

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 561
3298879 and 3348263

BETWEEN	JUDITH BELL Applicant
AND	HUBERGROUP NEW ZEALAND LIMITED Respondent

Member of Authority:	Davinnia Tan
Representatives:	Barbara Buckett and Lucy Fisher, counsel for the Applicant Hanna Tevita and Nikita Raman, counsel for the Respondent
Investigation Meeting:	25-26 June 2025 in Wellington
Submissions received:	At the investigation meeting and 30 June 2025 from the Applicant At the investigation meeting and 26 June 2025 from the Respondent
Determination:	11 September 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Judith Bell claims that she was unjustifiably dismissed and unjustifiably disadvantaged in her employment by Hubergroup New Zealand Limited (Hubergroup). The claims arise out of a redundancy process undertaken by Hubergroup in November 2023.

[2] Ms Bell alleges that the redundancy was not genuine, and that the process followed was procedurally and substantively flawed, resulting in both unjustified

dismissal and disadvantage, and a breach of good faith, under the Employment Relations Act 2000. Ms Bell seeks compensation, loss of remuneration, and penalties.¹

[3] Hubergroup denies the allegations and asserts that the dismissal was the result of a genuine redundancy, following a fair and reasonable process. Hubergroup has counterclaimed that Ms Bell breached the confidentiality clause in her individual employment agreement (IEA) by sending work emails to her personal email account and purging her work emails. Ms Bell claims there is no breach of her IEA and that the sending of emails was necessary as part of preparing her feedback to Hubergroup's proposal.

Background

[4] Ms Judith Bell began work for Nova Inks and Chemicals Limited (Nova Inks) in or around 1994 in a predominantly sales role and had the title of Wellington Sales Manager. Nova Inks was a supplier of printing ink and raw material products for the printing industry. In 2008, Nova Inks was sold to Hostmann-Steinberg New Zealand Limited now known as Hubergroup. Ms Bell retained her position as Wellington Sales Manager.

[5] Hubergroup is an international company, with approximately 3,500 employees across thirty countries. In New Zealand, Hubergroup has branches in Auckland, Wellington, and Christchurch, with approximately 15 staff in Wellington.

[6] Ms Bell's role and responsibilities evolved over the years and in 2015, she was given a new role title of 'Wellington Branch Manager' to reflect the expansion of her role. Her job description listed her key accountabilities as:

- Consolidating existing business and generating new business from customers
- Providing strong customer relationships
- Analysing competitor activity
- Develop sales objectives
- Resolving any disputes that may arise internally or externally during the course of business in a timely manner...
- ..providing coaching, development and motivation (to branch personnel)
- Compliance with Health and Safety legislation and regulations

¹ Ms Bell had, at the start of proceedings with the Authority, claimed reinstatement but withdrew this at the investigation meeting.

- Supervising the administration of the branch... so that...branch expenditure is kept to a prudent level and within budgeted limits
- Identify and reconcile any inventory discrepancies
- Locate areas of improvement and propose corrective actions that meet challenges and introduce growth opportunities
- Act positively at all times in the best interests of the company and actively promote the profitability and good reputation of the company

[7] Ms Bell says her role was “very organic” and there was not much oversight by management (based in Auckland), and she “essentially worked autonomously”.

[8] One of Ms Bell’s performance indicators was to ensure the Wellington branch did not exceed any budget that she was “currently privy to” and that “stock levels are accurate to SAP and are monitored weekly” and that she was “responsible for all pricing on a day to day basis and maintain a good margin for the company where I am able to set the pricing.”

[9] Until about 2020, Ms Bell reported to her manager Peter Achilles. From 2020, her new manager was General Manager, Arthur Lenssen (based in Auckland). Mr Lenssen reported to the Managing Director for Hubergroup Australia & Hubergroup New Zealand, who is Ray Toal (based in Australia).

[10] In mid 2022, Ms Bell requested a pay increase which was declined by Mr Lenssen. Ms Bell believes that her relationship with Mr Lenssen deteriorated following this declined request.

Ms Bell receives pay rise in April 2023

[11] In or around 18 April 2023, Ms Bell decided to resign from Hubergroup after an incident in which she claims she was verbally abused by Mr Achilles. This occurred around the same time Ms Bell was shoulder tapped for a role by one of Hubergroup’s customers. Ms Bell says she decided to consider accepting the offer of new employment as a result of this incident.

[12] Upon receipt of Ms Bell’s resignation, Mr Toal met with Ms Bell and persuaded her to withdraw her resignation. In doing so, Mr Toal indicated to Ms Bell that she was valuable to the business and offered her a pay increase from \$96,000.00 to \$110,000.00 as an incentive to stay, which she did. As such, she did not accept the offer of

employment from Hubergroup's customer and withdrew her resignation from Hubergroup.

[13] Mr Toal stated that it was Mr Lenssen who instigated the pay increase and had recommended to Mr Toal the retention of Ms Bell.

September 2023 meeting with Mr Toal – administrative functions

[14] In September 2023, Ms Bell met with Mr Toal at his request to discuss potential changes to the administration functions of the Wellington Branch. The purpose of the meeting, as Ms Bell understood, was for her to provide suggestions about these potential changes. During this meeting, Ms Bell says she was reassured that she would "still have a role". As a follow-up to their meeting, Ms Bell set out a lengthy email dated 5 October 2023 which included an explanation on how the Wellington branch operated and her concerns of delays for customers "should orders be centralised". Ms Bell also stated that "in regards invoicing, I am more than happy to turn what little I currently do over to [her colleague in another centre]."

