

**NOTE: This determination  
contains an order prohibiting  
publication of certain  
information at [3]**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 273  
3305321

BETWEEN	NICHOLAS GORDON PILCHER Applicant
AND	BRANDT TRACTOR LIMITED Respondent

Member of Authority:	Helen van Druten
Representatives:	Jemani Sherson, counsel for the Applicant Alastair Hall, counsel for the Respondent
Investigation Meeting:	9 and 10 March 2026 at Hamilton
Submissions received:	Up to 30 March 2026 from Applicant 27 March 2026 from Respondent
Determination:	4 May 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Nicholas Pilcher was employed as a territory manager and then sales manager with Brandt Tractor NZ Ltd (Brandt) based in the Waikato region. After receiving four complaints about his work conduct he was placed on leave while the complaints were investigated. Mr Pilcher says this was a suspension which was both substantively and procedurally unjustified. He further claims that his dismissal on 22 April 2024 was unjustified, being based on complaints he did not see and without any fair process.

[2] Brandt operates a number of tractor dealerships in the North Island. It does not accept Mr Pilcher's claims. It says that Mr Pilcher was reasonably placed on leave after

it received the complaints. It says the complaints were consistent and too serious that it needed to take immediate action to protect the health and safety of its other employees.

### **Non-publication of specific information**

[3] The parties have requested a non-publication order by consent prohibiting the publication of commercially sensitive Brandt information. It is appropriate for such limited non-publication orders to be made, and I have written this determination accordingly without referencing that information. In accordance with Schedule 2 clause 10(1) of the Employment Relations Act 2000 (the Act), I order that any evidence, submissions, or documents that would tend to reveal the same are not to be published.

[4] I have also anonymised the first complainant employee in this determination. They are referred to as MJP. A random generator was used and does not resemble the name of that individual.

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

[5] For the Authority's investigation written witness statements were lodged from Mr Pilcher, Kelly Langman, Graeme Taylor as chief personnel officer based in Canada, Stuart Drew as vice-president operations New Zealand, Harley Connell and Jamie Wood in Brandt sales and Haylee O'Hanlon as EA to Mr Drew. All witnesses (except Mr Wood) answered questions under oath or affirmation from me and the parties' representatives. Mr Taylor attended by audio-visual link and Mr Wood's evidence was accepted on the papers by agreement. The representatives also gave written closing submissions.

[6] The parties raised multiple evidential concerns prior to the investigation meeting. Several of those concerns related to the production of allegations and information to the Authority not provided to Mr Pilcher prior to or during the process leading to his dismissal. By Authority direction, the parties were directed that evidential relevance and weight was for the Authority to determine, recognising that admission of those documents does not remove or mitigate the employers' obligations under the Act.<sup>1</sup>

[7] Mr Drew was employed on 5 August 2024 after Mr Pilcher's employment was terminated therefore he could only comment on Brandt documentation on file and

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<sup>1</sup> Including ss 4, 103A(2) and 103A(3) of the Act.

information received from others. Dean Smith (as Mr Pilcher's direct line manager) and Karen Harvey (HR advisor) were the investigators, though were both unavailable as witnesses.

[8] 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**

[9] The issues requiring investigation and determination were:

- a. Was Mr Pilcher unjustifiably disadvantaged by Brandt putting him on a Performance Improvement Plan (PIP) on 12 February 2024 and/or suspending him on 17 April 2024?
- b. Was Mr Pilcher unjustifiably dismissed?
- c. If Brandt's actions were not justified, what remedies, if any, should be awarded, considering;
  - i. Reimbursement of lost wages under s123(1)(b) of the Act;
  - ii. Compensation under s123(1)(c)(i) of the Act; and
  - iii. Payment of any outstanding commission payments.
- d. If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Mr Pilcher that contributed to the situation giving rise to his grievance?
- e. Are wage arrears and holiday pay owed to Mr Pilcher?
- f. Did Brandt breach its good faith obligations to Mr Pilcher? If so, should the Authority issue a penalty and should it be paid to the applicant?
- g. Should either party contribute to the costs of representation of the other party?

[10] Mr Pilcher no longer seeks reinstatement as a remedy.

### **Background Information**

[11] Brandt Group of Companies operates worldwide in manufacturing and heavy equipment across multiple industries. In New Zealand, it operates a tractor sales and service dealership network in the North Island.

[12] Mr Pilcher commenced employment with Agrowquip NZ Ltd on 28 October 2020 as a sales representative. Upon Brandt acquiring Agrowquip NZ Ltd, Mr Pilcher continued employment with his new employer on 30 January 2023, in the same role with a new title of territory manager.

