

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 293  
3373263

BETWEEN                      KYLE HORSEFIELD  
   Applicant

AND                              EUROCARS LIMITED T/A  
   OCEANIC CARS AND  
   CAR4EVERY1  
   Respondent

Member of Authority:        Rachel Larmer

Representatives:              Adrian Plunket, counsel for the Applicant  
   John Wood, advocate for the Respondent

Date of Investigation        3 February 2026 in Auckland  
Meeting:

Submissions and Other       17 and 23 February 2026 from the Applicant  
Information:                    21 February 2026 from the Respondent

Date of Determination:      12 May 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     The applicant, Mr Kyle Horsefield, was employed as a Sales Representative by the respondent, Eurocars Limited trading as Oceanic Cars and Car4Every1 (Eurocars), from 12 to 21 November 2024.

[2]     Mr Durgesh Durgesh is Eurocars' sole director, and he is a fifty per cent shareholder along with his wife Usha Yadav.

[3] At 10.10am on 21 November 2024 Mr Durgesh sent Mr Horsefield was sent a text message from Eurocars that stated:

Just to inform you with your employment, we understand your (sic) are busy with lawyer and physio. But for us we like someone to come to work on time.

We were planning to train you for something but we understand there is a lot going on in your personal life. Please accept the notice for your casual employment termination.

[4] Mr Horsefield said this text message summarily dismissed him from his permanent employment. He claimed his dismissal was unjustified, and he sought remedies for that. Mr Horsefield also claimed Eurocars had breached its good faith obligations and his employment agreement and he sought that penalties be imposed on Eurocars for those breaches.

[5] Eurocars denied Mr Horsefield had been dismissed or that it had breached good faith or the employment agreement. It said Mr Horsefield was a casual employee and the text had simply explained he was not going to be offered any more casual work, so it was not a dismissal.

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

[6] The Authority held an in-person investigation meeting (IM) in Auckland on 3 February 2026. Mr Horsefield attended and answered questions under oath. His mother, Ms Raewyn Somfan, lodged an affidavit in advance of the IM. She was not required for questioning by the Authority or cross examination by Eurocars, so she did not attend the IM.

[7] Mr Wood, Eurocars' advocate attended the IM in-person. However, there was no appearance by any witness for Eurocars. Mr Wood told the Authority he had found out that same morning that Mr Durgesh was in India. Mr Wood was given time to attempt to contact Mr Durgesh, to see if he could attend the IM remotely. That was unsuccessful, likely due to time-zone differences.

[8] There was no information as to why Mr Durgesh was overseas, the date he had left New Zealand or when he would be back in New Zealand. Eurocars had lodged a statement in reply and Mr Durgesh had lodged an unsigned witness statement on 15 October 2025. Mr Durgesh's absence meant his evidence was not provided under either oath or affirmation and it could not

be tested by questioning from the Authority and/or by cross-examination by Mr Horsefield's advocate.

[9] Eurocars had known about the IM date since 14 August 2025, but no request was made to adjourn the IM. Mr Wood confirmed the Notice of IM has been passed on to Mr Durgesh, so Eurocars knew about the IM would be held on 3 February 2026.

[10] The Authority considered whether the IM should be adjourned but that was opposed by Mr Horsefield. He had taken time off work to attend the IM and (as a low paid employee) he told the Authority he could not afford to do so again. It was also unknown if/when Mr Durgesh would be back in New Zealand.

[11] In accordance with the power in clause 12 of Schedule 2 of the Employment Relations (the Act), the Authority decided to proceed with the IM in Mr Durgesh's absence. Eurocars was on notice of the IM date, had not sought an adjournment in advance of the IM and had not arranged for another witness (such as the other shareholder Ms Yadav, who had direct interactions with Mr Horsefield and who had sent him the text on 21 November 2024) to attend in Mr Durgesh's absence.

[12] Mr Wood was also present at the IM so he could (and did) challenge Mr Horsefield's evidence by cross-examining him. Mr Wood also represented Eurocars interests at all times during the IM.

[13] At the conclusion of the evidence, the Authority provided the parties with a preliminary indication of the likely outcome of Mr Horsefield's claims in the hope that information would encourage the parties to settle. However, that did not occur. Both parties lodged written submissions and additional information after the IM.

