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Adams v Properly Plastered Ltd (Christchurch) [2016] NZERA 720 (25 February 2016)

Last Updated: 17 December 2021

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH		
		[2016] NZERA Christchurch 17
		5560279
	BETWEEN	CHAD ADAMS
		Applicant
		PROPERLY PLASTERED LIMITED
	AND	Respondent
Member of Authority:	Christine Hickey	
Representatives:	Michael McDonald, Advocate for the Applicant	
	John Shingleton, Counsel for the Respondent	
Date of investigation meeting:	25 November 2015	
Submissions received:	30 November 2015 from both parties	
Determination:	25 February 2016	
DETERMINATION OF THE AUTHORITY		

- A. Chad Adams was unjustifiably disadvantaged and unjustifiably dismissed by Properly Plastered Limited.
- B. Properly Plastered Limited must pay Chad Adams \$2,100.00 compensation for humiliation, loss of dignity and injury to his feelings.
- C. Costs are reserved.

Employment relationship problem

[1] Chad Adams was employed by Properly Plastered Limited (PPL) as a trowel hand/labourer from 20 January 2014 until May 2015. Mr Adams claims he was unjustifiably dismissed on 6 May 2015. He also claims he was unjustifiably disadvantaged by receiving warnings during March and April 2015.

[2] By way of remedy Mr Adams claims lost wages of \$4,646.39 and compensation for humiliation, loss of dignity and injury to feelings of \$12,000 and costs.

[3] Mr Adams also says that PPL did not supply his time and wages records when requested and claims that PPL should be subject to a penalty for that failure.

[4] PPL says the dismissal was substantively justified and that Mr Adams was not disadvantaged during his employment. If the dismissal is found to be unjustified PPL says that Mr Adams contributed 100% to the situation leading to his dismissal.

[5] PPL counter-claims that Mr Adams breached his individual employment agreement (IEA) in particular clauses 4.2(i), 4.2(iii) and 4.2(iv) by repeatedly either failing to turn up for work without reason or notice and leaving work without reason or notice. It says in so doing he did not comply with all reasonable and lawful instructions of his employer and did not deal with PPL in good faith. PPL seeks a penalty of \$3,000 to be imposed on Mr Adams to be paid to the Crown.

[6] I heard sworn or affirmed evidence from Mr Adams, Carolyn Spriggs, his mother, Aaron Gamble, a subsequent employer of Mr Adams who was summoned, and Glenn Munro, director of PPL, Ian McKay, Peter Stuart, Sven Wright and Tyler Rumler who are all employees of PPL.

Issues

[7] The issues the Authority needs to determine are:

(i) Were PPL's decisions to issue Mr Adams with warnings and how it reached those decisions what a fair and reasonable employer could have done in all the circumstances at the time?

(ii) Was PPL's decision to dismiss Mr Adams and how it reached that decision what a fair and reasonable employer could have done in all the circumstances at the time?

(iii) Did Mr Adams breach his employment agreement and if so, is a penalty warranted?

(iv) What remedies are due to Mr Adams, taking into account his contribution to the situation leading to his dismissal?

Background facts

[8] Mr Adams worked satisfactorily for PPL for about a year when a problem with his ex-partner resulted in him facing criminal charges¹. On 4 February 2015 Mr Munro wrote a character and work reference for Mr Adams to present to the court.

[9] From about February 2015 Mr Adams had a number of absences from work, some of which related to his legal problems. Mr Adams informed Mr Munro about some of those in advance. However, there were other times that he did not seek permission to have time off or did not inform Mr Munro before he was expected to begin work that he would not be at work that day, or would be late. Mr Munro dates all the problems he says he experienced with Mr Adams to after court issues arose.

[10] Mr Munro spoke to Mr Adams at least twice in March and probably once in April about the amount of what PPL calls *unentitled time* away from work and some other issues, including Mr Adams not following instructions and needing to have a more constructive attitude to working with more senior members of his crew. Mr Munro recorded that he gave Mr Adams verbal warnings for *no show* on 10 and 11 March 2015 and *last warning for attitude* on 11 March 2015.