October/November 2023 - Loss of major contract

[15] In October/November 2023, Hubergroup lost a major contract with an international customer ("the major contract"), resulting in \$680,000 of lost revenue. Hubergroup says it was at this point that the proposal to disestablish Ms Bell's role was discussed. Mr Toal, Mr Lenssen and Hubergroup's other director based in India, had these discussions virtually. Hubergroup says there were no notes of these discussions because it was moving at pace following the loss of the contract.

Proposal to disestablish Ms Bell's role – 28 November 2023

[16] On 28 November 2023, Mr Lenssen flew to Wellington for what was advised as a "general catchup" with staff. Upon arrival in the Wellington office, Mr Lenssen went into Ms Bell's office, closed the door and read verbatim from a written document which proposed to disestablish Ms Bell's role with her last day being 7 December 2023 ("the proposal"). Ms Bell was advised she had until 1 December 2023 to provide feedback. Ms Bell stated that Ms Lenssen then verbally asked her to use the time to prepare an "information-dense report" of what she did at Hubergroup as part of her feedback to the proposal. It was concerning to Ms Bell that Mr Lenssen did not make eye contact with her during this meeting in her office. Ms Bell says that she was in a state of shock during this meeting when the proposal was read out to her.

[17] The proposal stated:

Rationale for change

The company is conducting a review of its business operations in New Zealand resulting from the continue decline in our revenue and margins over the past 18 months.

We would first like to reiterate the following

1. The company has not made and [sic] decisions on what changes to the organisational structure will be required and at this stage we are simply in the review stage.
2. This proposal together with any subsequent written or verbal communication on the subject matter contained in this document are conducted on a “without prejudice basis”

It is clear however that based on the financial performance of the business over the past 18 months, changes will be necessary to bring the costs of the business back into line with revenue and margin to reflect our position within the New Zealand market.

Despite our collective best efforts, the losses due to market shrinkage (post Covid), loss of other revenue streams have outstripped any gains we have achieved. The outlook for the printing market, particularly commercial printing is for continued decline, and we must also adjust accordingly.

Currently the company is reviewing the position of the Wellington Branch Manager (your current position) with a view to disestablishing the position of Wellington Branch Manager, although as mentioned above, no final decision has been taken yet and we will seek your input before making a decision.

Proposed changes

As our Wellington regional market continues to decrease, most recently with the closure of Webstar Masterton management and administrative functions will be streamlined and centralised across the New Zealand business.

The proposal outlines the following changes:

- Disestablish the specific role of Wellington Branch Manager

[18] The following proposed timeline noted that the dates were indicative only and may be subject to change depending on the feedback provided.

28 November 2023	Consultation begins with proposal meeting...feedback due by 5pm Friday 1 December
1-7 December 2023	consideration of feedback

7 December 2023, 12 noon	we meet to confirm the outcome, and discuss preferences and options
7 December 2023	if proposal goes ahead changes become effective
7 December 2023	communication. If proposal goes ahead changes will be shared with local teams and the wider business
Date tbc	if proposal goes ahead last day of work

[19] The letter included advice to obtain legal advice, and to bring a support person to any future meetings unless they were an employee, client or competitor.

Process and parties' discussions

[20] Later that day, Ms Bell contacted Mr Toal seeking a meeting about the proposal. Mr Toal advised he was not available that day but was available the following day at 1pm New Zealand time. The following day however Mr Toal did not contact Ms Bell. She states she then sent him a text message at 1.10pm asking if they were meeting. When she did not hear back, Ms Bell reached out to Buckett Law for legal representation. Later that afternoon Mr Toal sent a text message to Ms Bell to advise he was now available, but Ms Bell did not respond. At the investigation meeting, Ms Bell stated she did not respond because by the time Mr Toal finally responded to her (despite having scheduled a 1pm phone call about the proposal) it was later in the day and by then, she was legally represented and felt it was best to engage through her lawyers from there on.

[21] On 4 December 2023, Buckett Law requested the following information about the proposal from Hubergroup and requested an extension of time to provide feedback which was agreed to by Hubergroup:

- a. Ms Bell's personal file
- b. Financial reports for the period 2018-2023
- c. All communications between Mr Lenssen and any other third person in relation to Ms Bell and the matter
- d. All communications between Mr Toal and any other third person in relation to Ms Bell and the matter

- e. All communications between Mr Achilles and any other third person in relation to Ms Bell and the matter
- f. All information relied upon for the restructure proposal
- g. All information and communications in relation to negotiation of Ms Bell's employment terms and conditions
- h. All information and communications in relation to Ms Bell and the car allowance

[22] On 8 December 2023, Mr Lenssen provided Ms Bell's personal file, and financial reports for the years 2021-2022. Mr Lenssen stated that "the financial result for the year to date 2023 is a profit before tax (loss) of \$406,889 and an estimated year end result of >\$500,000 (loss). He also noted that financial information for years before 2021 was available on the NZ companies register. He stated that there were no recorded communications that could be provided (in relation to paragraphs c-f and h above). All communications were conducted within "management team (including other board members)...held via Teams calls...and as such are not recorded."

[23] On 12 December 2023, Ms Bell's lawyers sought an extension to provide feedback on the basis that Mr Lenssen had provided the information "late Friday afternoon" and noted they were unable to attend the meeting on 15 December 2023.

