

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI Ā TARA ROHE**

[2026] NZERA 345  
3360103

BETWEEN                      STEPHEN NUNN  
Applicant

AND                              PORT NICHOLSON  
FISHERIES LP  
Respondent

Member of Authority:      Sarah Kennedy-Martin

Representatives:           Robert Morgan, advocate for the Applicant  
Jeremy Little for the Respondent

Investigation Meeting:     21 October 2025 in Tauranga

Submissions received and   Up to and including 18 February 2026 from the  
Additional Information      Applicant  
Received:                      Up to and including 3 March 2026 from the Respondent

Determination:              3 June 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Stephen Nunn was employed by Port Nicholson Fisheries Limited Partnership (PNF) as a driver and process worker in Tauranga. PNF export live crayfish from Auckland or Wellington. Crayfish were delivered and processed at a Depot before being transported to an export depot. The processing, transporting and export of live product is highly regulated. Mr Nunn worked with two others in the Tauranga Depot. He was the only driver and his individual employment agreement (IEA) provided for permanent employment for a minimum of 16 hours per week.

[2] Mr Nunn was dismissed without notice after two employment investigations in quick succession and says his dismissal was unjustified both procedurally and substantively. He also raised issues about annual holiday leave calculations which have been resolved but he claims he was incorrectly paid for public holidays between 22 April 2022 and February 2023. He seeks compensation, lost wages, public holiday arrears and payment for his notice period.

[3] PNF say the dismissal was justified. The industry is highly regulated and the matters that were investigated related to Mr Nunn failing to record the correct documentation, and follow processes regarding catches that were landed and entered at the Tauranga Depot before being transported by Mr Nunn to Auckland. It says this resulted in exposure to risk for PNF and could have resulted in failed audits from the Ministry for Primary Industries (MPI). It did not accept Mr Nunn's response that he did not have the training to know what was expected of him. He was dismissed after the second employment investigation after a final written warning was in place after the first employment investigation.

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

[4] For the Authority's investigation written witness statements were lodged from Stephen Nunn and for PNF from Jeremy Little, Chief Executive. A statement was lodged from Jeremy Phipps, National Factory Operations Manager after the investigation meeting. Wendy Swales, Depot Manager lodged a written statement but did not attend to give oral evidence. Her statement was not considered.

[5] Mr Nunn's representative provided further information from MPI after the investigation meeting. All witnesses answered questions under oath or affirmation from the Authority and the parties' representatives. The representatives provided written submissions.

[6] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

## **The issues**

[7] The issues requiring investigation and determination were:

- (a) Was the dismissal of Mr Nunn's employment and how it was carried out, what a fair and reasonable employer could have done in all the circumstances at the time?
- (b) If PNF is found to have acted unjustifiably what remedies should be awarded to him, considering lost wages and compensation under s123(1)(c)(i) of the Act.
- (c) Is Mr Nunn due wage and public holiday arrears?
- (d) If any remedies are awarded, should they be reduced (under s 124 of the Act) for blameworthy conduct by Mr Nunn that contributed to the situation giving rise to his grievance?

## **Background**

[8] Mr Nunn started work in June 2014 and after PNF took over the business a new IEA was signed between the parties in 2019. He was employed on a permanent basis with 16 hours guaranteed work each week but he could work up to 35 hours a week seven days a week. The IEA provided that four weeks' notice of termination of employment was to be given. Employment could be terminated without notice for serious misconduct. Suspension was specially provided for in cl 19 of the IEA. PNF could suspend employees on full pay pending the outcome of any fact finding or disciplinary investigation after consultation with the employee.

[9] The job description was Driver/Process worker and Mr Nunn reported the Depot Supervisor who was Ms Swales. Ms Swales would text or call Mr Nunn the night before to let him know if he was needed the next day. Work was dependant on a number of factors including weather, quota numbers and size of catch. He would regularly travel to Whitianga, Tauranga, Whakatane and sometimes Napier to collect a catch from the fishing boats and bring them back to the Tauranga Depot before they were transported elsewhere for export.

[10] Once back at the depot Mr Nunn says Ms Swales and one other worker would input the data, weights and whose catch it was into an electronic system called Tally and then pack the crayfish into smaller containers. Once the crayfish were transferred to the small packing containers it was Mr Nunn's job to pack the live crayfish into the

van and drive them to Auckland or where they were required. After unloading the van he would pick up the empty replacement containers and return to Tauranga.