[11] One of the matters that Mr Adams had been talked to about by Mr Munro was that he needed to listen to work instructions from Mr Wright, who although younger than Mr Adams was a fully qualified plasterer. Mr Munro says that his instruction to Mr Adams was to listen to and do what Mr Wright said in terms of trade matters. Mr Munro says that Mr Adams was aware that Mr Wright was not his supervisor and that Mr McKay was his supervisor. Mr Adams says he was told he had to do whatever Mr Wright said and Mr Munro did not limit that to trade matters.

¹ These charges were eventually resolved by being dropped and Mr Adams' ex-partner instead faced charges and received diversion.

[12] Mr Wright's evidence was the intervention by Mr Munro came about because of an aggressive confrontation

between him and Mr Adams at work initiated by Mr Adams who had challenged him to a fight. Mr Adams denies trying to instigate a fight with Mr Wright.

[13] On 10 April 2015 Mr Munro issued a final written warning to Mr Adams about the amount of time he had off work, among other things. He wrote:

I have made it very clear to you that if you have any more unentitled time off and or lack any communication/organization around having any time off then this will result in your employment being terminated.

[14] He also wrote:

Chad, I believe you are a capable worker and underneath recent issues a decent young man. As an employer I found (until recently) that your general character and sense of humour fitted in well within in our work environment. I take great pride in the work team that we have created and I am looking forward to you getting back up to a level where you fit right into that environment.

I look forward to us putting these issues behind us and to moving ahead on the path to success.

[15] On 5 May 2015 in the early afternoon Mr Adams was carrying one bucket of plaster instead of the usual two. He says that is because he had a sore back. He did not notify anyone at PPL about his sore back that day. Mr Wright told him he needed to be carrying two buckets. Mr Wright says that Mr Adams answered that he was having a cigarette, which was in his other hand. Mr Wright says he became fed up with Mr Adams' attitude and told him to *fuck off* and began carrying the buckets himself, which was not his job. He says when Mr Adams saw him carrying the buckets he told Mr Wright *fuck you* and told him he was a *faggot* and a *bitch*. Mr Wright says Mr Adams walked away, got on his bike and left the site. He did not come back that day.

[16] Mr Adams denies holding a cigarette in his hand while carrying one bucket with the other hand. He says that when Mr Wright saw him carrying only one bucket he started swearing at Mr Adams and calling him useless. Mr Adams says Mr McKay would have been able to hear this. He agrees Mr Wright told him to *fuck off*. Mr Adams says that because he had been told to listen to Mr Wright's instructions he left to go home because he believed Mr Wright had told him to leave work.

[17] Mr McKay denies hearing what Mr Wright said to Mr Adams and says he did not know Mr Adams had left the site until Mr Rumler told him. Later that day

Mr McKay tried to call Mr Adams but got no reply and did not leave a voice message. I am satisfied that he also sent a text to Mr Adams at 2.42 pm saying *Where the hell have you gone??* Mr Adams did not call or text Mr McKay back.

[18] The following day Mr Adams went to work at about 7.10 am. His expected start time was 7 am. His evidence and that of Mr McKay differ.

[19] Mr Adams says that Mr McKay said *what the hell are you doing here? You left early yesterday*. Mr Adams says Mr McKay told him he was sick of him and to *fuck off*. He says he was yelled at and humiliated in front of his co-workers. Mr Adams then said *your life would be better off if I wasn't here* to which Mr McKay answered *yes, it would be*. Mr Adams says he was devastated and understood Mr McKay to be saying he didn't want him to work at PPL anymore. He turned and walked out to the road to catch the bus home. He thought he had probably been dismissed. He says that Mr McKay did not call out to him to come back or text or telephone him.