[13] On 11 August 2023, Mr Pilcher accepted a promotion to Sales Manager. In this role he was responsible for leading sales team managers and leading the team to achieve sales targets and growth.

[14] Brandt says that on 16 January 2024, it was alerted to concerns of harassment and intimidation against Mr Pilcher from another employee, MJP. Mr Pilcher was invited to an investigation meeting with Mr Smith and Ms Harvey on 2 February 2024 to discuss the complaint. He denied the allegations and provided written feedback to each example provided by MJP.

[15] On 12 February 2024 Mr Pilcher was invited to a further meeting two days later to respond to proposed disciplinary action. The invitation letter summarised the earlier meeting, further investigation undertaken and advised the allegations were substantiated. Mr Smith advised his preliminary view on disciplinary action. He proposed a warning, mediation with MJP to repair the working relationship, work on a PIP and training for Mr Pilcher on managing conflict and building positive relationships in the workplace.

[16] A transcript of the 14 February meeting (and 15 February 2024 outcome meeting) was provided in evidence. Mr Smith confirmed that Brandt had concerns about Mr Pilcher's reaction to the complaint and attempts to resolve the concerns. Both parties discussed those concerns. At the outcome meeting, Mr Smith decided not to issue any warning but Mr Pilcher would be put on a Performance Improvement Plan (PIP). Mr Pilcher declined mediation with MJP.

[17] Soon after that, Brandt says that it received four complaints in quick succession:

- a. On 26 March 2024, Brandt received a verbal complaint from a different employee alleging verbally inappropriate behaviour by Mr Pilcher. Brandt says that it spoke to that employee who described the alleged aggressive, derogatory, belittling and demeaning statements made and

Mr Pilcher's apparent rudeness. According to Brandt, they did not want to make a formal complaint as they were concerned for their safety.

- b. A second written complaint on 2 April 2024 saying that the employee felt targeted and demoralised by Mr Pilcher's actions towards them.
- c. A third complaint on 3 April 2024 from a manager, claiming that they had heard Mr Pilcher make an unsettling comment about a co-worker's physical appearance; and
- d. Also, on 3 April 2024 from a fourth employee alleging that Mr Pilcher treated other employees poorly and unprofessionally.

[18] On 2 April 2024, Brandt says that Ms Harvey and Mr Smith spoke to the first complainant and assessed them as "credible and reliable" with genuinely held concerns about Mr Pilcher's reaction to any formal complaint. The same day, the second complainant made a written complaint and included that others felt the same but were scared of retaliation if they came forward. Both the third and fourth complaints expressed similar opinions about potential consequences if they were identified.

[19] In February 2024, a female employee received a sexually explicit text from an unknown number. She believed the message was sent by Mr Pilcher and spoke about it with another employee who also reported another person receiving an offensive text message in March 2024 from the same number with, as he reported, details only Mr Pilcher would know. Brandt did not discuss the text messages with Mr Pilcher.

[20] On 17 April 2024, Mr Pilcher was advised that Brandt was investigating the bullying allegations and would be appointing an independent investigator. The parties dispute what occurred at that point. Brandt says that it offered Mr Pilcher special leave on full pay while the matter was investigated, which he accepted. Mr Pilcher says that he was unjustifiably disadvantaged as he was suspended in front of others and this was humiliating. He claims that this was a suspension which was both substantively and procedurally unjustified.

[21] Brandt says that after reviewing the complaints, it decided that no formal investigation was required. The complaints were consistent and constituted demeaning, inappropriate and harassing conduct. It further says that it had safety obligations to other employees and its own reputation and had an obligation to remove that risk.

[22] On 22 April 2024, Mr Smith called Mr Pilcher to have a chat. He and Mr Pilcher's manager, Trent Oien, met Mr Pilcher in a carpark and told him that he was dismissed for serious misconduct, effective immediately. In his oral evidence, Mr Drew said that he was unaware the conversation occurred in a carpark and that was not appropriate. Other than that, Mr Pilcher's description of the interaction occurred as he understood it.

[23] A personal grievance was raised on 3 May 2024.

### **Was Mr Pilcher unjustifiably disadvantaged?**

[24] Mr Pilcher has raised personal grievance claims of unjustified disadvantage claiming that one or more conditions of his employment were affected to his disadvantage by some unjustifiable action by the employer.<sup>2</sup> Firstly, I need to determine if he suffered a disadvantage in his employment and, if so, whether this was caused by an unjustified action or actions of Brandt.