[24] On 13 December 2023, Mr Lenssen provided further information to Ms Bell's lawyers to support Hubergroup's reasons for disestablishing the Wellington Branch Manager role. This information included the following:

- Hubergroup "have been considering a number of changes to how we conduct our business, with a view to improving our financial performance, while at the same time minimising the impact to our employees. One step we are taking to save costs is to relocate our Auckland facility to a much smaller footprint and we are in the final stages of formalising this. The move is planned for April 2024...."
- That Hubergroup had now "reached a stage where we need to consider reducing our payroll expenditure. With this in mind, we have reviewed all the roles in the business to see where we may be able to make financial savings, while ensuring that the business can continue to operate effectively and generate revenue."

- That the role of Wellington Branch Manager “could be disestablished, making a cost savings of \$140,000.00 (salary, statutory and vehicle costs), without significant impact to the business’ operations”; and that “the duties and responsibilities of the Wellington Branch Manager could be assumed by other roles.”
- That the “workload of the Wellington Branch Manager continues to be impacted by the loss of significant clients” (including the loss of Hubergroup’s ‘largest customer’ which meant that support was “no longer required” for this client);
- “the stock management, customer and technical support has transferred to Auckland.”
- “30% of sales revenue that channels through the Wellington branch is derived from customers who are not based in the Wellington area. We therefore propose to handle this from a central basis (primarily from our Head Office in Auckland), with support from remaining staff in Wellington.”
- “25% of sales revenue in the Wellington branch” was from “a nationally contracted account... We propose to take a Key Account Management approach to this business, with activities coordinated out of our Head Office in Auckland, supplemented by local support from the technical team in Wellington, as required.”
- That “duties carried out by the Wellington branch manager role could be absorbed by other existing roles. In particular:
 - It is proposed that inventory management currently handled... by [Ms Bell] will transfer to the National Logistics Manager;
 - It is also proposed that the customer ordering and invoicing in Wellington will be handled out of our Auckland office by the Financial and Administrative assistant;
 - It is further proposed that general customer and sales support would be handled via a combination of our national and remaining local support structures.

[25] Hubergroup says that it proposed to disestablish Ms Bell's role because it considered her role had the least impact on the business.

[26] Mr Lenssen advised that the deadline for feedback had now moved to 15 December 2023 which would then be considered on 18 December 2023, with a final meeting scheduled for either 19 December 2023 or 20 December 2023.

[27] On 15 December 2023, Buckett Law sought an extension stating "the deadline imposed to provide feedback is not fair or reasonable. We wrote to you [on 12 December 2023] to request an extension given that we had received a tranche of information, and it was not a reasonable timeframe for our client to be able to provide feedback...".

[28] On 21 December 2023, Hubergroup advised Ms Bell of a revised timetable for feedback, final meeting and schedule as follows:

Feedback due	11 January 2024
Consideration of feedback	12-15 January 2024
Final meeting	10am, 2pm or 4pm 16 January 2024

[29] As a result of upcoming holidays over Christmas, a further extension was provided and the final meeting was postponed until 1 February 2024.

[30] On Christmas day, Ms Bell received an email notification that Mr Lenssen had cancelled all future recurring sales meetings. This email included other recipients of the sales team. Ms Bell believed this had showed Hubergroup had made its mind up about her position.

Feedback and unjustified disadvantage personal grievance raised

[31] On 15 January 2024, Buckett Law wrote to Hubergroup responding to the information provided to Ms Bell on 8 and 13 December 2023, and raised a personal grievance for an unjustified disadvantage.

[32] The 15 January 2024 letter included the following feedback and emphasised that the feedback was "initial feedback":

- a. It disagreed with the view that Ms Bell's role would not have a significant impact on the business operations and listed some of Ms Bell's other main duties such as sales, account management, management of two direct reports, and assisting in operational functions;
- b. It noted that the workload of the Wellington branch had not diminished due to loss of clients,
- c. It noted that Hubergroup did not provide information as to where all of Ms Bell's duties and responsibilities would be going to, including who would manage the employees in the Wellington branch, and that it did not provide sufficient information as to the changes Hubergroup stated it intended to make, and how that would affect Hubergroup;
- d. That the loss of one of its clients occurred in 2021 and 2022, and it was not appropriate for Hubergroup to only now "rely on the impact at the end of 2023" and as such, disagreed that this had an impact on the proposal to disestablish Ms Bell's role;
- e. That the closure of Webstar Masterton (relied on in the proposal) "would not have a significant impact" on Ms Bell's workload as Webstar Masterton was a "contracted client with the management and admin functions being generally overseen by the head office and the Australian team. The budget for 2024 would also not be impacted as the employer was aware of the closure when the budget was set";
- f. Hubergroup did not provide reasons as to why the entire Wellington branch was not being restructured despite relying on information that "would not be limited to her role";
- g. That Ms Bell was assured her role was secure during discussions with Mr Toal in September, but "a fair and reasonable employer could have made Ms Bell aware that her role would be disestablished."
- h. That Hubergroup stated that the purpose of the meeting originally scheduled for 7 December 2023 was to "disestablish the role and give Ms Bell her entitlements". This showed that the meeting was not

intended to be a genuine opportunity to consult with Ms Bell and consider her feedback with an open mind prior to determining that the role would be disestablished;

- i. That the cancellation of recurring sales meetings by Mr Lenssen on Christmas day “demonstrates that the employer has predetermined the disestablishment of our client’s role” and that Ms Bell receiving notification of the meeting cancellation on Christmas day was “extremely distressing...ruined her Christmas...was callous.”