### **Issues to be determined**

[14] Prior to the IM the parties agreed the following issues had to be determined:

- (a) Did Mr Horsefield have a signed written employment agreement?
- (b) If not, what were the terms and conditions of his employment?
- (c) Was Mr Horsefield a permanent or casual employee?
- (d) Did Eurocars breach its good faith obligations?

- (e) Did Eurocars breach Mr Horsefield's employment agreement?
- (f) Should penalties be imposed for any breach of good faith and/or the employment agreement that has occurred?
- (g) Did Mr Horsefield raise his unjustified dismissal personal grievance claim within the 90-days' time-limit in s 114(1) of the Act?
- (h) If so, was Mr Horsefield's dismissal justified?
- (i) If not, what remedies should be awarded?
- (j) Should any remedies that may be awarded be reduced under s 124 of the Act on the grounds of contribution?
- (k) What if any costs and disbursements should be awarded?

**Did Mr Horsefield have a signed written employment agreement?**

[15] Despite specific requests, the Authority was not provided with a signed copy of Mr Horsefield's individual employment agreement (IEA). An unsigned IEA was provided to the Authority.

**What were the terms and conditions of Mr Horsefield's employment?**

[16] Mr Horsefield said he received a copy of the IEA on 11 November 2024. He said he printed it, signed it and had personally handed it to Eurocars before 9am on 12 November 2024, which turned out to be his first day of work.

[17] The Authority was therefore satisfied that the IEA that had been lodged for the IM therefore recorded the agreed terms and conditions of Mr Horsefield's employment, even though a signed version of his IEA was not available.

**Was Mr Horsefield a permanent or casual employee?**

[18] There was a dispute between the parties about whether Mr Horsefield was a casual or permanent employee.

[19] The term "casual" employment is not defined in legislation so it is often misunderstood by employers. Putting the label "casual" on the employment relationship (for example by stating that in the IEA) does not necessarily create a 'casual' employment relationship. The

reality of the situation must be assessed in totality to determine whether the parties intended they would have mutual ongoing obligations or not between each period of casual work.

*Job advertisement*

[20] Mr Horsefield responded to the job advertisement Eurocars had published on 1 November 2024. This advertisement did not mention casual employment. It stated:

Are you fluent in Samoan or Tongan and ready to start work immediately? Oceanic Cars is looking for enthusiastic staff to join our team? If you're passionate about customer service and want to work in a supportive environment, we'd love to hear from you. No experience required – Training can be provided.

*Pre-employment discussions with Mr Durgesh*

[21] Mr Horsefield said he spoke to Mr Durgesh when responding to the advertisement, he was told that it was not a problem that he (Mr Horsefield) did not speak Samoan or Tongan. Mr Horsefield told Mr Durgesh he was seeking fulltime work and they discussed his lack of car sales experience. Mr Durgesh elected to interview Mr Horsefield on 5 November 2024 and told him he would be given training.

[22] Mr Durgesh in his witness statement said he had told Mr Horsefield needed him for a casual role in November and December 2024. Mr Horsefield denied that, and said he was never told his employment would be limited to two months only. Mr Horsefield said the provision of training and references to being “a team member” indicated his employment was intended to be ongoing, as he had claimed.

[23] Mr Durgesh in his witness statement also said he told Mr Horsefield he would be needed from 9am to 5pm on the days he worked. Mr Horsefield denied that. The Authority noted that on one occasion Eurocars sent Mr Horsefield home at 3pm and on another occasion it asked him to come to work at 11am, so Eurocars was not strictly observing the 9am to 5pm workday it alleged Mr Horsefield was required to work.

*Discussion about physio and legal appointments*

[24] Mr Horsefield said that during the job interview he told Mr Durgesh he had weekly physio appointments (as Mr Horsefield had broken his ankle in July 2024 and had just come out of a moonboot in September 2024) and that he would have to meet with the family lawyer

a couple of times about his recently deceased grandmother's will. Mr Horsefield said Mr Durgesh said that would be fine and they could work around those commitments.