[11] On 5 May 2024, Mr Nunn received a text message from Mr Phipps asking him to attend the meeting to catch up on a couple of things. He was not advised what the meeting was about. At the meeting the next day (6 May) concerns about excessive speed in the work vehicle and the handling of an octopus were discussed. Mr Nunn had unloaded a catch which included an octopus on 26 March 2024. He had recorded it on the handwritten “unload docket” and then placed the octopus in the freezer in the Tauranga Depot freezer without completing the necessary further documentation.

[12] What was required of Mr Nunn was to have weighed and entered the correct data about the octopus before either storing it at the Depot or transporting the full load of lobster with the octopus to the Auckland factory.

[13] Mr Nunn says octopus had not been transferred to Auckland in recent years as it was typically sold from the Tauranga Depot. While he was aware that all products should be weighed into a depot in accordance with the Licensed Fish Receiver (LFR) training, Ms Swales or the other worker would usually do that. He was not familiar with the electronic Tally system because they usually did that. There were no other workers in the depot that day.

[14] On 21 May 2024, Mr Phipps issued his preliminary decision. It was recorded in the letter that allegations of non-compliance had been presented to Mr Nunn at the meeting on 6 May 2024. Mr Nunn’s information and responses had been taken into account. Another employee had also been interviewed as part of the investigation. It was also recorded that as Mr Nunn was LFR registered and possessed the necessary unit standards meaning he was aware of the legislative requirement to weigh all products entering any registered depot. If he was uncertain it was recorded that he should have contacted Mr Phipps or the compliance team immediately because allowing a quota species into a licensed premises without recording the weight in Tally put the company in a serious compromising position with MPI.

[15] The preliminary view was that it was appropriate to issue a final written warning. Mr Nunn was invited to provide any response he wished to make before a

final decision was made. He was advised in this letter of his entitlement to bring a representative or a support person with him to any further meetings.

[16] On 4 June 2024, Mr Phipps confirmed in writing his final decision was to issue a final written warning for 12 months for serious misconduct because of non-compliance with the legislative requirement to weigh all products entering any registered depot and record the weight in Tally. Failing to do so was a serious breach of the company compliance policy and procedures.

[17] The policies and procedures were not specified but it appears from the material lodged with the Authority after the investigation meeting that the LFT training was the source of the company policy that was relied on.

[18] Also on 4 June 2024, Mr Nunn received a new letter from Mr Phipps informing Mr Nunn that another disciplinary employment investigation had been commenced regarding a new non-compliance issue observed in the depot on Tuesday 28 May 2024. Mr Nunn was to be stood down from his duties while the allegations were investigated. The allegations were recorded as:

1. Non-compliance with PNF receiver processes from landing on 28 May 2024.
2. Failure to complete any initial compliance checks at the time of receipt and tanking.
3. Negligent handling of product at the time of receipt.

[19] Mr Phipps met with Mr Nunn on 10 June 2024. Mr Nunn outlined his usual process which was to weigh the crayfish and put the details down on paper because he did not know how to use the electronic Tally system following the many upgrades. One of the other workers would put the details into Tally when they next came to the office.

[20] The allegation relating to negligent handling of product was a concern that a crayfish had arrived in Auckland that was damaged. Mr Nunn had explained that when driving to Auckland it was common for the crayfish in the top tank to occasionally climb out and fall on the floor. When they land on the floor there is no water for them to land and they are simply on the floor of the van. He said once he arrived in Auckland he would put the crayfish back into the tank.

[21] On 7 June 2024, Mr Phipps wrote to Mr Nunn setting out his preliminary decision which was termination of employment on the grounds of serious misconduct. The allegations had been found to be made out and the seriousness of these allegations and the recent final written warning for non-compliance regarding the octopus had exposed PNF to unnecessary risk. Mr Nunn was invited to provide any additional information before a final decision was made.

[22] On 10 June 2024, Mr Nunn emailed Mr Phipps further responses to the allegations. On 12 June 2024, Mr Phipps advised Mr Nunn that his preliminary decision was confirmed and Mr Nunn's employment was to be terminated for serious misconduct effective immediately.

