parties' representatives. Following the investigation meeting, the representatives provided written closing submissions both of which have been considered.

[4] 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 the evidence and submissions received.

What were the issues?

[5] The issues requiring investigation and determination were:

- (a) Was Mr Clarke's dismissal on the grounds of redundancy substantively justified and procedurally fair?
- (b) Was Mr Clarke unjustifiably disadvantaged by OHL's (alleged) breach of the statutory duty of good faith?
- (c) What evidence is there of mitigation of loss by Mr Clarke by applying for other jobs?
- (d) What is to be made of the remedies sought by Mr Clarke notably lost remuneration, compensation, interest and a penalty for a breach of ss 4 and 4A of the Act?
- (e) Should either party contribute to the costs of representation of the other?

What happened?

[6] OHL carries on business as a health care provider and employed Mr Clarke as its chief operating officer on 27 March 2023. OHL's business model was to acquire GP practices which was partly financed by equity and by way of working capital from

its bank or business partner, Sandford World Clinic, based in the United States. OHL could then charge a three percent management fee for providing services to the practices it acquired. When Government funding for COVID-19 testing was withdrawn and as cost-of-living changes took hold making it expensive to see the doctor, and with shortages of general practice doctors particularly in regional New Zealand, OHL started to experience financial challenges.

[7] At the time the company employed Mr Clarke, its profit and loss results for the last three consecutive financial years (FY) from FY2020 to FY2022 had been declining from \$644K in FY20 to \$549K in FY21 and down further to \$354K in FY22. Not that Mr Clarke nor his line manager, Mr Wills, would have known this at the beginning of 2023, but OHL's profit and loss statement for FY23 would significantly fall further to a deficit of some -\$203K for that year.

[8] As chief operating officer, one of the purposes of Mr Clarke's role was to provide professional oversight of OHL's business operations and administration. He attended monthly board meetings in which he received budget information regarding OHL from which he could infer its financial position.

[9] On 31 January 2024, by which time Mr Clarke had been working for OHL for 10 months, Mr Wills provided him with a restructure consultation document for change that he created (the change proposal). The change proposal stated that recent trading performance of the practices in the group had created challenges for OHL and these were understood by everyone as it was something they had all been dealing with for some time. However, unfortunately the company had run out of time or capacity to weather the financial cost. Mr Wills' change proposal referenced OHL's profit and loss results from FY2020 to FY2023 as noted above and said that the reduced financial performance of the practice entities was having a significant effect on Omni Health, for example, the dividend income, which was used to supplement management fee income, had declined 40% in the last year.

[10] Under the proposal, three senior roles were to be disestablished: manager people and culture, senior administrator, and Mr Clarke's role of chief operating officer. The manager people and culture position was already vacant but would remain so and not be filled. It was also proposed that three new roles be established:

recruitment/telemedicine coordination, an additional bookkeeping/payroll person, and an accountant who would replace the external contract accountant. The bookkeeping position was required to provide added support across the group.

[11] The change proposal set out various next steps and timings for the process which included input as to what improvements, cost savings, alternatives, and options could be provided, feedback for which was due 9 February 2024. Mr Wills stated that he would advise everyone of the final design and the outcome for each affected staff member between 7-8 March 2024. As it would later transpire, he missed his own deadline for a final decision, which was not made until 21 March.

[12] On 1 February 2024, Mr Clarke attended a senior leadership team (SLT) meeting and felt humiliated knowing that everyone present was aware of the change proposal.

[13] On 4 February 2024, Mr Clarke received a Google chat message from OHL executive partner, Karolina Slack, stating: “Please let me know how I can help you. Happy to be a reference too.” Mr Clarke stated that receiving such a message from Ms Slack before he had provided his feedback to the change proposal made him doubt the genuineness of the process.

[14] On 9 February 2024, Mr Wills extended the deadline for feedback to 12 February to give the regional managers and a group operations manager affected by the change proposal more time to do so.