[25] Mr Durgesh's witness statement denied that, claiming the legal appointment was raised by Mr Horsefield for the first time on 14 November 2024. Mr Horsefield denied that.

[26] Mr Horsefield's evidence was preferred on the grounds it was more likely than not to be correct. Mr Horsefield knew he had committed to attend these appointments so it made sense for him to have raised that before he was employed to ensure that would not be a problem if he was employed.

#### *Pre-employment discussions*

[27] When Mr Horsefield asked about the days and hours of work he said Mr Durgesh reassured him it would be full time work. Mr Durgesh denied that in his statement. Mr Horsefield said he assumed that meant 40 hours work per week. However, that was not reflected in the IEA which superceded previously agreed arrangements.

[28] Mr Horsefield said that later during the interview Mr Durgesh mentioned the employment was "casual". Mr Horsefield said he therefore clarified whether the role was casual or full time. Mr Durgesh reportedly said it was full time but also told Mr Horsefield he would be given an IEA that said it was "casual employment", because that was the easiest way for him to end the employment relationship.

[29] Mr Horsefield said he suggested during the job interview that Mr Durgesh use a 90-day trial period clause if he wanted to see if Mr Horsefield was the right person for the job. Mr Horsefield said Mr Durgesh insisted on using a casual employment agreement instead of a trial period.

[30] Mr Horsefield said he called Mr Durgesh in the days after the interview again asking for a 90-day trial period instead of a casual employment agreement, but that Mr Durgesh was insistent the IEA had to be casual. Mr Durgesh in his witness statement acknowledged that Mr Horsefield had proposed a 90-day trial period but said he rejected that suggestion as it was not what he (Mr Durgesh) was looking for.

[31] Mr Horsefield said he needed the job and although he felt pressured to sign the casual IEA, he believed he had been promised fulltime work so, he signed the IEA he had been given.

### *Appointments*

[32] When Mr Horsefield dropped the signed IEA back to Mr Durgesh, he was asked to start immediately at 9am on 12 November 2024, even though that had not been planned. This lack of prior agreement about the date Mr Horsefield's employment would start meant Mr Horsefield was deprived of an opportunity to reschedule his appointments around his work commitments. Eurocars also failed to clarify with Mr Horsefield, before he had started work, what times and days he had appointments already booked.

[33] Mr Horsefield informed Ms Yadav or Mr Durgesh if he had a physio or lawyer appointment as soon as he knew the timing of these appointments, which he was always given approval to attend.

[34] Mr Horsefield said he recorded his hours via a timesheet which he sent to Mr Durgesh via WhatsApp at the end of the week. Mr Durgesh said Ms Yadav completed the timesheets for Mr Horsefield, as they were in her handwriting. However, that dispute was not considered material because the parties had agreed the days and times Mr Horsefield had worked for Eurocars.

### *The IEA*

[35] Mr Horsefield's IEA had the word "Casual" on the cover page. Clause 3 recorded that he was "employed on a casual basis...".

[36] Clause 7 dealt with "Hours of Work". Clause 7.2 stated that Mr Horsefield was "employed as a casual employee and are offered to perform the hours of work allocated by the Employer from time to time."

[37] Clause 7.3 stated:

The Employer will give you reasonable notice of when you are offered to work. The Employer does not guarantee to provide you with a minimum or maximum amount of work.

[38] Clause 7.4 stated "You may also be offered to work reasonable additional hours".

[39] Clause 7.5 stated:

As a casual employee you have the right to accept or decline shifts which may be offered to you by the Employer. The Employer does not provide any guarantee that you will be offered work on an ongoing basis.

[40] Clause 10.1 provided for 'pay as you go' annual holiday pay to be paid with Mr Horsefield's hourly wage.

[41] Item 6 of the Schedule attached to the IEA recorded the "Business normal hours of operation" as Monday – Sunday 9am to 7pm. The days and times Mr Horsefield would be needed to work or period Eurocars intended to employ Mr Horsefield for was not recorded.

[42] Clause 11 set out sick leave entitlements as per the Holidays Act 2003 (the HA03). Clause 13 recorded Mr Horsefield was entitled to public holiday entitlements in accordance with the HA03.