[33] The letter also noted the absence of any written communications about the proposal and stated:

Even if there were no notes taken of these discussions, the information request ...can extend to information held only in the mind. The discussions between management in relation to the restructure would be readily retrievable and our client is entitled to those discussions.

Mr Lenssen informed Wellington staff of loss of the major contract

[34] On 18 January 2024 Mr Lenssen visited the Wellington office following the loss of the major contract in October/November 2023 and had a Wellington branch-wide meeting to advise of changes to the Auckland branch. Ms Bell stated that during this meeting Mr Lenssen expressly stated that the Wellington branch would not be affected at all.

Hubergroup’s instruction to Ms Bell – work emails forwarded to personal email

[35] On 18 January 2024 Ms Bell received an email from Mr Toal advising her she was to immediately cease and desist sending emails to herself as Hubergroup considered it serious misconduct.

[36] Ms Bell responded to Mr Toal that she required the information in order to complete feedback requested by Hubergroup and that she had deleted those emails. Hubergroup contacted Ms Bell’s lawyers on 25 January 2024 asking for further confirmation that those emails had been deleted. Ms Bell says that she had forwarded the emails to herself as she did not want to compile her response from her work computer for privacy reasons and had ensured she deleted emails she forwarded to

herself once she had written her response to Hubergroup in relation to the proposed redundancy.

Feedback meeting 1 February 2024

[37] On 1 February 2024, Ms Bell and her lawyer met with Hubergroup's Managing Director Mr Toal, Jessica Taylor (Hubergroup's lawyer) and Mr Lenssen. The purpose of the meeting, as stated by Hubergroup's lawyers, was "to hear Judy's feedback, on the proposal. Hubergroup understands that Judy wishes to have an opportunity to speak to and elaborate on the feedback she has already provided. Hubergroup therefore does not have a list of prepared questions but may have some clarification questions."

[38] During this meeting Ms Bell made a request for Hubergroup's financial information for the year 2023 which Hubergroup said was not available because the information was with its auditors. Hubergroup reiterated that there was a projected \$480,000.00 loss in the business. Mr Toal indicated that Hubergroup would "take on board the feedback we've received today" and "consider that tomorrow and we'll give our formal response to that." The meeting concluded with Ms Bell's lawyer advising that Ms Bell would like an "opportunity to respond" to what had been discussed at the meeting, in order to "digest what's happened today and make a response".

Ms Bell sought further clarification 2 February 2024

[39] On 2 February 2024, counsel for Ms Bell wrote to Hubergroup's lawyers advising that the meeting had raised "more questions than answers" and sought further clarification about two other roles that had been subject of discussion during the meeting that took place on 1 February 2024.

Hubergroup's response and decision letter 2 February 2024

[40] Later that day, Mr Toal issued Hubergroup's decision letter to Ms Bell which set out its decision to disestablish the role, which stated Ms Bell's last day as Monday 5 February 2024. Hubergroup stated it would provide payment in lieu of notice. The letter included the following:

- Hubergroup was considering disestablishing two roles in Auckland but this was "very tentative and there is no formal proposal" and that "based on current thinking, any changes would focus on technical production roles and even if a

restructuring of this nature proceeded, there would be no redeployment opportunities” for Ms Bell;

- The financial result for year-to-date 2023 is a profit before tax (loss) of \$406,889 with an estimated year-end result of >\$500,000 (loss). (As we indicated at the meeting, we are still waiting to receive the audited accounts, but the loss will not change materially). The financial result for year-end result 2022 was a profit before tax (loss) of \$240,741;
- Hubergroup needed to make changes to reduce its expenditure;
- Hubergroup agreed that “many of the duties and responsibilities of the Wellington Branch Manager role still need to be undertaken, but remain of the view that these could be redistributed...we consider that the tasks and responsibilities will be able to be effectively performed by other roles.”
- Hubergroup clarified, in response to the query made on 2 February 2024 by Ms Bell’s lawyer, that “there are no roles being created”.

[41] Ms Bell raised a personal grievance with Hubergroup on 26 February 2024 for an unjustified disadvantage and unjustified dismissal.

The Authority’s investigation

[42] Witness statements were lodged by Ms Bell, Jan Bell (Ms Bell’s sister-in-law), and Philip Bell (Ms Bell’s husband). For Hubergroup, witness statements were lodged by Mr Toal.

[43] 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 the orders made. It has not recorded all the evidence and submissions received, but all information submitted to the Authority has been considered.

Non-publication application

[44] Ms Bell made an application for non-publication of her name which was opposed.

[45] Pursuant to clause 10 schedule 2 of the Act, the Authority may, in respect of any matter, order that all or any part of any evidence given or pleadings filed or the name of any party or witness or other person not be published, and any such order may be subject to such conditions as the Authority thinks fit.

[46] The starting point is that of open justice in the Authority, including the names of parties. Although non-publication may be granted in exceptional circumstances, none of those circumstances apply.

[47] In *MW v Spiga Ltd (Spiga)*², the majority set out a two part test when considering whether to grant non-publication:

- (1) Firstly, there must be “reason to believe that the specific adverse consequences could reasonably be expected to occur”;
- (2) Secondly, the “Authority or Court must consider whether the adverse consequences that could reasonably be expected to occur justify a departure from open justice in the circumstances of the case”.