[25] Mr Pilcher claims that the two actions causing his disadvantage were the decision to put him on a performance improvement plan (PIP) and his suspension on 17 April 2024.

#### *Performance Improvement Plan*

[26] The PIP was put in place by Mr Smith following the 16 January 2024 complaint of harassment and bullying conduct by MJP. The complainant gave four examples where she felt that Mr Pilcher was critical of her and her work. The Authority was provided with transcripts of both the proposed disciplinary meeting and the outcome meeting which assisted in understanding the nature and content of the conversations.

[27] The meeting on 2 February 2024 was informal and investigation occurred following that conversation. The outcome was summarised in a letter of 12 February 2024 to Mr Pilcher. The overall tenor of the two follow up meetings was supportive and informative by Brandt, albeit lengthy. In the 14 February 2024 meeting, Mr Smith acknowledges Mr Pilcher's support person, outlines the incidents raised and they discuss them. Based on the transcript and his oral evidence, Mr Pilcher felt that there were sides within the sales team, people with an agenda who swapped sides and he

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<sup>2</sup> Employment Relations Act 2000, s 103.

wanted to know who said what, when and to who. Mr Pilcher felt that he could not respond to complaints when he lacked specific information and reiterated his earlier concerns that he felt unsafe working with MJP.

[28] The problems Mr Pilcher was having with MJP's performance were relevant though not addressed specifically in that meeting. During the 14 February 2024 meeting, it became apparent that those concerns continued and Mr Pilcher was frustrated trying to address them. His words and actions to MJP as quoted in her complaint and as he described in evidence, were justified but not communicated effectively to her. Consequently, MJP found them demeaning and uncomfortable, leading to her complaint.

[29] I conclude that Mr Smith recognised the MJP performance challenges, even if he did not communicate that to Mr Pilcher and it explains in part why he decided to work through a PIP to help Mr Pilcher manage his team and provide constructive feedback more effectively rather than take any disciplinary action. Mr Smith did not issue a warning, as Mr Pilcher initially claimed, but tried to explain to Mr Pilcher that he needed to think about others and how his words and actions could be perceived by them. Mr Smith offered EAP support and clearly wanted to address those concerns in a positive and respectful manner. A PIP is a reasonable way to do so.

[30] Having reviewed the documentation and response to MJP's complaint, Mr Smith's actions responding to Mr Pilcher were those of a fair and reasonable employer. Mr Pilcher's disadvantage claim relating to the PIP is unsuccessful.

#### *Events of 17 April 2024*

[31] After receiving the multiple complaints from four other employees between 28 March and 3 April 2024, Brandt decided that it needed to undertake an investigation.

[32] Mr Pilcher claims that he was suspended on 17 April 2024 when he was handed a letter, asked to leave the office and his phone and laptop were taken from him. He says that there was no prior notice and no opportunity for him to seek advice, provide feedback or comment before the decision was made. He says that the action occurred in full view of other employees which was humiliating when both Mr Smith and Mr Oien walked into his office.

[33] Brandt denies that it put Mr Pilcher on suspension. It says that Mr Pilcher was given the letter in his office and took it away.

[34] Mr Pilcher claims this explanation is a coverup after the event when Brandt realised that the suspension was unlawful. The letter given to Mr Pilcher on 17 April 2024 suggests otherwise. It was titled Commencement of Employment Investigation. It had all the elements one would expect in such a letter. It also offered the opportunity to take special leave on full pay while the investigation was underway and asked Mr Pilcher to “let us know, with some urgency, whether you would like to take up this offer”.

[35] Without Mr Smith or Ms Harvey to provide context to the letter I cannot reach any firm conclusion on what was said in the office on 17 April 2024. Mr Smith or Mr Oien may have offered a blunt “you have to leave the office” comment as Mr Pilcher suggests, though I prefer to rely on the written documentation as more reliable evidence.

[36] In questioning, Mr Connell said he was in the office that day. He saw Mr Pilcher get his phone taken off him in his office and concluded something serious had happened because, to him, when that happens its usually a suspension or a dismissal.

[37] While the letter clearly intended special leave, the actions of Brandt meant this was a suspension in all but name. Mr Pilcher read the letter but in reality, the decision was already made to remove his ability to undertake work.

[38] There are obligations on an employer before they make the decision to suspend. In principle, suspension from employment is well established as a disadvantage to the employee as it usually deprives that employee of their ability to work.<sup>3</sup> The onus falls on the employer to establish that the suspension was justified.