[43] Clause 17 gave Eurocars the right to suspend Mr Horsefield. Clause 17.1 stated, "For the avoidance of doubt, the Employer does not provide any guarantee that you will be offered work on an ongoing basis."

[44] Clause 18 gave Eurocars the right to terminate Mr Horsefield's employment without notice for the reasons set out in that clause (none of which applied to Mr Horsefield at the time he was sent the text). Clause 18.1 also provided for the parties to terminate the employment on one hour's notice (verbal or written) or on one hour's pay in lieu of notice.

[45] Clause 19 stated Mr Horsefield could be made redundant and the second clause 4 (which fell between clauses 19 and 20 because the paragraph numbering was out of sequence) dealt with restructuring. The second clause 4 in the IEA (restructuring) provided Eurocars would negotiate with the new employer about a proposed the transfer of Mr Horsefield's employment.

[46] Clause 22 of the IEA required variations to be in writing and clause 24 stated the IEA was the "Entire Agreement" so any previous terms ceased to have effect.

*Absences from work*

[47] Mr Horsfield attended an appointment with the family lawyer in Pukekohe about his grandmother's will at 3.30pm on 13 November 2024, so he left work at 3pm that day.

[48] Mr Horsefield attended prearranged physio appointments at 12pm on 14 November 2024 and at 9.30am on 21 November 2024.

[49] On the evening of 14 November 2024 Mr Horsefield's stepfather had a medical event and was rushed to hospital. Mr Horsefield asked Ms Yadav if he could not work on 15 November 2024 so he could be at the hospital to support his stepfather. Ms Yadav agreed to that without indicating that was a problem for Eurocars, or that his absence on 15 November 2024 could put the employment relationship in jeopardy.

[50] At 8am on 18 November 2024 Mr Horsefield saw his doctor. Ms Yadav asked him to collect a laptop from the Manukau branch of Eurocars on his way to work after his doctor's appointment. Traffic meant Mr Horsefield did not turn up to work at the Papakura branch until 10.30am that day. Mr Horsefield left work at 5.15pm because he had a late customer that day.

[51] On 19 November 2024 Mr Horsefield had completed his assigned tasks by 3pm and when he asked Ms Yadav for more work she sent him home for the day, saying there was no more work for him to do.

[52] Mr Horsefield called Ms Yadav before 9am on 20 November 2024 to make sure there was work for him to do as he was confused that he had been sent home before 5pm the previous day. Mr Horsefield said he was told to come in to work at 11am by Ms Yadav. Mr Durgesh denied that in his witness statement, and said Mr Horsefield had asked to come to work at 11am because he was delivering documents to the lawyer. Mr Horsefield denied that.

[53] Mr Horsefield's evidence regarding that dispute was preferred because it had been tested during the IM and it made logical sense. There was no other evidence to support Eurocars version of events. It also would not have taken two hours for Mr Horsefield to have dropped documents off to the family lawyer and because he needed the money, he needed to work, so was unlikely to have arranged this activity if it had occurred (which he had denied) during his working hours.

[54] Mr Horsefield attended his scheduled one hour physio appointment at 9.30am on 21 November 2024. As Mr Horsefield was walking to his car, he saw a text from Ms Yadav that had been sent to him at 10.10am, which had ended his employment.

[55] Mr Horsefield understood that Ms Yadav was the manager of Eurocars' Papakura branch. Mr Durgesh said Mr Yadav was not the manager of that branch but was his co-shareholder. However, the evidence established that Mr Horsefield took instructions from Ms Yadav about when to work.

[56] On 14 November 2024 it was Ms Yadav who told Mr Horsefield there was no point him working that day due to the travel time to and from his one hour physio appointment which he had at 12pm that day.

[57] Ms Yadav instructed Mr Horsefield to collect a laptop from another branch before reporting to work at the Papakura branch on 18 November 2024. Ms Yadav sent Mr Horsefield home at 3pm on 19 November 2024 and she also told him not to attend work until 11am the following day. It was Ms Yadav who sent Mr Horsefield the text on 21 November 2024 that ended his employment.