[20] Mr McKay says that he first asked Mr Adams what time he would go home today. He said that Mr Adams answered quite aggressively that Mr Wright had told him to *fuck off*. Mr McKay answered that Mr Wright was not his boss and so he had no reason to leave the work site. Mr Adams then said *it sounds like you don't want me here either* to which Mr McKay replied *yeah, I suppose it might make life easier but we just need to get on with it*. He denies telling Mr Adams to *fuck off* and instead says Mr Adams turned away and said *right I'll fuck off then*. Mr McKay denies yelling at Mr Adams in front of his co-workers.

[21] Later that day Mr Munro called Mr Adams who says he missed the call. Mr Munro did not leave a message and Mr Adams did not call him back.

[22] On Thursday, 7 May Mr Adams got up to go to work although he says he was worried he had been dismissed. However, once he was dropped at work by his mother he says he was too anxious to go in as he feared he would be yelled at and told to leave in front of his workmates. So he went back home where he says he waited for someone to

call him and tell him where he should be for work which he thought they would if he had not been dismissed already.

[23] At about 8.45 am Mr Adams received the following text from Mr Munro:

Where are you? I have had no notification from you that you would be away from work Tuesday pm, all Wednesday and now today? Please accept this as your employment termination notice as per your last written and final warning dated 10/4/15, about time away from work. One will be sent to you via email if I don't hear from or see you again? As you have left without giving me the required notice as per our contract, I will be taking that out if (sic) any money's owing to you. For clarification around this contact me directly. Glenn

[24] On Saturday, 9 May Mr Adams sent Mr Munro an email explaining that on both Tuesday and Wednesday he believed he had been told to leave the work site and so did so. He said he did not go to work on Thursday because of what had happened the previous two days and because he had not yet spoken to Mr Munro. He told Mr Munro that he did not want to leave work on either the Tuesday or Wednesday and did not do so of his own choice. He asked that his employment not come to an end, although he felt it was clear that Mr Wright and Mr McKay did not want him there anymore.

[25] Mr Munro responded:

For someone so keen to fight for their job why did I not see or hear from you for four days while you were supposed to be at work?

If you read the letter I sent you properly, your employment has been terminated because you left work without the proper authority, with absolutely no contact to me and avoided my contact for days all while being on a final written warning that any more activity like that would result in your termination.

Chad my tolerance for you not being here had already run out, hence the final written warning and now hence the termination.

[26] Mr Adams replied that he thought clause 13.4 of his IEA, *Abandonment of employment* applied, and:

... I did not leave work without proper authority, as I followed your previous instructions that Sven and Ian are my superiors and that I need to listen to them. Once again, I will state that Ian heard and was there on the Tuesday afternoon when I was told to leave by Sven so I did unhappily. On Wednesday, it was Ian that told me to leave (f off) and I wasn't going to work at all when I first arrived at work just after 7.00am so once again I did confused and unhappily once again. I DID NOT LEAVE WILLINGLY OF MY OWN ACCORD I WAS ORDERED

OFF SITE both times.

Glen I did not avoid contact with you but thought that I had to wait for you to contact me by phone to ask me about what happened. When I didn't hear from you I send you that email about the events. ... I

thought Ian and Sven would have told you that they made me leave work and it was² by my own choice.

[27] In a letter written on 11 May 2015 Mr Munro responded:

... I believe that this is just another example of you choosing to be away from work again and trying to make convenient excuses as to why you're absent, instead of dealing with the issues in the correct manner. At the very least I would expect some communication from you at the first instance of any perceived trouble you may have had onsite before you made the decision to leave.

No one onsite other than me has the authority to tell you to leave for anything outside of H&S matters Chad. The decision to leave was entirely your own. Not only did you leave but you also failed to inform your site foreman that you were going, neglecting to given him or myself a chance to sort any "conflict" that may have arisen between you and your co-worker.

As for Wednesday morning you were not instructed to leave the work place you left again at your choice, at no time did your foreman instruct you to leave.