[23] It transpired that after the octopus incident on 26 March the company had arranged LFR refresher training for all staff in Auckland on 15 April 2024 and Mr Nunn attended this training session. Mr Phipps's evidence was that Mr Nunn already held a similar unit standard therefore he was not required to complete the formal assessment at the end of the course. Mr Nunn was present for all other relevant learning material expected by the tutor.

[24] Mr Phipps' written evidence was that between 21 May and 28 May he communicated regularly by phone and text message with Mr Nunn regarding the depot activities. The other two depot employees were away at that time. On 28 May Mr Phipps organised a Teams meetings with Mr Nunn at the depot to go through the unload procedure and the required documentation to complete the landing. He specifically reinforced to Mr Nunn that he did not you need to use the electronic Tally inventory system but that he should instead complete the manual paperwork that he was already familiar with. He also instructed him to contact him if there were any issues during the landing.

[25] On 30 May 2024, it was discovered that the landing details from 28 May had not been properly recorded by Mr Nunn and this again placed the organisation at risk of MPI intervention and potential penalties. On 31 May 2024, the documentation was corrected and recorded in the Tally inventory system of one of the other employees with assistance from the internal compliance team. The non-compliance was then escalated to senior management for review.

[26] In the final view letter allegation one was made out because in the Teams meeting with Mr Phipps prior to the landing the importance of recording all weights on the appropriate legislative document was emphasised. Mr Nunn had only recorded gross weights on a separate piece of paper. This meant that the document was insufficient for MPI's legal requirements and the lack essential details such as the date, species type, the numbering, the fisherman, the permit name, the vessel details, and the net weight. Mr Phipps said these details constituted the minimum requirements for compliance that were expected of a LFR and they were not met in this instance.

[27] In relation to allegation two and the failure to complete any initial compliance checks at the time of receipt and tanking Mr Phipps noted that on reviewing the camera system it was evident that the company policy regarding the 15 compliance checks on products prior to acceptance was overlooked. He says the step was vital as a help to identify any illegal products before PNF accepted the landing. It was recorded that failing to carry out this procedure had exposed PNF to unnecessary compliance risk and as mentioned during the recent LFR training in Auckland adherence to this directive and policy was imperative.

[28] Allegation three it was about handling of the crayfish. Again on reviewing the camera system it had been observed that the crayfish had not been handled correctly in accordance with the operations manual. Each should have been individually handled and placed into the swim bins and because the fish bin was simply tipped into the swim bins.

[29] A finding of serious misconduct was confirmed and Mr Nunn's employment was terminated effective immediately.

[30] On 17 July 2024, Mr Nunn emailed Mr Phipps raised his personal grievance with PNF and recorded his view that the decision to dismiss him on 12 June was procedurally flawed, ungrounded and humiliating.

### **Unjustified dismissal**

[31] In assessing an unjustified dismissal the test for justification set out in s 103A of the Act involves determining whether PNF's actions were what a fair and reasonable

employer could have done in all the circumstances at the time. The Authority must consider:

- (a) Whether, having regard to the resources available to PNF, did it sufficiently investigate the allegations before taking action against Mr Nunn;
- (b) Whether PNF raised the concerns with Mr Nunn before dismissing or taking action against him;
- (c) Whether PNF gave Mr Nunn a reasonable opportunity to respond to its concerns before dismissing him;
- (d) Whether PNF genuinely considered Mr Nunn's explanation in relation to the allegations before taking action against him.

[32] The test for justification is an objective test and the Authority may not substitute the employer's decision with its own but is required to review the facts on which the decision was made to determine whether an employer acted justifiably. The Authority may also consider any other factors it thinks appropriate (s103A(4)).

[33] Minor defects in the process followed by the employer cannot in and of themselves, render an action unjustifiable if these did not result in the employee being treated unfairly (s103A(5)).

*Mr Nunn was invited to a meeting for a catch up*

[34] PNF's own documents clearly state the meeting on 6 May was an investigation meeting. That means there were a number of flaws in the process followed by PNF. Mr Nunn was not informed his employer had concerns about his conduct or that an employment investigation into his conduct had started until he was in the meeting to hear his feedback.

[35] Despite this Mr Nunn gave his explanation which relied heavily on his account of day to day practice at the Tauranga Depot. While the investigation found his handling of the octopus did not comply with policy, procedure or legislation, his response was that the Depot manager and another employee did all the paperwork and entered everything in the electronic Tally system. He mostly did the driving despite the IEA describing his job as Driver/processor. He also said octopus had not been transported to Auckland for some time because after they were received in the Depot they were sold as bait from the Tauranga depot.