[15] Mr Clarke provided his feedback on 12 February stating, among other things, that the change proposal was light on detail and lacked any substantive analysis; that the proposal referenced “financial sustainability” but did not quantify the benefit of the restructure nor what the target profit was; that consideration be given to increasing the management services fee by one percent, that Mr Wills had recently stated that there would be three acquisitions over the next couple of months and applying (an increased) management fee of 4 percent would generate an additional \$200K per annum; Mr Clarke questioned how the addition of a bookkeeper would assist with financial sustainability; and that he had been contacted by Ms Slack who had offered to be his referee even though a final decision had supposedly not been made.

[16] On 15 February 2024, Mr Clarke met with Mr Wills to discuss his feed back to the change proposal. Mr Wills agreed that the change proposal was light on detail but that was because he did not want it to have been completely worked through such that it would be difficult for anyone to provide alternative views to it.

[17] On 1 March 2024, OHL deferred the date for announcing the outcome of the restructuring until 11 March 2024.

[18] On 4 March 2024, an email from one of the regional practice managers was circulated to senior staff that referenced a draft delegations authority that omitted Mr Clarke's role of chief operating officer. Although Mr Wills had not authored the document, he did forward it to senior staff including Mr Clarke.

[19] On 6 March 2024, Mr Clarke emailed Mr Wills and requested a detailed profit and loss for OHL for 2020 to 2023, a detailed forecast for the coming year comparing the impact of the restructure proposals versus the status quo, and a quantification of "financial sustainability". Mr Wills provided Mr Clarke with a detailed profit and loss for the requested periods but no forecast was provided. Mr Wills did not quantify what financial sustainability would look like but stated that when OHL no longer required extra working capital over and above the management fee and dividend income, the business would be sustainable at that point.

[20] Mr Wills missed the due date to announce the outcome of the restructuring proposal but communicated to Mr Clarke while on a business trip in Hastings on 12 March 2024 that he felt that there were no suitable options where Mr Clarke's role could be retained and that OHL was now proposing to disestablish his role. He recommended that he seek independent advice by 18 March at which time Mr Wills would make his final decision.

[21] At an SLT meeting on 21 March 2024, Ms Slack enquired with Mr Wills when a final decision regarding the restructure would be. Shortly after the meeting ended, Mr Clarke was called into Mr Wills' office and was given a letter confirming the disestablishment of his role effective 21 June 2024.

[22] On 25 March 2024, Mr Wills telephoned Mr Clarke to inquire whether he would take annual leave instead of receiving his salary in lieu of his notice period. This was rejected.

[23] On 17 June 2024, Mr Clarke raised his personal grievance claim with OHL claiming that he had been affected to his disadvantage by the company's unjustifiable actions and that he had been unjustifiably dismissed.

Was Mr Clarke unjustifiably dismissed?

[24] The test for whether a dismissal is justified is set out in s 103A of the Act. It requires an objective assessment of whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time of the dismissal. In relation to a dismissal for redundancy the Court of Appeal has described the test of justification in this way:¹

... If the decision to make an employee redundant is shown not to be genuine (where genuine means the decision is based on business requirements and not used as a pretext for dismissing a disliked employee), it is hard to see how it could be found to be what a fair and reasonable employer would or could do. The converse does not necessarily apply. But, if an employer can show the redundancy is genuine and that the notice and consultation requirements of s 4 of the Act have been duly complied with, that could be expected to go a long way towards satisfying the s 103A test.

Redundancy was for genuine reasons

[25] Mr Clarke was critical of the change proposal being light on detail and I agree. However, in my view, this was partly because Mr Wills had not set out in his change proposal what cost-cutting measures he had already considered before looking at the most significant expense item for OHL; its salary and wages bill.

[26] For example, in his feedback to the change proposal, Mr Clarke queried what the rent plan was for OHL's Shortland St premises and whether savings in IT could be made by moving to Google workspace. While valuable this feedback was from Mr Clarke, unbeknownst to him, Mr Wills had already considered these measures which is evident in an email between him and Ms Slack dated 13 February 2024.

¹ *Grace Team Accounting v Brake* [2014] NZCA 541 at [85].