As it is you have taken over 4 days to make any contact and or reply to my call/texts Chad. It would have been best to speak to me on the Tuesday afternoon before you left in the first place, not days later via email, not to avoid work and my contact in between that time frame, especially when it was clear to you that any further absentee behavior would result in your employment being

terminated.

While regrettable Chad this sort of behavior from you only backs up my decision to terminate your employment.

[28] Mr Munro made one last response which explained again that he had terminated Mr Adams' employment because he took time off work without any notification to Mr Munro. He said that he had discussed the events of Tuesday with the other crew members who do not *verify your story*. He again reiterated that Mr Adams should have been in contact with him before he left the site and *not days later avoiding my contact in between times*.

Was Mr Adams unjustifiably disadvantaged by the warnings?

[29] [Section 103A](#) of the [Employment Relations Act 2000](#) (the Act) sets out the test for whether an employer's actions are justified as:

(1) For the purposes of [section 103\(1\)](#) (a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by applying the test in subsection (2).

2 I consider Mr Adams probably meant to write "was not".

(2) The test 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.

[30] The test of justification requires that the employer acted in a manner that was both substantively justified and procedurally fair. [Section 103A\(3\)](#) sets out four aspects of procedure the authority must consider in assessing justification. A fair and reasonable employer is expected to:

- (i) Sufficiently investigate the allegations, having regard to its available resources;
- (ii) Raise its concerns with the employee before taking any action or deciding to dismiss;
- (iii) Give the employee a reasonable opportunity to respond to the employer's concerns before taking action or dismissing; and
- (iv) Genuinely consider the employee's explanation before taking action or dismissing.

[31] The Authority must not find an employer's action or a dismissal to be unjustifiable solely on the basis of procedural defects if the defects were minor and did not result in the employee being treated unfairly.

[32] The Employment Court has made it clear that if all four procedural factors are absent leading up to an employer's decision to an employee's detriment the decision is highly unlikely to be one that a fair and reasonable employer could make.

[33] All the warnings were issued after Mr Munro had a discussion with Mr Adams in Mr Munro's office. However, despite the warnings being recorded as disciplinary matters Mr Munro did not have any prior warning of what the discussions were to be about before he was called into Mr Munro's office. Mr Munro did not tell Mr Adams he had the right to bring a support person or representative with him. It is not clear that Mr Adams was aware that Mr Munro kept a written record of the three oral warnings.

[34] In this case PPL did not carry out a fair process in issuing Mr Adams with any of his warnings. In particular, it seems clear that Mr Munro did not raise his concerns with Mr Adams and give him a reasonable opportunity to respond to PPL's concerns before taking the action of issuing the final, written warning on 10 April 2015. I consider the defects in the process were not minor and did result in Mr Adams being treated unfairly.

[35] I consider the warnings and particularly the last, written warning to have been of disadvantage to Mr Adams in that they made his employment less secure. There was insufficient evidence for me to conclude the disadvantage was substantively justified, although it may have been. However, a fair and reasonable employer would have given Mr Adams advance warning that it alleged he had been absent without justification too often and that a disciplinary action might follow. A fair and reasonable employer would also have given him an opportunity to respond to the allegation before deciding to issue a final, written warning. That did not happen and the warning was unjustified in all the circumstances at the time.

Was Mr Adams unjustifiably dismissed?

[36] In addition, Mr Munro did not follow the procedural steps set out in [s 103A\(3\)](#) of the Act before he dismissed Mr Adams by text message on 7 May 2015. He based his decision on the warning which was itself an unjustified action.

[37] It appears that Mr Munro's decision to dismiss Mr Adams was predetermined. The warning letter stated that if Mr Adams was absent without justification again that *will result in [his] employment being terminated*. Mr Munro also wrote *my tolerance for you not being here had already run out, hence the final written warning and hence the termination*.