[58] Mr Durgesh in his witness statement said he told Mr Horsefield on his second day of work (13 November 2024) that he would be required to work on Monday, Tuesday and Wednesday the following week and that he would be given training. Mr Durgesh also said in his statement that he had spent extra money on advertising over the weekend to generate leads that he and Mr Horsefield could work on the following week.

### *Finding*

[59] Mr Horsefield was a permanent employee. Although he had no fixed or set days or hours of work, there was a mutual expectation of an ongoing employment relationship. The reality of the parties' relationship was that Eurocars expected Mr Horsefield to be available to work when it wanted him to, as demonstrated by the termination of his employment when he did not attend work during the times it had wanted him to be there. Mr Horsefield also wanted fulltime work.

[60] Mr Durgesh's claim that Mr Horsefield only wanted part time work was not accepted. Mr Horsefield was under considerable financial pressure, so his evidence that he wanted as

much work as he could was likely correct. Mr Horsefield had also likely made that clear to Eurocars from the outset.

[61] Mr Durgesh's witness statement referred to Mr Horsefield being "desperate to find another job [after being made redundant] so he could pay his bills", which supports the Authority's finding that Mr Horsefield likely told Mr Durgesh he wanted as much work as possible.

[62] As a permanent employee Mr Horsefield was entitled to the rights and protections of minimum code legislation, even though his working days and hours were not defined but were to be allocated by Mr Durgesh on an 'as required' basis. Mr Horsefield was not working under a series of discrete stand-alone fixed term engagements.

[63] That meant the ongoing employment relationship and mutual obligations remained in place between the days Mr Horsefield worked and did not attend work. The employment relationship did not end each day or week that Mr Horsefield worked. It continued until either party deliberately ended it.

[64] Mr Durgesh's evidence that he had employed Mr Horsefield to work for November and December 2024 supported that view, as did the fact the parties did not enter into a new employment relationship each time Mr Horsefield attended work because their existing employment relationship had remained in place.

### **Did Eurocars breach its good faith obligations?**

[65] Section 4 of the Act imposes mutual good faith obligations on parties who are in an employment relationship. This requires them to be (among other things) "responsive and communicative"<sup>1</sup> and not to do anything that could mislead or deceive the other party.<sup>2</sup>

[66] The available evidence established that Eurocars did not make it clear to Mr Horsefield before he had entered into the employment relationship that he was only wanted on a casual as required basis for November and December 2024. It was also not made clear to Mr Horsefield how and when work would be allocated to him, which meant he was unable to plan his legal and physio appointments for days when Eurocars did not need him to work.

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<sup>1</sup> Section 4(1A)(b) of the Act.

<sup>2</sup> Section 4(1)(b) of the Act.

[67] The failure to clearly record these matters for Mr Horsefield was a breach of Eurocars' duty of good faith.

**Did Eurocars breach Mr Horsefield's employment agreement?**

[68] Clause 18.1 of the IEA required Eurocars to give Mr Horsefield one hour's notice before it ended his employment or one hour's pay in lieu of notice. That did not occur, so Eurocars breached clause 18.1 of the IEA when it unilaterally ended Mr Horsefield's employment by text message on 21 November 2024.

**Should penalties be imposed for any breach of good faith and/or the employment agreement that has occurred?**

[69] Although Mr Horsefield had originally sought that a penalty be imposed on Eurocars for its breach of good faith, he withdrew that claim during the IM.

[70] Mr Horsefield told the Authority he still wanted to pursue his penalty claim against Eurocars for its breach of his employment agreement, namely its failure to give him contractual notice or pay him in lieu of notice.

[71] This breach of the IEA formed part of Mr Horsefield's dismissal grievance, so it has been addressed as part of that claim. The facts of this particular matter did not warrant a penalty be imposed on Eurocars. Accordingly, Mr Horsefield's penalty claim did not succeed.

**Did Mr Horsefield raise his unjustified dismissal personal grievance claim within the 90-days' time-limit in s 114(1) of the Act?**

[72] Mr Horsefield raised his dismissal grievance claim within eight days of being dismissed, which was well within the 90-day time-limit required by s 114(1) of the Act.

**Was Mr Horsefield dismissed?**

[73] The ending of a genuinely casual engagement is not a dismissal in the same way the ending of a fixed term engagement (which complied with the requirements of s 66 of the Act) was not a dismissal.