[36] Mr Phipps' meeting notes (provided after the investigation meeting) record an investigation meeting took place on 6 May 2024 and confirm Mr Nunn's evidence about the explanations gave:

- Ms Swales and the other employee were away on 26 March
- normally someone else would weigh the octopus in and put it in the freezer
- Mr Nunn was aware that all products must be weighed before coming into the depot
- Mr Nunn did not have training in weighing octopus as it was usually done by the others
- Mr Nunn was not familiar with where to put the weight for an octopus in the paper documents (if he was not using the electronic system)
- what he did with the octopus that day was not out of the ordinary
- things were rushed that day as there was urgency to get the product to Auckland before the end of the month
- Ms Swale's priority was always to get the vehicle on the road for quality purposes which is why she would always do the paper work and get him on the road fast.

[37] Also provided by Mr Phipps after the investigation meeting was an email from the Harvest and Compliance advisor dated 27 March 2024 that sets out how the matter was identified. She noticed the docket in Tauranga recorded octopus had been landed but on arrival to the export depot in Auckland no octopus was recorded. On 27 March 2024 she telephoned the export depot manager to ask about this:

- I called Andrew and he explained that he had noticed the Oct on the Unload and had asked Steve and Stevie told them it was at the Tauranga depot for sale. Andrew did not think anything further of it or notice when sending paperwork through. I also asked Andrew if Steve had mentioned the weight or who the sale was for an entry said he had no details.
- I then called Steve who advised he received the landing at Tauranga depot and was taking it straight Auckland to be weighed in and graded but he'd put the octopus straight into the freezer at Tauranga without weighing it in all recording on a landing docket. His reasoning for putting it in the freezer and not taking it to Akl was that it is usually sold locally in total so he thought there was no reason to take it to AKL but did not think about paperwork required.

[38] Her email to Mr Phipps and Mr Little records that she rectified the situation by having Mr Nunn go back into the depot to weigh the octopus and complete a paper form in relation to this. She completed the necessary additional paperwork to attach and file in Tauranga to finalise the paperwork. She asked Mr Nunn if he would like to have the octopus in accordance with a "koha" arrangement. Mr Nunn accepted and the necessary sales document was written out before he took it away with him.

[39] Mr Nunn's evidence is consistent with that. Mr Nunn's explanation is supported by an email from Ms Swales setting out that he wasn't trained in Tally. He says Ms Swales had resigned on 22 March and the other employee was away. The relevant point was that he was the only person working at the depot at that time and the absence of Ms Swales directly impacted on what he said he would do. He did not know how to use the electronic Tally system and his practice was to write information on a piece of paper for the other employees to enter into Tally. He took the crayfish to Auckland as he normally did and left the octopus behind the freezer, as he had done before. When he got Auckland on 26 March he gave Ms Swale's office keys and work computer to Mr Phipps and says Mr Phipps seemed grateful and doing what he could get such short notice.

[40] He says he also saw the factory manager in Auckland and told him about the octopus and he seemed happy with what Mr Nunn had done.

*Mr Nunn's explanations were not taken into account*

[41] PNF did not have to accept Mr Nunn's explanation or rationale for what he did but it did have to genuinely consider it. Mr Nunn raised and the absence of Ms Smales and the other employee and their local practice as the reason why he did not comply with the policy and procedures PNF said it required of him.

[42] Mr Nunn was the only driver which supports his explanation that the others entered the data. He says he is aware octopus need to be weighed because of the regulations. He says he did and it was intended this would be entered by the other employee when he returned to work.

[43] The compliance advisor's email suggests that PNF was open to octopus being sold locally as bait including to its own employees in Tauranga which then undermines its stated expectation that the full load was transported to Auckland. It also undermines the finding misconduct that resulted in a final written warning.

[44] In light of Mr Nunn's explanations, in order to find misconduct PNF would have to have engaged with Mr Nunn's assertions about the local practice and following on from that take into account the fact Ms Smales had left and it did not do that.

[45] As a result, the conclusion Mr Nunn's conduct was serious misconduct set out in the final decision letter dated 4 June 2024, was not conclusions a fair and reasonable employer could have reached in the circumstances because it was not in a position to reach that finding without giving Mr Nunn's responses genuine consideration. It follows it was not reasonable to have issued a final written warning in relation to this.