[27] While the change proposal could have been more detailed, this reflects the fact that it was created by Mr Wills without input from a people and culture manager because the company could no longer afford to refill the role left vacant. This was symptomatic of OHL's poor state of financial health which Mr Clarke could infer from the budgets that he saw each month at SLT meetings. I find his request for quantification of "financial sustainability" to be unreasonably made given that the company was on the cusp of receivership.

[28] It was Mr Wills' evidence, which is internally consistent with his company's profit and loss statements, that OHL's financial position towards the end of 2023 and the beginning of 2024 was unsustainable. While there was equity in the business, this only had value on paper and there was no cash to support that value. This was acknowledged by Mr Clarke when I asked him why the profit earned from previous years could not see the company through one bad year. His answer was that the lack of cashflow was causing the bite.

[29] Mr Wills' evidence given at the investigation corroborates this bleak view of OHL's liquidity problems in 2024. He advised that his company had a monthly overdraft with its bank which was pressuring the business to reduce its level of indebtedness. Mr Wills further stated that a spreadsheet needed to be made of the payments that could not be made and that cheques to creditors were being produced "right on the dollar".

[30] I accept that Mr Clarke requested, but was not provided, a financial forecast from Mr Wills who confirmed the document's existence but declined to disclose it because it contained confidential salary information. However, those particulars could have reasonably been redacted to balance Mr Clarke's interests in access to information relevant to the continuation of his employment,² and the privacy interests of other employees. However, in light of OHL's profit and loss statements, and as will be seen, reticence from its business partner, Sandford World Clinic (Sandford) to invest further, production of the forecast would not have changed the outcome for Mr Clark especially when cost savings in the hundreds of thousands of dollars needed to be made if OHL were to prevail.

² The Act, s 4(1A)(c)(i).

[31] It was submitted that the chief strategy officer could provide clinical services that could be recharged to the practices. The difficulty there though was time which OHL did not have. It would have taken time for that additional revenue to be earned and to make a material difference to OHL's liquidity problems.

[32] It is common ground that in August 2023, Mr Wills went on a self-funded trip to the United States to go cap in hand to Sandford for additional and much-needed investment. However, he was unsuccessful and returned empty handed. When I asked Ms Slack why Sandford did not invest more into OHL, she explained that as a not for profit, the organisation was not large, did not have access to unlimited funds, and there was no financial appetite among the shareholders to invest further.

[33] Although a financial forecast could have been provided to Mr Clarke, it would only have confirmed that drastic measures needed to be taken to avoid receivership. His idea to increase management fees by one percent was not practical and to his credit, Mr Clarke accepted this to be so at that investigation meeting. Although Mr Wills had stated in an SLT meeting in February 2024 that he was looking to acquire three additional clinics, those acquisitions did not proceed in the end. Additionally, while there had been significant steps taken by both Mr Wills and Mr Clarke to recruit an external contractor, that mahi was ultimately for naught because the company could no longer afford to employ that person.

[34] In his role as chief operating officer, Mr Clarke will have been across the monthly budget for OHL and could infer from that information that the company was not tracking well, which had been the case for the entirety of his 10 months with the business. I find that at the time of employing Mr Clarke, the ground had shifted for OHL for the worse, and now with the benefit of hindsight, Mr Wills would not have established the chief operating officer role when he did. There was a genuine financial reason for Mr Clarke's redundancy that underpinned his dismissal.

Could Mr Clarke have been re-deployed?

[35] One of the new roles arising from the change proposal was an in-house accountant position. It is common ground that the position was never offered to Mr Clarke as a redeployment opportunity but neither did he apply or express interest in the role which he knew about. The issue of redeployment has come to the fore now

because, despite best efforts, Mr Clarke has not been able to secure a comparable replacement job. He has done some ad-hoc contracting work of a short-term nature for two organisations from July 2024 to late January 2025. However, he has largely been out of work since then and has made 35 job applications in the last two years (2024-2025).

[36] I am satisfied that there were no suitable redeployment roles for Mr Clarke after the restructure. There is no doubt of his ability, qualifications, and work experience for the accountant role but Mr Clarke's desire to undertake that role now must be put in its proper context. It comes belatedly in the course of this employment relationship problem and only after he has not succeeded in securing more senior roles such as chief operating officer. I accept that there was no bad faith on Mr Wills' part in not offering the accountant position to Mr Clarke but it is a substantially different and a much junior role, with a salary less than the finance manager who earned significantly less than Mr Clarke as OHL's then chief operating officer.