[39] Given the allegations received, there was potentially a substantive justification for suspension, but the process was not the actions of a fair and reasonable employer including that:

- a. Taking Mr Pilcher’s phone and laptop at the time he was given the letter meant that in reality, there was no choice to make about leave or

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<sup>3</sup> *Lenaghan v Hydrovac* [2016] NZERA 230 at [9].

suspension. The decision was already made that he was removed from the workplace;

- b. The duty of good faith includes affording an employee natural justice by providing an opportunity to respond to a proposal to suspend prior to it occurring unless there is an immediate risk that justifies an alternative action. The same must reasonably apply to special leave in that circumstance. The letter was dated 17 April 2024 and it offered special leave starting that same day, giving little, if any, opportunity for genuine consideration of Mr Pilcher's feedback or for him to seek advice.
- c. There was no immediate safety risk in the office at that point to justify a suspension without any consultation with Mr Pilcher, particularly when both Mr Oien and Mr Smith were present. The fourth complaint was received on 3 April 2024 and Mr Pilcher remained in the workplace until 17 April 2024. If there was a genuine safety risk requiring his immediate removal, this would have occurred much sooner, not two weeks after the complaints were received;
- d. It was not appropriate that the interaction occurred in an office with glass windows in front of Mr Pilcher's team.

[40] I accept the submissions put forward by Brandt that it had good reason to initially propose removing Mr Pilcher from the office, for his own benefit as much as Brandt's while the investigation was underway. That is the reason suspension is sometimes considered, because the allegation is serious but unsubstantiated and the employer needs time to investigate and determine the facts. Brandt was very clear that it treated these complaints seriously.

[41] I conclude that the process of removing Mr Pilcher from the workplace was deficient in the circumstances and unjustifiably disadvantaged Mr Pilcher by removing his ability to work without giving him an opportunity to consider the letter and provide any more than a reactionary response.

[42] Mr Pilcher's disadvantage grievance claim is successful and it is appropriate that this is included in consideration of any remedies.

## **Was Mr Pilcher's dismissal justified?**

[43] Where an employee raises a grievance for unjustified dismissal, the onus rests with the employer to determine that its actions were justified. The Act provides that the test for justification is 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 the dismissal or action occurred.<sup>4</sup>

[44] The Authority must approach this objectively, considering what options were available to the employer at the time and whether the option taken by the employer met that justification test. It is not for the Authority to determine whether Brandt made the right decision or not, only whether the decision made by them was the decision a fair and reasonable employer could have made.<sup>5</sup>

[45] The Act further requires the Authority to consider the four procedural fairness tests outlined in s 103A(3) and any other appropriate factors. These must be considered alongside the employer's good faith obligations outlined in s 4(1A)(c) of the Act. An employer who is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment (as a dismissal would obviously do), must provide the employee with access to information and an opportunity to comment on it.

### *The first complaint*

[46] Investigation of the 16 January 2024 complaint raised some concerns for Brandt. Discussions with the sales team supported MJP's allegations and raised similar concerns about Mr Pilcher's communication style and behaviour.

[47] These concerns were discussed with Mr Pilcher in the 14 February 2024 meeting. In oral evidence, Mr Drew says that having reviewed the meeting transcript and the file, Mr Pilcher was defensive and did not accept that his behaviour had affected MJP or that he had done anything wrong. This meant that restoration of the working relationship between the complainant and Mr Pilcher was difficult. I agree with that summation. Mr Pilcher wanted specific times, places and dates and who the witnesses were so he could "take that on" and defend himself by disproving them. He was clearly frustrated that the discussion was about feelings and dismissed the concerns as "airy fairy".

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<sup>4</sup> Employment Relations Act 2000, s 103A(2).

<sup>5</sup> *Angus v Ports of Auckland* [2011] NZEmpC 160, [2011] ERNZ 466 at [25].

### *The further complaints*

[48] Upon then receiving four similar complaints between 28 March and 3 April 2024, Brandt were right to be concerned and right to act. They received four complaints that were consistent not only with each other, but also consistent with the earlier concerns raised in January 2024. Relevantly, the complainants were at different levels in the organisation. While the complainants were not identified in the investigation, written copies of later interviews with each complainant were received by the Authority.

[49] The complaint themes included an overall level of nervousness working with Mr Pilcher alleging passive aggressive behaviour, unpredictable mood swings and sexual descriptors and comments about colleagues. One complaint referenced a customer concern about working with Mr Pilcher.