*The second employment investigation*

[46] Mr Phipps was already aware from the first employment investigation that Mr Nunn was not using the electronic Tally system, that he documented information and left it for his colleagues to enter and that Mr Nunn was at the time often working alone or with one other at Tauranga depot. The evidence was that the Depot Manager had left. In light of this Mr Phipps appears to have an AVL meeting with Mr Nunn on 28 May 2024 and emphasised the importance of recording all weights on the approved appropriate legislative documents required when not using the electronic system. Mr Nunn failed to follow this instruction and documented gross weights on a separate piece of paper and not the approved documentation. This was recorded as being insufficient because it did not comply with the minimum requirements of an LFR.

*There was training in between the first and second employment investigations*

[47] In between the octopus incident on 28 May and the second compliance incident Mr Nunn was required to attend further LFR training. Mr Nunn was reluctant to do this training and in fact refused to sign a document at the end of the training. PNF also say that despite the Auckland training he already held the relevant unit standards such that they could be satisfied of their expectation that he operated at an LFR level.

[48] The second employment investigation was based on what could be seen on the camera system in the Tauranga Depot which identified Mr Nunn had not completed 15 compliance checks. Review of the cameras had also identified handling issues with the crayfish on that day. Mr Nunn's response was that had not been rough with the crayfish and had taken care despite not handling them individually. He was not shown the footage and his explanation that the crayfish can climb out the top bin while they are being transported was again not engaged with.

*Mr Nunn's explanations were the same*

[49] Mr Nunn relied again on local practice and says that he had weighed the crayfish and put the details on paper so that when the other employee next came in it was his expectation they would enter the details into the electronic system for him.

*PNF held Mr Nunn to the standard of an LFR*

[50] The standard Mr Nunn was being held was that of a LFR but the allegations for both employment investigations did not set this out. This is because there were no allegations recorded for the first matter and the second matter relied on conduct that had been viewed on the CCTV footage. What PNF appears to have been concerned about was the way in which the Tauranga depot was operating and Mr Nunn being used as a driver rather than in a dual role as a driver and a processor as recorded in his IEA.

[51] If the decision to send Mr Nunn to Auckland to do LFR training was because PNF had serious concerns about Mr Nunn's ability to comply with the requirements to process the product on arrival and to enter data into the electronic system and/or onto the correct document, it would have needed to have alerted Mr Nunn to the fact that had those concerns about his performance.

*The process errors were more than minor*

[52] The basic requirement imposed on an employer when it is investigating concerns about an employee is that it must follow the principles of natural justice. The minimum requirements are that the employer has properly investigated allegations, given the employee an opportunity to be heard and considered that explanation before making the decision to dismiss.

[53] A proper investigation means all material relied on by the decision maker is provided to the employee. This is not what occurred with Mr Nunn. No allegations were provided to Mr Nunn during the first investigation and he was invited to an employment investigation meeting without being told the meeting was to discuss his employers concerns about his conduct.

[54] It is clear during the first investigation information was gathered from the Auckland depot manager because it is referred to in the final view letter but that was not provided to Mr Nunn. The emails from the compliance manager also indicate Mr Nunn was able to purchase the octopus for bait which did not form part of the investigation and undermines the position PNF had taken with regard to the seriousness of Mr Nunn's conduct in not transporting the octopus to Auckland.

[55] The process errors in the second investigation involved failing to provide Mr Nunn an opportunity to view and comment on the CCTV footage. In both investigations PNF failed to engage with Mr Nunn's explanations and explain why they were not accepted. This likely resulted in Mr Nunn not being able to respond to the actual concerns his employer had which in the first instance were performance concerns. There was also no evidence that PNF took into account Ms Swales absence from the workplace and this was relevant to Mr Nunn's explanations.

[56] It is also problematic for PNF that Mr Phipps was the decision maker in both investigations and that the letter telling Mr Nunn a second employment investigation had been initiated was given to Mr Nunn on the same day he received a final written warning in relation to the octopus incident.

[57] It is not possible for PNF to say Mr Phipps was an impartial decision maker or that the first finding did not influence his thinking in relation to the second investigation. The second matter was discovered on 30 May which was in between the preliminary view letter and the final decision letter for the first employment investigation about the octopus. PNF waited until 4 June to inform Mr Nunn about the second issue and had already decided it had reached a level of seriousness that meant it was necessary to suspend him from work.