[38] It is clear that at some point Mr Munro spoke to the members of Mr Adams' crew about the events of 5 May and to Mr McKay about the morning of 6 May. However, it is not clear that all of this investigation happened before Mr Munro dismissed Mr Adams. There is no evidence a sufficient investigation was undertaken before a decision to dismiss was made. In addition, Mr Munro did not tell Mr Adams what the crew members and Mr McKay said and ask for his comment on that.

[39] PPL did not put its allegations to Mr Adams that he had been unjustifiably absent on Tuesday afternoon, Wednesday and at least late to work on Thursday and ask him for his explanation, giving him a reasonable opportunity to respond and taking that into account before making its decision to dismiss. I do not consider the defects to have been minor. In particular I consider the lack of opportunity to give his explanation and have it considered before a decision was made resulted in Mr Adams being treated unfairly.

[40] After the dismissal, Mr Munro considered whether PPL could take Mr Adams back on by asking another foreman, Nathan, if he would be willing to take Mr Adams on in his team. He did so because he considered the situation in Mr McKay's crew with Mr Adams was irreparable but wondered if he could deploy Mr Adams elsewhere. However, Nathan refused to take Mr Adams on.

[41] I also need to consider whether given the evidence that PPL had, despite its lack of investigation and further fair process steps, the dismissal was substantively justified.

[42] I leave aside evidence raised by witnesses about Mr Adams' work behaviour other than that about unjustified absences. A certain amount of evidence was given by Mr Munro and PPL employees about matters that were intended to show Mr Adams in a bad light. However, according to Mr Munro at the time of dismissal the only reasons that Mr Adams was dismissed were his absences on the Tuesday afternoon, the whole of Wednesday and the morning of Thursday and his failure to communicate in a timely way with Mr Munro about them.

[43] Mr Singleton later submitted that the absences and the lack of communication were the last straw for PPL and finally eroded the trust and confidence it needed to have in Mr Adams.

[44] Mr McDonald submits that Mr Adams genuinely believed he had been told to leave work on the two consecutive days. He also submits that it was reasonable of his client not to contact Glenn Munro directly based on his experience of the warnings he had previously received which meant he was unlikely to have received *a welcoming reception*.

[45] There is no requirement that an employer conduct a forensic investigation about what happened. The level of proof that an employer is held to is that of the balance of probabilities. That means that before making its decision to dismiss Mr Adams PPL had to be satisfied that the information it had made it more likely than not that Mr Adams was not justified in leaving work on Tuesday and Wednesday and staying away on Thursday, without contacting Mr Munro.

[46] Having heard from Mr Adams and the other witnesses I find it unlikely that Mr Adams would have taken Mr Wright's telling him to fuck off to be a genuine instruction to leave work and go home. Even if he did he has no explanation for why he did not contact Mr McKay that day to complain about Mr Wright's words to him or at least to discuss what he was expected to do the following day considering that records show Mr McKay had both telephoned and texted him on Tuesday afternoon.

[47] In addition, although Mr McKay's greeting and answer to Mr Adams on the Wednesday were somewhat provocative they were not a direction to leave work. In addition, Mr Adams' did not return Mr Munro's call although he was aware that he had missed a call from him.

[48] Mr Adams' case is distinguishable from *Lim v Meadow Mushrooms Limited*³ because in that case the allegation was one of criminal conduct and because of an inadequate investigation there was very little evidence that Mr Lim was involved and he denied any involvement. In this case it was clear that Mr Adams was absent from work on Tuesday afternoon, all day Wednesday and on Thursday morning. The question was simply whether he had an adequate reason for being absent without contacting Mr Munro.

[49] Even if Mr Munro had interviewed Mr McKay and the crew and put their versions of what happened to Mr Adams and heard his explanation a fair and reasonable employer could have decided to prefer one or more employee's version over that of Mr Adams. Despite PPL's lack of a fair process I consider that it is more likely than not that if it had carried out a fair process Mr Adams would have been dismissed in any event, although it may have been some days later.