### *The investigation process*

[50] Based on the 17 April 2024 letter, Brandt initially intended to fully investigate the allegations using an independent investigator and establishing terms of reference that would be discussed with Mr Pilcher.

[51] At some point between 17 April and 22 April 2024, this approach changed. Mr Taylor said that he was the decision maker. In making the decision to dismiss he says that he considered the earlier complaint, input from employees on site, the complainants' fears of retaliation, the potential impact on them if identified, lack of evidence of collusion and the consistency of the issues. While there is no reason to doubt Mr Taylor did as he says, there is no documentation to support that process. He did not speak to Mr Pilcher about the allegations.

[52] Other than Mr Taylor's review and conversations with the complainants by Ms Harvey, there was no internal or external investigation of the allegations made. Mr Smith decided that they were sufficiently serious and consistent that they were accepted at face value. As an international company with senior HR resource and with a New Zealand HR advisor, Brandt had the resources to at least conduct an internal investigation. No substantive investigation occurred.

[53] Mr Taylor says that he considered corroboration but there was no information presented to the Authority to suggest that Brandt considered the coincidence it received

four consistent complaints within days of each other. Mr Pilcher was with the Brandt business for over 12 months prior to any documented complaint. While they were likely all legitimate complaints, the short timeframe is highly unusual and Brandt owed Mr Pilcher to investigate that possibility. There was no indication this was considered in any depth.

[54] Mr Pilcher's employment agreement provides examples of misconduct and serious misconduct with the proviso that the level of the 'offence' will be determined on an individual basis. Within its' examples sexual harassment or bullying behaviour are considered serious misconduct, though harassment of other employees on personal...issues is considered misconduct. Brandt's harassment policy provides that "the harasser will be disciplined appropriately. Discipline may range from a verbal reprimand to suspension or dismissal." With such a broad descriptor, some allegations made within the four complaints fit within the scope of Brandt's definitions of serious misconduct contained within the employment agreement and policy, though could also fit within the misconduct definition.

[55] One of the themes in the complaints was inappropriate and sexualised language. With relevant witnesses, I tested the appropriateness and suitability of the specific language in the Brandt workplace and wider industry as alleged. Mr Pilcher says that such language would regularly be used in the farming sector. Mr Pilcher accepted that he used c\*\*\* as a descriptor in the workplace from time to time but that it was used in the industry, not directed at anyone and was often a way of bonding with clients to use similar language that they used. He denied all of the allegations that he made derogatory comments about female colleagues or referred to them in that way. Others said that it was all joking with "the boys", no malice was involved and they would speak differently to the 'office lady'.

[56] Mr Drew disagreed with this and said that even when visiting farming clients, such language is not appropriate. Even more so in the office, comments to others about a female colleagues' body and sexual comments was extremely inappropriate.

[57] Mr Drew's evidence was brief, though in preparation for the investigation meeting, he spoke to one of the complainants about their complaint. I accept that Mr Drew is not a mental health expert. However, he says that he directly observed one

complainants voice and demeanour change in that conversation and in his opinion, they seemed anxious and distressed talking about it.

[58] Mr Pilcher denies all allegations made in the complaints. He believes that these claims were manufactured after his dismissal to try and justify Brandt's actions. There was no evidence to support that claim so I place no weight on that assertion.

[59] Where Brandt primarily failed, is in its decision that the allegations were corroborated and proven by speaking only to the complainants, not to Mr Pilcher. A fair and reasonable employer in these circumstances would fully investigate the allegations. As counsel for Mr Pilcher submits, Brandt did not engage in fair and objective fact-finding. Brandt relied heavily upon substantiation of the January 2024 complaint, Mr Pilcher's response to that event and anonymous text messages to conclude that the new allegations were therefore substantiated.

*Was the dismissal procedurally justified?*

[60] It is not in question that the allegations were serious, and, if proven on balance of probabilities, there was substantive justification to consider dismissing Mr Pilcher. It is reasonable that an employer could conclude the allegations as made could constitute demeaning, inappropriate and/or harassing conduct and required immediate action.

[61] However, even if there are substantive reasons to dismiss an employee the employer still has an obligation to follow a fair and reasonable process before making the decision to dismiss the employee.<sup>6</sup>

[62] The procedural considerations required by the Act include whether Brandt:

- a. having regard to the resources available, sufficiently investigated the allegations before making the decision to dismiss Mr Pilcher;
- b. raised the concerns with Mr Pilcher before dismissing him;
- c. gave him a reasonable opportunity to respond to the concerns; and
- d. genuinely considered his explanation prior to taking action.<sup>7</sup>

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<sup>6</sup> Employment Relations Act 2000, s 103A.