[58] The letter on 4 June recorded:

Given the seriousness of these allegations, you will be stood down from your duties until further notice effective immediately, pending the completion of my investigation and preliminary decision. Throughout this period, you will continue to receive your normal contracted hours' pay.

[59] Noting the IEA required consultation before suspension from work the decision to suspend Mr Nunn on 4 June did not comply with the suspension clause in the IEA. Whether a suspension is reasonable is assessed according to the facts of each case. It

is well-established an employer is generally required to give notice of a proposal to suspend and seek the employee's views.<sup>1</sup>

*There was a failure to consider alternatives to dismissal*

[60] It is clear there was no consideration of alternatives to dismissal. The courts have been clear that a fair and reasonable employer will consider alternatives to dismissal. Sending Mr Nunn on the LFT course was a step towards raising his level of competency as that appears to have been what PNF was looking for. However, there was no evidence that PNF turned its mind to how its concerns it had might otherwise be met such as through coaching and training or even a formal performance plan.

[61] It was significant that PNF was concerned about risk management and compliance with the regulatory it operated in but sheeted that home to Mr Nunn personally when there was plenty of information to support Mr Nunn's explanation as to the local practice that had developed. That that meant he mainly did the driving and the Depot manager managed the data entry and compliance requirements.

*Conclusion*

[62] A fair and reasonable employer could have been expected to follow the process set out in s 103A of the Act. While on the surface a process was gone through, the findings reached in the first investigation could not be substantively justified without addressing Mr Nunn's explanations. Section 103A of the Act requires employers to genuinely consider the employee's explanation and PNF could not demonstrate that it had done that in this case.

[63] The fact the octopus was then sold to Mr Nunn for bait was also problematic for PNF because it undermines the seriousness it said attached to his conduct. The email provided that showed Ms Swales confirming to Mr Phipps that Mr Nunn had not been trained in Tally meant it was not reasonable to forge on and make the finding that Mr Nunn's conduct amounted to serious misconduct.

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<sup>1</sup> See for example: *E tu v Singh* [2024] NZEmpC 84 at [54].

[64] The result of the first investigation was taken into account during the second investigation but given the finding reached above, it was not reasonable to have considered that conduct to be serious misconduct or to issue a final written warning in relation to it. The second investigation appeared to be pre-determined. A decision had been made about how serious Mr Nunn's conduct was evidenced by the reason given for the suspension and suspending Mr Nunn from work without consultation was also not a step a fair and reasonable employer could take. The IEA required consultation.

[65] There was no opportunity to view the CCTV footage which was pivotal to the allegations in the second investigation. There was also a failure a second time to address Mr Nunn's responses about the local practice that had developed with Ms Swales, who was the Depot manager. There was also no consideration of alternatives to dismissal. This meant that PNF's decision that Mr Nunn's conduct reached the level of serious misconduct and that dismissal was the appropriate outcome was one a fair and reasonable employer in the circumstances could have reached.

[66] Mr Nunn has been successful with his claim his dismissal was unjustified and he is entitled to a consideration of remedies.

## **Remedies**

[67] Mr Nunn seeks compensation for humiliation, loss of dignity and injury to feelings caused by his grievance. His evidence was that he was bewildered as to how his dismissal came about. He had a good record for 10 years and then in the space of one month he had two disciplinary meetings in quick succession and was dismissed summarily.

[68] Mr Nunn says the emotional effects on him have been great. He was humiliated and shocked at the suddenness of his dismissal and says it caused anxiety. He said he felt like an old appliance simply thrown out. He was 70 years old at the time. He wants to keep working both to help with living costs for his family but also to keep himself mentally fit. He said his job kept him mentally stimulated as well as helping with the day-to-day living costs noting that life is more expensive and he wants to be able to pay for these expenses. That has contributed to his feelings of loss of dignity and humiliation.

[69] Mr Nunn seeks compensation in an amount starting from \$18,000.00 and says compensation should take into account the way the dismissal was handled, the merits of the claim against him and the fact alternatives to dismissal were not considered. The impact on Mr Nunn appears to have fallen within the midrange in accordance with band two of the scale set out by the court.<sup>2</sup> Noting no alternatives to dismissal were considered and the relative suddenness with how the dismissal was handled and other similar recent Authority cases I consider \$20,000.00 to be appropriate compensation for the humiliation, loss of dignity and injury to feelings suffered as a direct result of PNF actions towards Mr Nunn.