[48] The Court said this part is a weighing exercise and that equity and good conscience may be involved.

[49] Counsel for Ms Bell submitted that publication would likely result in adverse consequences, such as reputational harm and client relationships. Counsel submitted that this is particularly so in light of Hubergroup’s counterclaim for alleged serious misconduct. However, as submitted by Hubergroup, publicity associated with legal proceedings that may cause embarrassment or unwelcome attention does not meet this high threshold. Hubergroup also submitted that what Ms Bell has asserted are usual consequences of legal proceedings of this nature.

[50] I find that there was no evidence that publication would cause Ms Bell specific adverse consequences that were sufficient to justify an exemption to the fundamental rule of open justice.

[51] Ms Bell’s application for non-publication is declined.

² *MW v Spiga Ltd* [2024] NZEmpC 147.

The issues

[52] The issues requiring investigation and determination were:

- (a) Whether Ms Bell was unjustifiably disadvantaged and/or dismissed by Hubergroup;
- (b) Whether there was a breach of good faith and if so, should penalties be awarded and what quantum?
- (c) Whether Ms Bell breached her employment agreement and if so, should penalties be awarded and what quantum?
- (d) If Hubergroup's actions were not justified (by disadvantaging and/or dismissing her) what remedies should be awarded, considering:
 - (i) Lost wages (subject to evidence of reasonable endeavours to mitigate her loss); and
 - (ii) Compensation under s123(1)(c)(i) of the Act?
- (e) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Ms Bell that contributed to the situation giving rise to her grievance?
- (f) Should either party contribute to the costs of representation of the other party.

Was Ms Bell unjustifiably dismissed by redundancy?

Relevant Law

[53] In considering a personal grievance for redundancy the Authority must apply the test of justification set out at section 103A of the Act. The Authority must assess the reasons given to the employee by the employer including the business reasons and decide, on an objective basis, whether the employer's actions were reasonable. Even if a redundancy is genuine, it may be procedurally so flawed that dismissal is unjustifiable. However, if an employer can show the redundancy was genuine and that notice and consultation requirements have been met, the s 103A test may well be satisfied:³

We consider that the appropriate approach to statutory interpretation in this case is the orthodox approach beginning with the words of the section and considering them in light of the purpose of the statute. When the words of s 103A are considered in light of the purposes of the statute set out in s 3 and the overarching duty of good faith provided for in s 4, we do not consider that the reference in s 103A to a 'fair and reasonable

³ *Grace Team Accounting Ltd v Brake* [2014] NZCA 541, [2015] 2 NZLR 494 at [85].

employer’ can properly be read down to mean ‘a genuine employer’, in the sense used in *Hale* (an employer not using redundancy as a pretext for dismissing a disliked employee).

[54] The Court of Appeal in *Grace Team Accounting Ltd v Brake*⁴ decided that s 103A meant that the Authority of the Court could not be precluded from inquiring into the substantive justification of a dismissal for redundancy, even where the dismissal was for a genuine business reason. It stated:

In the end the focus of the Employment Court has to be on the objective standard of a fair and reasonable employer, so the subjective findings about what the particular employer has done in any case still have to be measured against the Employment Court’s assessment of what the fair and reasonable employer would (or, now, could) have done in the circumstances.⁵

[55] As to whether a dismissal was for a genuine business reason, the law has adopted the natural and ordinary meaning of the word “redundancy”, requiring that a genuine redundancy is one that is superfluous to the employer’s needs, or in other words, that the position filled by the employee has become superfluous to the needs of the employer.⁶ This was the position of the Court of Appeal in *Grace Team Accounting Ltd v Brake*⁷ when it confirmed that *GN Hale & Sons Ltd v Wellington Caretakers IUOW*⁸ remains good law where it defined what redundancy commonly means.

[56] A genuine redundancy involves the elimination of a position for genuine commercial reasons. However, even where a redundancy is genuine, the employer must follow a fair process, which includes:

- Providing the employee with sufficient information about the proposal;
- Allowing meaningful consultation;
- Considering alternatives to redundancy; and
- Acting in good faith under section 4 of the Act.

⁴ *Grace Team Accounting Ltd v Brake* [2014] NZCA 541, [2015] 2 NZLR 494.

⁵ *Grace Team Accounting Ltd v Brake* [2014] NZCA 541, [2015] 2 NZLR 494 at [84].

⁶ *The New Zealand King Salmon Co Limited v Robert Slotemaker* (2017) NZEmpC 99.

⁷ *Grace Team Accounting Ltd v Brake* [2014] NZCA 541, [2015] 2 NZLR 494 at [47]; *The New Zealand King Salmon Co Limited v Robert Slotemaker* (2017) NZEmpC 99 at [31].

⁸ *GN Hale & Sons Ltd v Wellington Caretakers IUOW* [1991] 1 NZLR 151 (CA).

[57] With regard to consultation, the Court stated in *Simpsons Farms Ltd v Aberhart*⁹:

[...] A fair and reasonable employer must, if challenged, be able to establish that he or she or it has complied with the statutory obligations of good faith dealing in s4 including as to consultation because a fair and reasonable employer will comply with the law.

Evidence

[58] It is undisputed that Hubergroup had lost several contracts preceding its decision to disestablish Ms Bell's role.

