

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 337  
3379483

BETWEEN                      TIMOTHY OSBALDISTON  
Applicant

AND                              PRIMEHORT  
DISTRIBUTORS LIMITED  
Respondent

Member of Authority:        Simon Greening

Representatives:            Applicant in person  
Robert Thompson, advocate for the Respondent

Investigation Meeting:      On the papers

Submissions received:      15 May 2026 from the parties

Determination:              2 June 2026

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Timothy Osbaldiston was employed by Primehort Distributors Limited (PDL) from 20 September 2023 until 28 March 2025.

[2] Mr Osbaldiston was employed in the position of operations / project assistant until 10 February 2025. On or about 10 February 2025, Mr Osbaldiston was transferred to a telesales position.

[3] On 17 March 2025, PDL provided a letter to Mr Osbaldiston advising that his position had been made redundant, and that redundancy would “take effect” two weeks from the date of the letter, which was 28 March 2025.

[4] The penultimate paragraph in the letter stated:

As discussed last Monday 10/03/25 we have the option of actively assisting in repositioning you in alternative employment or if you leave earlier (21/03/25) with 1 month (160 hours) Pay in Lieu.

If you have any questions or concerns, please do not hesitate to reach out to us.

[5] On 20 March 2025, Mr Osbaldiston replied to this letter:

Hi Mike

I accept your offer, as discussed, of 1 months pay in lieu, not physically present at work through the 28<sup>th</sup>.

Regards

Tim

[6] On the same day, PDL sent Mr Osbaldiston a further letter:

Dear Tim

We are writing to confirm the details of your redundancy package, as confirmed earlier. Please find below the terms of our full and final offer.

- 5 weeks' (200 hours) remuneration in lieu of notice, paid in accordance with your current salary and benefits plus accrued holiday pay.
- This payment is made in full and final settlement of all matters between you and Primehort, including but not limited to, your employment contract.

By accepting this offer, you acknowledge that you have no further claims against Primehort, and you release and discharge the company from any and all liabilities, claims and demands.

Acceptance:

I, Tim Osbaldiston accept the terms of this full and final redundancy letter. I acknowledge that I have no further claims against Primehort and release and discharge the company from any and all liabilities, claims and demands.

Signature:

Date:

[7] Mr Osbaldiston did not sign this letter.

[8] Mr Osbaldiston's employment with PDL concluded, by reason of redundancy, on 28 March 2025.

[9] Mr Osbaldiston raised a personal grievance for unjustified dismissal. He has brought this claim to the Authority for determination.

[10] PDL's position is that Mr Osbaldiston is unable to pursue his personal grievance claim because the parties settled this claim on the basis of accord and satisfaction.

## **The Authority's investigation**

[11] For the Authority's investigation an affidavit was served and lodged by Mr Osbaldiston and Mr Michael Wearmouth. Mr Wearmouth is the General Manager of PDL. Mr Osbaldiston and PDL lodged written submissions with the Authority.

[12] 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 preliminary issue for determination**

[13] The preliminary issue for determination, is whether the parties have settled Mr Osbaldiston's personal grievance for unjustified dismissal on the basis of accord and satisfaction.

## **Legal principles – accord and satisfaction**

[14] The nature of the agreement PDL says the parties have entered into, is known as "accord and satisfaction". The definition of such an agreement is as follows:<sup>1</sup>

Accord and satisfaction is the purchase of a release from an obligation arising under contract or tort by means of any valuable consideration, not being the actual performance of the obligation itself.

[15] Whether such a release has been given depends on the language used by the parties and determined by applying principles of contractual interpretation.<sup>2</sup>

[16] Firstly, it follows that before there can be accord and satisfaction, there must be a genuine dispute.<sup>3</sup>

[17] Secondly, because accord and satisfaction is a contract of a particular kind, the question of whether it has been made and what are its terms is a question of fact.<sup>4</sup>

[18] The focus of the second element of the enquiry is whether there has been a meeting of the parties' minds, or that one of the parties has acted in such a way as to

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<sup>1</sup> *Clearkin v Geneva Healthcare Limited* [2019] NZEmpC 174 at [11].

<sup>2</sup> Above n 1 at [12].

<sup>3</sup> *Harris v Birchwood Farm Holdings Limited* [2002] NZEmpC 124 at [46].

<sup>4</sup> Above n 3 at [48].

induce the other to think that money (or other consideration) is taken in satisfaction of the claim.<sup>5</sup>

### **Application of legal principles**

[19] The focus of PDL's submission is that Mr Osbaldiston accepted its offer.

[20] The question which follows, is what offer did Mr Osbaldiston accept?

[21] The correspondence between Mr Osbaldiston and Mr Wearmouth on the morning of Thursday 20 March 2025 supports Mr Osbaldiston's position that he was accepting PDL's offer to not work out his notice period and be paid an additional two weeks' notice.

[22] In short, at this point, a genuine dispute had not arisen between the parties.

[23] Mr Osbaldiston's first email to Mr Wearmouth at 8.02am on Thursday 20 March 2025 does not refer to accepting an offer, instead Mr Osbaldiston confirms his final day of employment will be 28 March 2025. Mr Osbaldiston writes:

As per the letter of redundancy received on 17/3/25 I confirm my last day of employment will be 28/03/25.

[24] Mr Wearmouth replies to Mr Osbaldiston's email:

Thanks Tim.

Appreciated, just to confirm you would like to take up the offer of 1 months pay in lieu, not physically present at work through to the 28<sup>th</sup>?

[25] I find that Mr Osbaldiston's reply email amounted to acceptance of PDL's offer of "1 month's pay in lieu".

[26] PDL submits that Mr Wearmouth's next email, which attached a document: "*Redundancy package*", was simply a process involving formalising agreement that had already been reached.

[27] I don't accept this submission because the redundancy package sets out another offer, which included additional terms, and required Mr Osbaldiston's signature.

[28] The opening sentence of this letter, states:

We are writing to confirm the details of your redundancy package, as confirmed earlier. Please find below the terms of our full and final offer.

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<sup>5</sup> *Graham v Crestline Pty Limited* [2006] NZEmpC 848 at [48].

[29] Mr Osbaldiston did not sign this letter or accept this offer.

[30] In summary:

(a) Mr Osbaldiston accepted PDL's offer to not work out his notice period, and for payment of this notice period to be extended two weeks beyond the contractual notice period.

(b) There was no genuine dispute between the parties.

(c) Mr Osbaldiston did not accept PDL's subsequent full and final offer to "release and discharge the company from any and all liabilities, claims, and demands".

### **Summary and orders**

[31] I find that Mr Osbaldiston's personal grievance for unjustified dismissal was not settled between the parties on the basis of accord and satisfaction.

[32] Therefore, Mr Osbaldiston is able to proceed with his personal grievance claim for unjustified dismissal, which is now before the Authority for determination.

[33] A case management conference will be convened shortly in order to progress Mr Osbaldiston's claim to a substantive investigation meeting.

[34] Costs are reserved.

Simon Greening  
Member of the Employment Relations Authority