#### *Lost wages*

[70] Mr Nunn seeks lost wages. The Act permits reimbursement to the employee of lost wages in an amount that is the lesser of the sum equal to lost remuneration or to three months ordinary time remuneration. Mr Nunn gave evidence of looking for work but having no success because he believes his age puts employers off. He said he is also limited in what he can do now as he does not want a job that involves a lot of physical labour.

[71] Given I have found above that Mr Nunn has a personal grievance and his evidence that he has been out of work since his dismissal, despite trying to find new work, and that he did not secure any work within the initial three month period, I consider an award for lost wages equivalent to three months wages is appropriate.

#### *Unpaid public holiday pay*

[72] Mr Nunn also seeks payment for public holidays that he says were not paid in to him in full. He says the date range for payments not being correct is between April 2022 and February 2023 and the amount he is owed is the equivalent of 105 hours.

[73] PNF had external audits completed with regard to how it calculated annual and public holiday leave and entered into a remediation process to correct any incorrect payments. It was accepted that those leave types had been calculated incorrectly for

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<sup>2</sup> *GF v Comptroller of the New Zealand Customs Service* [2023] NZEmpC 101 at [162].

the period April 2022 to February 2023. The letter to Mr Nunn about this is dated 5 July 2023.

[74] However, despite this Mr Nunn says he is still owed arrears for the public holidays in that period because prior to April 2022 and after February 2023 his public holiday leave was calculated based on his workday being an 8 hour day.

[75] PNF explained that they considered him to be a part-time employee and as an organisation they took the approach that if Mr Nunn worked three out of the last four days then the public holiday would be considered to be an otherwise working day.

[76] PNF accepts it had alternated between paying Mr Nunn 8 hours public holiday leave to paying him a pro-rata amount and back to 8 hours and that this would have been confusing. However, PNF says they have paid all Mr Nunn's public holiday entitlements.

[77] Section 49 of the Holidays Act 2003 provides that if an employee does not work on a public holiday but the day would otherwise be a working day for the employee, the employer must pay the employee not less than the employee's relevant daily pay or average daily pay for that day. When work hours vary within the pay period the holiday or leave falls it is appropriate to use average daily pay to calculate the payment.

[78] PNF was not clear whether it used relevant daily pay or average daily pay to calculate Mr Nunn's public holiday entitlement. PNF was also not clear about why it returned to paying Mr Nunn for an 8 hour day on public holidays after February 2023.

[79] Given this was the approach taken prior to April 2022 and after February 2023, PNF must have considered Mr Nunn to be working full time hours. On that basis his claim for public holiday leave arrears, for the difference between the pro rata amount and 8 hours for the period April 2022 to February 2023 is successful.

#### *Notice period*

[80] Mr Nunn was summarily dismissed and his IEA provided a four weeks' notice period. It is appropriate given the findings above that Mr Nunn is paid for his notice period.

## **Contribution**

[81] Under s 124 of the Act, contribution to the situation that gave rise to the personal grievance must be considered. I have found above PNF was not in a position to reach the conclusions about Mr Nunn's conduct that it did and the process it followed was not one that a fair and reasonable employer in the circumstances could follow. In these circumstances, Mr Nunn cannot be said to have contributed to the personal grievance.

## **Summary of orders**

[82] Port Nicholson Fisheries Limited Partnership is to pay Stephen Nunn within 28 days of this determination:

- (a) Compensation under s 123(1)(c) of the Act in the amount of \$20,000.00;
- (b) An amount equivalent to Mr Nunn's four week notice period;
- (c) Lost wages in an amount equivalent to three months wages inclusive of holiday pay and Kiwisaver;
- (d) For public holidays between April 2022 and February 2023, the difference between what he was paid for a public holiday that was otherwise a work day and what he would have been paid if the amount was calculated based on an 8 hour day

## **Costs**

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

[84] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Steven Nunn may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of this determination. From the date of service of that memorandum Port Nicholson Fisheries Limited Partnership will 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.

[85] 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>3</sup>

Sarah Kennedy-Martin  
Member of the Employment

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<sup>3</sup> [www.era.govt.nz/determinations/awarding-costs-remedies](http://www.era.govt.nz/determinations/awarding-costs-remedies)