[59] In Mr Toal's witness statement, he listed the following losses that took place since 2020 as "examples" of "significant impacts" to Hubergroup's business:

- a. In 2020, a lost contract resulted in lost revenue of \$200,000;
- b. In 2022, a lost contract to another competitor resulting in lost revenue of \$1,300,00;
- c. In 2021, a lost contract to another competitor resulting in lost revenue of \$814,000;
- d. In 2023, the closure of Webstar Masterton resulting in lost revenue of \$900,000;
- e. In 2023, the loss of the major contract resulting in lost revenue of \$680,000.¹⁰

[60] Mr Toal stated there was a general decline in the market and in 2020 there were closures of print businesses all over New Zealand with the market trending down. However, Mr Toal also stated that the revenue decline happened not long after Hubergroup bought over the company in 2008. For the 2023/24 financial year, Hubergroup also estimated a loss of almost \$500,000, that had yet been confirmed by its auditors at the time of its final decision on 2 February 2024.

[61] Out of the examples listed above, the closure of Webstar Masterton in (d) above was the only example expressly relied on in the proposal of 28 November 2023.

⁹ *Simpsons Farms Ltd v Aberhart* [2006] 1 ERNZ 825 at [65].

¹⁰ For commercial sensitivity reasons, all customer names have been removed.

[62] During the investigation meeting, Mr Toal's response to this was that he believed that because Ms Bell had access to Hubergroup's internal system containing financial information, she could "access the sales information" and that should have sufficed. Mr Toal stated also that Ms Bell understood the position of the branch very well, and she had a good understanding of the state of play in Wellington.

[63] Mr Toal stated that as part of its processes leading up to the proposal to disestablish the Role, other roles had been discussed and Hubergroup had, by then "exhausted all other (operational) options". Mr Toal also noted that there were only two employees in Christchurch. For these reasons Hubergroup did not consider redeployment an option as there were no roles available for this purpose.

[64] Mr Toal noted that Ms Bell shared a sales function with Mr Achilles albeit in relation to different customers. Mr Toal stated that Mr Achilles, who was previously national sales manager and shared a sales function with Ms Bell, had a title change to "business development" and was on reduced hours prior to the proposal. Mr Toal stated that it was not a new role but a title change. Mr Toal stated this change in title in September 2023 was to reflect the fact Mr Achilles' sales function (in relation to the paper market) was "not a five-day job". Mr Toal stated that Hubergroup's rationale for not including Mr Achilles' role for consideration in the proposal was because Mr Achilles was already on reduced hours by then.

[65] Further, despite its reliance on Hubergroup's financial performance over the "last 18 months", no financial information was provided in the proposal nor was there any further elaboration.

[66] Mr Toal accepted that "in hindsight" Hubergroup would have provided more information at the time of the proposal and that Hubergroup had terminated Ms Bell's Role before Hubergroup received the final figures from its auditors. However he believed that the projected loss of \$500,000 was a fair assessment by the time Hubergroup proposed to disestablish Ms Bell's role. This figure was provided to Ms Bell in Mr Lenssen's email of 13 December 2023.

[67] Although the estimated loss was subsequently supported by the final audited figures (which was only provided to the Authority two weeks prior to the investigation meeting), counsel for Ms Bell submitted that the disestablishment of Ms Bell's role

(with an annual salary of \$110,000 following the pay increase in May 2023 and approximately \$30,000 of employee entitlements annually) did not represent a “true cost saving”.

[68] During the meeting of 1 February 2024, Ms Bell asked how Hubergroup “accounted for [her] salary in the financial year ending 2023” when she received the 15% wage increase from \$96,000 to \$110,000 in May 2023, and questioned why “barely seven months later” her role “warranted disestablishment within seven days.” However there was no direct response to Ms Bell’s question, other than Mr Toal explaining that that it was not financially sustainable for the business to keep operating as it had been.

[69] When I asked what feedback provided by Ms Bell may have led to a change in the proposal, Mr Toal stated “a strategy for business development” might have led to a different outcome. However, the feedback Ms Bell was asked by Mr Lenssen to provide was an “information-dense” report of all the tasks Ms Bell performed for Hubergroup. Consequently, Ms Bell did not provide a “strategy for business development” as part of her feedback to the proposal to disestablish her role.

Analysis – unjustified dismissal

[70] Having reviewed the evidence, I find Ms Bell’s dismissal by redundancy was both substantively and procedurally unjustified.

Not substantively justified

[71] Hubergroup’s projected loss of \$500,000 may have been a driver for consolidating and mitigating its loss of revenue overall, but I am not satisfied that the commercial rationale extended to a genuine consideration of why the Wellington branch position was to be made redundant. Instead, I consider that Hubergroup selected Ms Bell for redundancy in a way that was not fair and reasonable. Financial loss is an expected driver for any business considering a redundancy. However there must also be evidence that Ms Bell’s role was genuinely superfluous to Hubergroup’s needs.

[72] Firstly, having reviewed the evidence, there was very little evidence before the Authority about how Hubergroup selected Ms Bell’s role for redundancy, other than stating that her role had the least impact on the business. Hubergroup had made this assertion notwithstanding Mr Lenssen had asked Ms Bell to set out a report of all the

work she performed for Hubergroup at the time of its proposal. In doing so, Hubergroup's proposal to disestablish Ms Bell's role prior to a proper understanding of what her tasks were lends itself to predetermination on this issue of superfluosity.