[74] Although Mr Horsefield's last day in the workplace occurred on 20 November 2024 he told the Authority he was expecting to work on 21 November 2024. No evidence was produced

(apart than the untested allegation in Mr Durgesh's witness statement) that established Eurocars had made it clear to Mr Horsefield before it sent the dismissal text on 21 November 2024 that he was not required to work the rest of that week.

[75] Based on Mr Durgesh's witness statement, Eurocars said that it had intended to employ Mr Horsefield during November and December 2024. The evidence therefore established the parties had mutually agreed obligations that had continued past 20 November 2024, because they had mutually intended Mr Horsefield's employment to continue at least until the end of December 2024 (according to Mr Durgesh) or permanently (according to Mr Horsefield).

[76] If Mr Horsefield was a casual employee whose casual engagement had ended then the decision not to offer him a new casual engagement would not have been a dismissal. However that was not the case here. The parties mutually intended that Mr Horsefield would be given more work so the employment relationship was ongoing, with the actual days and times of work to be advised by Mr Durgesh on an 'as required' basis.

[77] Mr Horsefield was available to work, he wanted to continue working, and Eurocars still needed his services. The only reason Mr Horsefield did not continue working was that Mr Durgesh decided Mr Horsefield was unreliable due to the time he had off work. Without discussing that view with Mr Horsefield, Eurocars sent him the text on 21 November 2024 that informed him he would not be given any more work.

[78] A dismissal is when the ending of the employment relationship occurs at the employer's initiative. The text Eurocars sent to Mr Horsefield was a summary dismissal, because it unilaterally ended the employment relationship without notice or pay in lieu of notice.

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

#### *Justification test*

[79] The justification test in s 103A(2) of the Act requires the Authority to objectively assess "the employer's actions, and how the employer acted", to determine whether it was what a fair and reasonable employer could have done in all the circumstances.

[80] This assessment is to occur at the time Mr Horsefield was dismissed, so it is based on the information that was available to Eurocars as at 10.10am on 21 November 2024, which is the time and date it made the decision to dismiss him.

[81] The Authority is not permitted to substitute its own subjective view for that of the employer, rather it is assessing what options within a range of possible responses could be open to a fair and reasonable employer in all the circumstances.

*Good faith obligations*

[82] Section 4(1A)(c)(i) of the Act requires an employer that is proposing to make a decision that could adversely affect an employee's employment, to provide the employee with access to relevant information and an opportunity to comment on it before a final decision was made.

[83] That did not occur. Mr Horsefield was not given any information before being dismissed, so he was not aware of what Eurocars was concerned about that had put his ongoing employment in jeopardy. Mr Horsefield therefore had no ability to respond to the information that was influencing Eurocars' decision making before he was dismissed.

[84] Eurocars failed to comply with its good faith obligations to Mr Horsefield, which undermined its ability to justify his dismissal.

*Procedural fairness tests*

[85] Mr Horsefield's dismissal came 'out of the blue'. Eurocars failed to comply with any of the four procedural fairness tests in s 103A(3) of the Act, which set out minimum standards of procedural fairness that need to be observed by an employer in order to justify an employee's dismissal.

[86] Eurocars failed to sufficiently investigate the concerns it had about Mr Horsefield's availability and attendance at work, in breach of s 103A(3)(a) of the Act. Eurocars failed to raise its concerns with Mr Horsefield, in breach of s 103A(3)(b) of the Act. Eurocars failed to give Mr Horsefield any opportunity to respond to the matters of concern, so it therefore failed to consider his responses to any concerns before it dismissed him, which breached ss 103A(3)(c) and (d) of the Act.

[87] These process failures by Eurocars were not minor and did result in significant unfairness to Mr Horsefield, so s 103A(5) of the Act did not preclude the Authority from finding that Mr Horsefield's dismissal was unjustified.

[88] Eurocars' failure to comply with any of the minimum procedural fairness tests in the Act undermined its ability to justify Mr Horsefield's dismissal.