Redundancy process was procedurally unfair

[37] While I am satisfied that Mr Clarke's redundancy was for genuine reasons and there were no suitable redeployment opportunities for him, and that his dismissal on the grounds of redundancy was substantively justified, the restructure process was carried out in a way that resulted in unnecessary stress and anxiety for Mr Clarke.

[38] Having had the benefit of Ms Slack's oral evidence and having considered the text message exchange between her and Mr Wills in which she describes Mr Clark as a "good man", I have no difficulty accepting her bona fides in offering to be referee for Mr Clarke. This was not evidence of a predetermined outcome but Ms Slack reflecting on her own personal experience of previously being made redundant herself and wanting to support Mr Clarke. However, as well intended and heart felt that support was, it came at an inopportune time when Mr Clarke was still very much in the middle of it all.

[39] While the change proposal acknowledged that this was a difficult time for affected staff, there was no express mention of EAP support and the evidence before me was equivocal as to whether OHL had done enough to inform Mr Clarke how he could access that support. Such support would have mitigated Mr Clarke's feelings of

embarrassment and humiliation when he attended an SLT meeting in early February 2024 after the change proposal was announced.

[40] Although Mr Wills was not the author of a delegations schedule which excluded Mr Clarke's role as chief operating officer, the document was circulated to other senior members of management which only added to Mr Clarke's feelings of isolation and hurt which could have been avoided had there been greater attention to detail.

[41] A telephone call by Mr Wills to Mr Clarke on 25 March 2024, after he had received his notice, ought not have been made in all the circumstances. During the call, Mr Clarke was asked whether he would agree to having some of his unused annual leave towards his three month notice period, which if accepted would mean that Mr Clarke was funding his own notice period. While this was rejected and although Mr Wills did not try to convince Mr Clarke to change his mind, the request should never have been made in the first place given the sensitivities at the time.

[42] An exit letter somewhat clumsily drafted by Mr Wills appeared to suggest that because Mr Clarke was leaving, OHL was restructuring when it was the other way round. Finally, there was the delay with Mr Wills' final decision for the restructure, which was originally scheduled for 7-8 March, extended to 11 March, but not made until 21 March 2024. The delay prolonged Mr Clarke's stress and anxiety unnecessarily.

[43] When the above shortcomings are considered individually, it could be argued that of themselves they are minor and did not result in Mr Clarke being treated unfairly.³ However, when considered in their totality, which is how it was experienced by Mr Clarke, it cannot be said that the process was what the notional fair and reasonable employer could have done in all the circumstances. This properly gives rise to compensation for hurt and humiliation for which Mr Clarke has not contributed. That said, there is a need to avoid awarding remedies twice given the overlap with Mr Clarke's dismissal and breach of good faith grievances.

³ The Act, s 103A(5).

[44] The level of compensation must recognise the fact that Mr Clarke's dismissal on the grounds of redundancy was substantively justified but that he was unjustifiably disadvantaged on procedural grounds. The effect of the grievance on Mr Clarke as conveyed to me by both him and Mrs Clarke are noted, particularly the loss of sleep and weight loss. I consider a global award of \$10,000 is appropriate for the loss of dignity and injury to feelings that Mr Clark has experienced.

Orders

[45] The Authority orders Omni Health Limited to pay \$10,000 to Gregory Brian Clarke no later than 29 May 2026. Given the outcome of this investigation in which Mr Clarke has been successful, it is appropriate that he be reimbursed the filing fee of \$71.55 that he paid to lodge his statement of problem with the Authority. This amount is to be reimbursed by OHL to Mr Clarke by 29 May 2026.

Costs

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

[47] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Clarke may lodge, and then should serve, a memorandum on costs within 21 days of the date of this determination. From the date of service of that memorandum, OHL would 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.

[48] 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.⁴

Peter Fuiava
Member of the Employment Relations Authority

⁴ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.