<sup>7</sup> Employment Relations Act 2000, s 103A(3).

[63] Mr Pilcher submits that Brandt did not follow proper procedures, conduct a thorough investigation, or give him an opportunity to respond to the complaints. Based on information before the Authority and the above considerations in the Act, I agree with Mr Pilcher.

[64] The basis of Brandt's justification for not meeting the requirements of s 103A(3) is the complainant's fear of retaliation. In its view, this fear and the potential health and safety impact of identifying them to Mr Pilcher justified confidentiality and withholding of all four complaints in their entirety. Brandt says that it undertook all the inquiry it was able to undertake in the circumstances and was prevented from presenting specific information to Mr Pilcher because of the risk of retaliation.

[65] Much discussion took place with the parties about the withholding of complainant identities and it is appropriate to address that here. As was canvassed at length with the parties at the outset, the Authority does not need to speak with the complainants about their specific complaints. It is not for the Authority to determine the genuineness of the complaints, but to establish whether Brandt undertook a fair investigation with the information it had at that time to reach the decision a fair and reasonable employer could have made.

[66] Mr Pilcher was dismissed only knowing the general nature of the complaints against him. If the fear of retaliation was that serious (and I remain unsure that it was), then Brandt had options to work with Mr Pilcher and look at ways to protect identities and also provide him the information he needed to be able to provide feedback on the allegations before any decision was made. It did not do so or attempt to do so.

[67] Brandt refers to the use of secret witnesses in *Brown v Bob Owens Retirement Village Limited* to support its approach.<sup>8</sup> I distinguish that case primarily because of the nature of that work environment and the significant cautions of Chief Judge Goddard where secret witnesses are used.

[68] The crux of Mr Pilcher's claim is that he was not provided with copies of the complaints, redacted or otherwise. He did not have sufficient information to enable him to respond in any informed way. Mr Pilcher was not given any opportunity to provide feedback on the four complaints or the general claims made in the 17 April 2024 letter

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<sup>8</sup> *Brown v Bob Owens Retirement Village Limited* [2013] NZERA 526.

before the decision to terminate his employment was made. The way the broad allegations was framed left Mr Pilcher only to offer a bare denial.

[69] The transcript of the 22 April 2024 meeting was also provided to the Authority and opens with Mr Smith informing Mr Pilcher that Brandt had decided to terminate his employment for serious misconduct, effective immediately and that the decision was final.

[70] Mr Pilcher says that it was only after he filed with the Authority and received the statement in reply, was he aware that there were anonymous complaints against him.

[71] The reason for withholding the names of the complainants was because there were concerns for their wellbeing. There was no evidence presented to indicate a pattern or history of retaliatory action of any sort by Mr Pilcher. The text messages were inappropriate but there was no definitive evidence they were sent by Mr Pilcher. In submissions, Brandt referred to credible and reliable information relating to retaliatory steps Mr Pilcher had already taken yet failed to provide any evidential basis for that claim.

[72] It is very understandable that Brandt wanted to keep its employees safe from mental harm. Investigating harassment complaints is often sensitive and confronting for all involved. But that factor must be managed and cannot automatically override the employer's obligation to treat its employees fairly and, in particular, give them the proper opportunity to understand the detail and extent of the allegations against them in order that they can fully and frankly respond. It advantages no one if an unsatisfactory investigation results in an unsafe dismissal.<sup>9</sup>

[73] Counsel for Brandt suggested, Brandt was effectively damned if it did but equally damned if it did not dismiss Mr Pilcher. Given the self-evident challenges of inquiries where sensitive material and reluctant complainants are involved, the initial suggestion of an independent investigator may have provided a solution. It could have provided a filter of impartiality enabling Mr Pilcher to ultimately at least understand why his employment could (and did) end.

### *Conclusion*

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<sup>9</sup> Above n 8 at [47].

[74] Brandt justified the immediate dismissal of Mr Pilcher on health and safety grounds. It was unable to establish any immediate health and safety risk sufficient to justify dispensing with any discussion with Mr Pilcher. At the time, Mr Pilcher was not present at the workplace as he was on special leave (or suspended as he claims). The disciplinary meeting was held off-site so no employees, other than Mr Oien and Mr Smith were present.