[73] Secondly, as highlighted in Ms Bell's initial feedback to Hubergroup, there was no rationale provided as to where some of Ms Bell's responsibilities would go, such as the management of the Wellington employees, and no attempt to rationalise its reasons for proposing to disestablishing one role, being Ms Bell's role.

[74] While I found Mr Toal to be a sincere and candid witness, there were no board minutes, discussion documents, meeting minutes, or other information to corroborate assertions that:

- a. Disestablishing Ms Bell's role would achieve the cost savings required;
- b. Other roles had been considered prior;
- c. Hubergroup exhausted all other operational options.

[75] Thirdly, it was not clear how Hubergroup made its decision to provide Ms Bell a 15% pay increase six months prior to its proposal to disestablish her role, notwithstanding its reliance to disestablish her role based on Hubergroup's financial performance over the last 18 months.

[76] Although Mr Toal may have elaborated, at the investigation meeting, where he believed Hubergroup was likely to achieve additional savings from, citing natural attrition as an example, this was not evident in its decision making.

[77] Ms Bell's request for financial information following the proposal (which expressly relied on Hubergroup's financial performance "over the last 18 months") was declined on the basis that it was "not yet available" because its financial information was with Hubergroup's auditors. Instead, Hubergroup provided an estimation of a \$500,000 projected loss to Ms Bell. Hubergroup says it would have been contrary to obligations of confidentiality to disclose this information to Ms Bell prior to the information being audited. However, this contradicts its claim that Ms Bell could easily access that information. In any case, citing financial loss of its own does not automatically mean the role was no longer needed for commercial reasons.

[78] In response to submissions that other roles, such as Mr Achilles's role, should have been part of the proposal, Hubergroup stated that the changes to Mr Achilles' role occurred before the proposal to disestablish Ms Bell's role. Therefore Hubergroup did not consider the removal of Mr Achilles' role would "achieve the cost-savings it needed", noting that he held key customer relationships for Hubergroup.

[79] However, given that the proposal was "based on the business's financial performance over the last 18 months", it remained unclear how and why Mr Achilles' hours and job title was amended only two months earlier outside the redundancy process; and Ms Bell's role was subject to disestablishment.

[80] If Hubergroup's financial performance was of genuine concern in the preceding 18 months, it is unclear why the two roles (Wellington branch manager and national sales manager) which both had sales functions, were not examined or assessed at the same time to determine if they were fit for purpose or truly superfluous. The similar sales function both roles shared also raises questions as to how Mr Achilles' role (notwithstanding that he was on reduced hours) was excluded from the proposal or why a similar alternative to reduce Ms Bell's hours was not explored as a possible alternative to redundancy.

[81] The two roles, despite its similarities, were treated differently.

[82] On a whole, there was a lack of clarity, consistency and cohesiveness around Hubergroup's decision-making. This was particularly so because Hubergroup stated that the only piece of written documentation that related to the restructure was the proposal document itself. The ambiguity and lack of transparency of Hubergroup's decision-making was compounded by the lack of forthcoming information.

[83] Consequently, when considering whether the Wellington branch manager role was genuinely superfluous to the business needs, the evidence does not go far enough to support Hubergroup's substantive reasons for disestablishing Ms Bell's role.

[84] Accordingly, I find the decision to disestablish Ms Bell's role substantively unjustified.

Not procedurally justified

[85] In their submissions, counsel for both parties referred to s103A(5) of the Act which states:

The Authority or the court must not determine a dismissal or an action to be unjustifiable under this section solely because of defects in the process followed by the employer if the defects were—

- (a) minor; and
- (b) did not result in the employee being treated unfairly.

[86] For Ms Bell, the submission was made that the defects were major defects which resulted in Ms Bell being treated unfairly.

[87] For Hubergroup, the submission was made that it accepts its process was not perfect, but it did not result in Ms Bell being treated unfairly. Hubergroup submitted that procedural justification did not require a “text-book perfect” process¹¹ and cited the words of Chief Judge Inglis in *Wilson Grange Investments v Guerra*¹²:

An employer’s actions are to be measured against those that a notional fair and reasonable employer could have taken. That may usefully be conceived of as a target. The bullseye of the target is “employer best practice” and the outer circles of the target comprise “acceptable action”. Towards the outer edges of the target lie the danger zones. Anything off the target is not what a fair and reasonable employer could have done. The size of the target will depend on ‘all of the circumstances at the time’, as s103A(2) expressly states.¹³

[88] For reasons set out below, I found that Hubergroup did not conduct a fair process in its decision to disestablish Ms Bell’s role.

[89] This was on the basis that:

- a. Insufficient information was provided about the proposal which led to Ms Bell not able to provide informed feedback about the proposal;
- b. Consultation was not genuine or meaningful;
- c. Alternatives to redundancy were not contemplated or explored;

¹¹ *B v Virgin Australia (NZ) Employment and Crewing Ltd* [2013] NZEmpC 40 at [178].

¹² *Wilson Grange Investments v Guerra* [2-23] NZEmpC 39.

¹³ Above n 10, at [41].

d. Hubergroup did not engage in good faith.

[90] Firstly, Ms Bell was blindsided by the nature of Mr Lenssen's visit to the Wellington office. There was no prior notice of a meeting between the two, let alone that the true purpose of Mr Lenssen's visit related to Ms Bell's continued employment with Hubergroup. I find that Hubergroup had given little thought with regards to process when it delivered the proposal of 28 November 2023 to Ms Bell and sought feedback by the end of that working week. There was no prior notice of a one-on-one meeting between Mr Lenssen and Ms Bell, or any indication that the purpose of Mr Lenssen's visit to the Wellington office concerned Ms Bell's potential ongoing employment.