3 [\[2015\] NZ EmpC 192](#)

[50] Although PPL was not justified in dismissing Mr Adams on the basis that he had abandoned his work if he had continued to fail to communicate by responding to PPL's attempts to contract him PPL may have been justified both substantively and procedurally in dismissing him on or after Monday, 11 May 2015.

[51] The dismissal was substantively justified. However, it was an unjustified dismissal because a fair and reasonable employer could not have made a decision to dismiss Mr Adams using the process that PPL used.

PPL's failure to provide wage and time records

[52] Mr Shingleton's submissions say that PPL has provided all necessary time and leave records and that the applicant did not produce any evidence in relation to its claim for a penalty.

[53] Mr McDonald's submissions do not cover this point. In all the circumstances I do not have enough evidence to consider this claim and it is dismissed.

Breach of contract?

[54] Although it is clearly arguable that Mr Adams breached at least clause 4.2(iv) of his IEA in that his lack of communication with Mr Munro after the Tuesday and Wednesday incidents meant he did not deal with his employer in good faith, the fact that he has been dismissed is the outcome of that and it is not appropriate to also impose a penalty on him.

Remedies

[55] Mr Adams claims lost wages of \$663.77 per week for 7 weeks being a total of \$4,646.39 and \$12,000 compensation for humiliation, loss of dignity and injury to his feelings.

[56] The Employment Court case of *Waterford Holdings v Nathan Morunga*⁴ was a case in which there was procedural unfairness but there had been no challenge to the Authority's decision that the dismissal was substantively justified. Judge Corkill decided that although there were procedural errors they had not caused any loss of

4 [\[2015\] NZEmpC 132](#)

wages. The Authority found that the cause of the dismissal was Mr Morunga's cruel treatment of the cows under his care and the employer had been substantively justified in dismissing him. Judge Corkill decided that although the dismissal led to a loss of wages that was not the cause of the loss of wages, but that Mr Morunga's actions caused his loss of wages. Judge Corkill decided Mr Morunga was not entitled to an award of any lost wages.

[57] Mr Shingleton submits that this case is similar to *Morunga*⁵ in that PPL was substantively justified in dismissing Mr Adams and therefore he is not entitled to any lost wages.

[58] I agree that the substantive reason for Mr Adams' dismissal was made out and the real reason for Mr Adams' loss of wages was his own actions. I do not award any lost wages.

Compensation

[59] Mr McDonald submits that Mr Adams was badly affected by the warnings and his dismissal.

[60] Mr Shingleton submits that Mr Adams' behaviour was so egregious that no award of compensation should be made.

[61] Mr Adams gave no evidence about how the warnings other than the final written warning caused him to feel other than *a bit confused*. However, his evidence of getting the oral warning for not following Mr Wright's instructions was that he was annoyed and felt it was not fair.

[62] I propose to consider compensation for the disadvantage grievances arising from the warnings as a global sum along with compensation for the unjustified dismissal.

[63] Mr Adams' evidence was that after the events of Tuesday he was nervous about going back to work on Wednesday and felt humiliated by how Mr Wright had

5 And *McKenzie v Dawsons Catering Limited* [2012] NZERA Auckland 183, *Wiremu v Levin Bobcats Limited* [2015] NZERA Christchurch 172 and *Naidu v Radius Residential Care Limited* [2012] NZERA Wellington 37

spoken to him. He says he was devastated and upset by how Mr McKay spoke to him in front of his co-workers on Wednesday. However, I do not consider these two events were unjustified actions by PPL for which Mr Adams should be compensated.

[64] I need to focus on Mr Adams' evidence of how he felt after he received Mr Munro's text. Mr Adams says he was very upset and confused. Later, after his response to Mr Munro had been rejected by Mr Munro he felt *pretty gutted* because he had his hopes up of getting his job back. He went on to feel more upset and quite depressed. Mr Adams gave evidence of going to see his doctor who wanted to prescribe medication for his depression.