### **Were any monies owed to Mr Pilcher?**

[75] In his initial statement of problem, Mr Pilcher identified potential monies still owed to him. As information was unavailable at the investigation meeting, the Authority left this matter with counsel to calculate and make payment if required. I refer specifically to Mr Hall's memorandum of 20 March 2026. A non-publication order is in place in relation to that material.

[76] If Mr Pilcher disputes the amount calculated by counsel with reference to that memorandum and related information, entitlement and quantum (if any) can be separately reviewed and determined by the Authority upon request.

### **Good faith**

[77] Lastly, I address the claim relating to a breach of good faith. Despite a failure to conduct a fulsome and fair investigation and disciplinary process in a responsive and communicative manner, I am not satisfied that Brandt's actions were intended to mislead or deceive Mr Pilcher. There are references in the 22 April 2024 meeting, in the oral evidence of Mr Drew and in the letter of termination referencing that the subject matter of the complaints was not a new issue for Mr Pilcher. Brandt made the decision to forego its obligations under s 4(1A)(c) of the Act to protect the confidentiality and safety of the complainants.

[78] I find it is not appropriate to award a penalty for any breach of good faith in this matter.

### **Remedies**

[79] As Mr Pilcher's unjustifiable dismissal claim is made out, he is entitled to consideration of remedies pursuant to ss 123 and 128 of the Act.

### *Lost wages*

[80] With respect to wages, s 128(2) of the Act requires the payment of the lesser of a sum equal to lost remuneration or three months' ordinary time remuneration, however s 128(3) allows the Authority to order a sum greater than that amount (actual loss being the outer limit). Mr Pilcher seeks 53 weeks lost wages based on his total remuneration package and commission. This is at the higher end of the exercise of discretion. Generally, any award over three months must be justified by the circumstances and moderation is generally appropriate.<sup>10</sup>

[81] Mr Pilcher provided evidence of his job-hunting efforts. He went onto benefit support and was required to apply for five jobs per week, though any match of skills against those jobs is not measured. He also used contacts and networks to seek opportunities. He obtained employment starting on 28 April 2025 at an approximately equivalent salary.

[82] Mr Drew acknowledged that in early 2025 he became aware that Mr Pilcher may have obtained employment with a Waikato business. If successful, that would require Mr Pilcher to visit Brandt sites. Mr Drew contacted the owner and advised Mr Pilcher was not permitted on Brandt sites. Likely as a result of that call, Mr Pilcher was not offered the position. While I accept Mr Drew was not malicious by his actions, this was unnecessary interference in Mr Pilcher's job-hunting efforts and undertaken without the full information, to Mr Pilcher's detriment.

[83] In evidence, Mr Pilcher does not reference part time or other income opportunities in his efforts to mitigate his loss. His evidence reflects that he limited himself to fulltime employment opportunities primarily in the agricultural sector.

[84] Brandt's counsel identified economic factors impacting the job market in 2024. It also identified the realistic contingency that, given Mr Pilcher's failure to accept any fault at the PIP stage he may not have continued in employment with Brandt. I accept those factors are relevant, though it is respectfully a step too far to suggest that a "fulsome investigation and disciplinary process" may have taken one month resulting in Mr Pilcher's dismissal, therefore only one month is appropriate.

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<sup>10</sup> *Sam's Fukuyama Food Services v Zhang* [2011] NZCA 608 and in *Telecom New Zealand Ltd v Nutter* [2004] ERNZ 315 and *Pyne v Invacare New Zealand Ltd* [2023] NZEmpC 179 at [33].

[85] I am not prepared to order any at risk remuneration component in an assessment of Mr Pilcher's lost wages. This is not guaranteed income and there are too many variables in the measures of that commission payment.

[86] Lastly, I must be mindful that a full investigation and proper process may still have resulted in Mr Pilcher's dismissal and therefore would not be causative of Mr Pilcher's loss.<sup>11</sup>

[87] In the circumstances, I consider that a fair reflection of the loss which ought to be compensated for is a payment equivalent to four months lost remuneration - calculated at an average of his ordinary pay (including employer Kiwi Saver contributions, if any). If the parties are unable to agree on this amount, then leave is reserved for an application to the Authority to decide the quantum of wages owed.

[88] In accord with s 28(4) of the Holidays Act 2003, Mr Pilcher is to have an entitlement to annual holidays created and calculated for that same period.

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

[89] Compensation for humiliation, loss of dignity, and injury is for the effects on the employee of the grievance. It is not intended to be a penalty imposed on the employer to indicate the Authority's disapproval of their conduct.

[90] Mr Pilcher gave evidence on the significant impact the unjustified dismissal had on his emotional health, his family and his finances. His partner, Ms Langman, described the impact as devastating and it contributed in part to the decline in her own health.