*Substantive justification*

[89] Eurocars' breaches of good faith and of minimum procedural fairness obligations fundamentally undermined its ability to justify Mr Horsefield's dismissal. Eurocars' lack of any communication with Mr Horsefield about its dissatisfaction regarding the timing of his physio and legal appointments meant he was not aware that was an issue that was putting his ongoing employment in jeopardy.

[90] Mr Horsefield was not given any feedback, constructive criticism, or guidance to support him to meet Eurocars' expectations regarding his availability and attendance on the days it wanted him to work. Quite the opposite. Eurocars had led Mr Horsefield by its words and actions to believe that there was no problem in him attending these appointments provided he advised Eurocars in advance of them.

[91] Prior to being offered employment, Mr Horsefield informed Eurocars he had these upcoming obligations, and he was told that would not be a problem. Eurocars never informed Mr Horsefield that it had changed its mind about that. The surprise start to Mr Horsefield's employment on 12 November 2024 meant he had existing appointments that pre-dated his employment which he was not asked, or given time, to rearrange.

[92] Eurocars also never gave Mr Horsefield clear advice about the specific days and hours it expected him to work, which would have enabled him to have rescheduled his appointments to times that better suited Eurocars' needs. Nor did Eurocars tell him it needed him to be at work and therefore not attend a specific appointment on a particular date or at the appointment time he had previously arranged.

[93] There was no suggestion by Eurocars that Mr Horsefield had engaged in serious misconduct. Mr Horsefield had only been in the role for six working days before he was summarily dismissed. He wanted to work and needed the job.

[94] The evidence established that had Eurocars informed Mr Horsefield it was unhappy that he had appointments on days it had wanted him to work and/or if he had been clearly advised in advance which days and times each week that Eurocars wanted him to work then Mr

Horsefield could and, according to his evidence, he would have changed these appointments to be held on days Eurocars did not want him to work.

[95] A fair and reasonable employer could only dismiss an employee for poor attendance after a graduated warning process, which had informed the employee of the issue and had given them an opportunity to address the employer's concern by improving their attendance. Dismissing Mr Horsefield for his absences was therefore not substantively justified.

[96] Mr Horsefield's physio appointments were a temporary situation as he was recovering and building up his strength from being without a moonboot. The appointments with the family lawyer about his grandmother's will required two appointments, one of which had occurred. Mr Horsefield's request to be in the hospital with his stepfather was a unique 'one off' situation.

[97] Had Mr Horsefield know that any of these absences were going to put his ongoing employment in jeopardy then he would have prioritised his employment because he needed to work and income.

[98] A fair and reasonable employer could not have summarily dismissed an employee in these circumstances. A fair and reasonable employer was required to have put Mr Horsefield on notice about its concerns and expectations before taking action against him for not meeting those expectations. Mr Horsefield had not been reprimanded, counselled or warned before he was dismissed. That omission effectively deprived Mr Horsefield of any opportunity to reschedule his appointments to days and times that were more convenient to Eurocars.

### *Outcome*

[99] Eurocars' actions and how it acted were not what a fair and reasonable employer could have done in all the circumstances.<sup>3</sup> Eurocars acted in a manner that was significantly unfair to Mr Horsefield.

[100] Eurocars failed to establish on the balance of probabilities that its dismissal of Mr Horsefield was procedurally or substantively justified. Accordingly, Mr Horsefield's unjustified dismissal personal grievance claimed succeeded.

### **What remedies should be awarded?**

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<sup>3</sup> Section 103A(2) of the Act.

*Mitigation of loss*

[101] Mr Horsefield established he had mitigated his loss by attempting to find new employment. He contacted a former employer and obtained casual work, which included a weeks' work during the Good Friday sales week.

[102] Mr Horsefield applied for jobs advertised on the Seek and Trade Me websites and he provided proof of that to the Authority. He also registered with Work and Income New Zealand (WINZ) which required him to actively seek work. Mr Horsefield also sought odd jobs, which resulted in him doing some gardening work and earning \$200.00 for that.

*Lost remuneration*

[103] Eurocars' claim that no lost remuneration was payable because Mr Horsefield was on accident compensation paid by ACC did not succeed. He was physically and medically able to perform certain work (which included the Sales Representative role Eurocars had employed him to do) so any hours he did work was a matter between him and ACC.