[65] Mr Adams also gave evidence of his financial difficulties after the loss of his income which caused his worry, although he was fortunate to have had the financial support of his mother.

[66] For PPL there are submissions to the effect that part of Mr Adams' emotional challenges arose because of the legal situation with his ex-girlfriend and the fact that his mother had been ill. Mr Adams' mother gave evidence in support of that view. I accept that is likely and have taken that into account.

[67] I accept that any dismissal, particularly a summary dismissal, will cause some humiliation and damage to any employee's feelings of self-worth. That is particularly so when that employee considers he has not had a fair opportunity to be heard about the events. I consider summary dismissal by text message to be particularly hurtful.

[68] In all the circumstances and taking into account the evidence given by Mr Adams I consider that, contribution aside, a reasonable amount of compensation is

\$7,000.

Contribution

[69] I have already found that Mr Adams' dismissal was substantively justified. [Section 124](#) of the Act requires me in deciding the nature and extent of remedies to consider the extent to which Mr Adams' actions contributed towards the situation leading to the warnings and dismissal and to reduce the remedies accordingly if his actions require that.

[70] In the *Morunga* case after taking into account Mr Morunga's contribution the Authority had awarded Mr Morunga 50% of \$5,000 compensation for humiliation, loss of dignity and injury to his feelings. In the Court Judge Corkill decided Mr Morunga's conduct was so egregious that it was one of the rare occasions where his contribution was 100% and no award or compensation should be made.

[71] Mr Shingleton also relied on some Authority cases in which contribution had reduced remedies ranging from 100% to 75%. He submitted that Mr Adams' behaviour was so egregious as to disentitle him to any remedies.

[72] Mr McDonald submitted that Mr Adams did not contribute to his dismissal at all because he genuinely believed on both days he had been sent away by people who had authority over him. He acknowledges that the other action by Mr Adams which needs to be considered is his failure to contact PPL.

[73] Mr McDonald relies on the cases of *Britton v Mulching, Crushing and Screening Limited*⁶ and *New Zealand Cards*

*Limited v Ramsay*⁷ to submit that the greater responsibility for letting Mr Adams know he was expected at work was that of PPL. However, those cases are not at all factually analogous. In those cases the employer knew that the employee considered they had been dismissed and made no effort to correct that misapprehension. In this case the employer did not know that Mr Adams believed he had been sent away from the work site two days in a row by more senior staff. Mr McKay and Mr Munro on behalf of PPL both made what I consider reasonable efforts to contact Mr Adams to find out what was going on. I consider the greater responsibility was on Mr Adams in this case to respond to contact from PPL to clarify the situation.

[74] I consider that Mr Adams' actions, most importantly his failure to make contact with PPL after the events on 5 and 6 May and early on 7 May, were behaviour which contributed to his dismissal and I consider it blameworthy in all the circumstances. His actions are not comparable to the egregious actions in *Naidu* or *Morunga*. I assess Mr Adams' degree of contribution as 70% and I reduce the amount of compensation accordingly to \$2,100.

6 [2015] NZERA Wellington 92

7 [2012] 1NZEmpC 51

Costs

[75] Costs are reserved. The unsuccessful party can usually expect to pay a reasonable contribution towards the successful party's costs plus the filing fee of

\$71.56.

[76] The parties are invited to agree on the matter. In order to assist the parties I can indicate that the Authority is likely to adopt its notional daily tariff based approach to costs. The daily tariff is \$3,500.

[77] If no agreement is reached any party seeking costs shall have 28 days from the date of this determination in which to file and serve a memorandum on the matter. The other party shall have 14 days from the date of receipt of the memorandum in which to file and serve a memorandum in reply. The parties should identify any factors which they say should result in an adjustment to the notional daily tariff.

Christine Hickey

Member of the Employment Relations Authority