[91] The impact of the termination was further impacted by allegations, rumour and various allegations made that Mr Pilcher denies and that he says impacted his confidence. His absence at the Waikato field days in June further fuelled rumours and it was alleged that he had slashed tyres of another employee. There is no suggestion that Brandt breached confidentiality of Mr Pilcher, but those allegations had a visible effect on Mr Pilcher's wellbeing.

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<sup>11</sup> Above n 10.

[92] Additionally, I refer back to the way in which Mr Pilcher was asked to leave the premises on 17 April 2024. The open nature of the office layout exacerbated the humiliation when at that stage no investigation had commenced. That process could easily have been discreet and respectful.

[93] Physically, Mr Pilcher described the impact of the dismissal with stress and anxiety, sleep disturbances and ongoing mental health impact and medical support. He said that his confidence was knocked and Ms Langman described it as a kick in the guts for them both.

[94] Financially, Mr Pilcher was on benefit and borrowed money to make rent payments. He described his struggle to buy basic healthcare items.

[95] I have considered the extent of the harm Mr Pilcher suffered as a consequence of Brandt's actions, where it sits when compared with other cases, then stepped back and assessed what I consider a fair and just amount in the circumstances.<sup>12</sup> The suddenness of the decision, lack of his involvement in the process and dearth of information about the 'why' of his dismissal exacerbated the effect on him and his wellbeing.

[96] An award of \$22,000 is appropriate in these circumstances having balanced the evidence against recent and established decisions in the Court.<sup>13</sup>

### **Contribution**

[97] I am required under s 124 of the Act to consider the issue of any contribution that may influence the remedies awarded. Specifically, to what extent, if any, did Mr Pilcher's actions contribute to the situation that gave rise to his personal grievance and then assess whether any calculated remedy should be reduced.

[98] Counsel for Brandt suggest that the Employment Amendment Act 2025 changes should apply in relation to contribution. Based on the recent guidance provided by the court, that approach is not adopted here.

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<sup>12</sup> See for example, *GF v Comptroller of the New Zealand Customs Service* [2023] NZEmpC 101 at [153] to [164]. General trends in recent compensation levels can be found at [Data and statistics | Employment New Zealand](#).

<sup>13</sup> *Pyne v Invacare NZ Ltd* [2023] NZEmpC 179; *GF v Customs* [2023] NZEmpC 101; *Pact Group v Robinson* [2023] NZEmpC 173.

[99] While a dismissal can only be justified on the basis of what was known by the employer at the time of the decision to dismiss was made, assessment of the employees' actions relevant to contribution is not subject to the same limitation.<sup>14</sup>

[100] I have considered that some reduction in the remedies is justified. I do not reach that conclusion based on the allegations made by the four complainants as these were allegations that were not fully tested in a full investigation.

[101] I rely upon the transcripts of meetings relating to all complaints with Mr Pilcher, his decline of mediation and his claim that the PIP was unjustified. At the initial outcome meeting Mr Smith was supportive and offered training to assist Mr Pilcher managing and leading his team positively. Mr Pilcher rejected that support as criticism and allegations made against him. Had he taken that constructive criticism on board, Brandt may have reached a different employment decision in relation to the later complaints received, if they were made at all. According to the dismissal letter, Brandt's decision to dismiss was also made because of the "lack of improvement (or prospect thereof)" following the PIP. Even though he dismissed MJP's concerns, Mr Pilcher must take some responsibility for his contribution to the working environment within his team and the feedback he received in February 2024.

[102] I consider it is appropriate to order a twelve percent reduction in the compensatory remedy under s 123(1)(c)(ii) of the Act.

### **Orders**

[103] Within 28 days of this determination, Brandt Tractor Limited is ordered to pay Mr Pilcher the following:

- a. Pursuant to s 128(3) of the Act, four months lost remuneration calculated at an average of his ordinary pay (including employer Kiwi Saver contributions, if any) plus any applicable annual leave for that period; and
- b. Compensation pursuant to s 123(1)(c)(i) of the Act of \$19,360 (being \$22,000 less twelve per cent contribution).

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<sup>14</sup> *Salt v. Fell, Governor for Pitcairn,., Henderson, Ducie and Oeno Islands* [2008] ERNZ 155.

## **Costs**

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

[105] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Pilcher 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, Brandt 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.

[106] 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>15</sup>

Helen van Druten  
Member of the Employment Relations Authority

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<sup>15</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).