[104] Contrary to Eurocars' submissions, the fact he was receiving ACC payments did not void Mr Horsefield's entitlement to be compensated for the remuneration he had lost as a result of his unjustified dismissal. These are two separate matters.

[105] Mr Durgesh' statement said that he required Mr Horsefield to work from 9am to 5pm on the days he did attend work, so that was the starting point for assessing the lost remuneration claim.

[106] In the three months after being dismissed, Mr Horsefield obtained one week's temporary work with a former employer to cover the busy Good Friday sales period. He is therefore entitled to recover 12 weeks' lost remuneration, being three months lost remuneration as per s 128(2) of the Act less than one week he had worked over that period. Pursuant to Mr Horsefield's IEA he was paid \$23.50 per hour. According to Mr Durgesh, he had wanted Mr Horsefield had to work 7.5 hours (9am to 5pm) on the days he worked.

[107] Lost remuneration has therefore been assessed by the Authority based on three working days of 7.5 hours work per week (total 22.5 hours per week), paid at the rate of \$23.50 per hour (being \$528.75 gross per week), multiplied by 12 weeks, which totalled \$6,345.00.

[108] Accordingly, within 28 days of the date of this determination Eurocars is ordered to pay Mr Horsefield \$6,345.00 lost remuneration pursuant to s 128(2) of the Act.

**Should any remedies that may be awarded be reduced under s 124 of the Act on the grounds of contribution?**

[109] Mr Horsefield and his mother gave evidence about the adverse effects his unjustified dismissal had on him. For privacy reasons this evidence has not been set out in this determination, but Eurocars are aware of it.

[110] During the IM, Mr Horsefield gave evidence detailing the shock, hurt and distress his sudden and unexpected summary dismissal had caused him. His mother's affidavit supported his evidence about that.

[111] Within 28 days of the date of this determination, Eurocars is ordered to pay Mr Horsefield \$6,000.00 under s 123(1)(c)(i) of the Act to compensate him for the humiliation, loss of dignity and injury to feelings he suffered as a result of his unjustified dismissal.

**Should remedies be reduced on the grounds of contribution?**

[112] Having determined that Mr Horsefield's dismissal grievance was successful, s 124 of the Act required the Authority to assess the extent to which Mr Horsefield contributed to the situation that gave rise to his personal grievance.

[113] Contribution denotes blameworthy conduct that has been proven on the balance of probabilities. No such conduct existed here. Mr Horsefield told Mr Durgesh before he was offered employment about the appointments he had to attend. He was told it would not be a problem. After becoming employed Mr Horsefield also asked and was given permission to attend the appointments he had scheduled when they arose.

[114] Mr Horsefield was unaware that Eurocars considered his attendance at these appointments was problematic or had made him in its eyes "unreliable". Independent proof of each of these appointments was provided to the Authority, and all of them were genuine. Mr Horsefield did not engage in any blameworthy conduct, so his remedies are not to be reduced on the grounds of contribution.

**Outcome**

[115] Mr Horsefield was a permanent employee who had no set or fixed hours of work, because he was employed on an 'as required basis'. Eurocars' summarily dismissed Mr Horsefield by text message sent on 21 November 2024. His dismissal was procedurally and substantively unjustified.

[116] Within 28 days of the date of this determination, Eurocars is ordered to pay Mr Horsefield \$12,345, being:

- (a) \$6,345.00 gross as lost remuneration awarded under s 128(2) of the Act.
- (b) \$6,000.00 without deduction as distress compensation awarded under s 123(1)(c)(i) of the Act.

**What if any costs and disbursements should be awarded?**

[117] Mr Horsefield as the successful party is entitled to a contribution towards his actual legal costs. The parties are encouraged to resolve costs by agreement, based on the notional daily tariff which is currently \$4,500.00. This matter involved a half-day IM, so the notional starting point for assessing costs is \$2,250.00.

[118] If agreement regarding costs is not possible, Mr Horsefield has 28 days within which to lodge his costs submissions. Eurocars then has 14 days within which to lodge its costs submissions. The parties should identify in their submissions any factors they say should result in the notional starting tariff being adjusted.

Rachel Larmer  
Member of the Employment Relations Authority