[91] The absence of any notice was grossly disproportionate to Hubergroup's reliance on its financial performance over the last 18 months and particularly shortsighted given its proposal impacted one of Hubergroup's longest serving employee.

[92] The proposed timeframe for Ms Bell to provide feedback also called into question the genuineness of Hubergroup's intention to consult with Ms Bell, having only provided until the end of the working week to provide feedback, without any prior notice of the proposal itself. I found that this only added insult to injury in such circumstances.

[93] Secondly, Hubergroup's responses to Ms Bell's questions, and the nature of the information provided, were, in my view, too vague to be of any genuine assistance for Ms Bell to be able to provide a properly informed response. It was only due to Ms Bell's requests for information, that subsequently further emails and information was provided, albeit drip-fed. I also consider Hubergroup characterised its inability to share certain financial information disingenuous and its "deadlines" for feedback were unreasonable, with Mr Lenssen providing information on 8 and 13 December 2023, and stating that "final" feedback be provided by 15 December 2023. This was not reasonable in light of the late provision of information to Ms Bell for the purposes of feedback. Although an extension was later provided, at Ms Bell's lawyer's request, the process in which Hubergroup purported to undertake and the timeframes it initially sought to impose, casts doubt on the genuineness of the consultation process.

[94] Thirdly, and significantly, I found it an odd request by Mr Lenssen to have asked Ms Bell for a full breakdown of her tasks following the proposal to disestablish the Wellington branch manager role. The purpose, as told to Ms Bell, was that this information would form the feedback to the proposal. However, what Mr Lenssen sought from Ms Bell as part of her response to the proposal, was not feedback that would have been helpful to Hubergroup or would have led to any change in the outcome, as confirmed by Mr Toal's evidence. Mr Toal was after feedback that was "strategic" in nature, and not task focussed.

[95] This meant that the feedback Ms Bell was asked to provide was in fact not relevant to the considerations Mr Toal would have factored in as part of considering the proposal or considering whether to make any changes. I found that this adversely impacted on Ms Bell's opportunity to provide informed comments on the proposal before Hubergroup made its decision on 2 February 2024. Consequently, any information Ms Bell would have provided was futile as to the prospects of her retaining her employment. I therefore find that Ms Bell was treated unfairly in the process.

[96] As the Court stated in *Stormont v Peddle Thorp Aitken Ltd*:

Employees must know what is proposed before they can be expected to give their view on it. This requires the provision of sufficiently precise information, in a timely manner. The employer, while quite entitled to have a working plan already in mind, must have an open mind and be ready to change and even start anew.

...[a]n employee's subjective views on adequacy are not the yard-stick. Nor is an employer under an obligation to continue to respond to requests for information indefinitely. The issue of whether or not sufficient information relating to the proposal was provided requires a review of the facts.

[97] Fourthly, although Hubergroup considered that Ms Bell had access to financial information through its internal systems in light of her role, counsel for Ms Bell correctly submitted that:

It is not fair or reasonable to have expected the applicant to go out and attempt to find some business case for the proposed restructure of her position. The employer is obliged to provide all relevant information (especially information expressly referred to in the proposal), and the failure to do so is fatal to the employer's position considering ss 4 and 103A(3) of the Act.

[98] Section 4(1A) of the Act provides that the duty of good faith *includes* requiring that an employer, who is proposing to make a decision that will have an adverse effect on the continuation of employment of any of its employees to provide the employees affected with:

...access to information, relevant to the continuation of the employees' employment, about the decision; and

An opportunity to comment on the information to their employer before the decision is made.

[99] Even if Hubergroup had substantially justified the proposal in its internal discussions (which it has not), the manner in which the process of the restructure was conducted was reactionary, and not a process that was properly stepped through, such as ensuring sufficient information was provided to Ms Bell at the time of its proposal or breaking down the financial information for the purposes of supporting its proposal. The absence of any supporting documentation, other than the proposal document itself and its annual reports, has not assisted Hubergroup in its case.

[100] Notwithstanding that finalised information was pending the auditor's approval, if Hubergroup was able to justify the proposal from a financial perspective, it should have been able to provide more than a high-level figure of its projected loss of \$500,000. If Hubergroup felt it was not able to do so because it was awaiting the finalised information from its auditors, then its decision to disestablish the role was likely to have been premature. In either scenario, the process was procedurally flawed.

[101] For these reasons, I find that Hubergroup's process was not simply one that was imperfect. Its process was far from perfect and had substantial flaws which resulted in Ms Bell being treated unfairly and breached its obligations of good faith to genuinely consult Ms Bell under s 4(1A)(c). Accordingly, Hubergroup's decision to disestablish Ms Bell's role was procedurally unjustified.

Was Ms Bell disadvantaged?

[102] Given that Ms Bell is successful in her claim of unjustifiable dismissal, I do not need, therefore, to further consider whether she was unjustifiably disadvantaged by Hubergroup.

[103] This claim is based upon the same facts as formed the basis of her successful unjustifiable dismissal claim for which she has been awarded remedies. There is no separate remedy award under this head.

Did Ms Bell breach her employment agreement?

[104] Hubergroup claims that Ms Bell has breached clauses 20 and 21 of her IEA by forwarding over 600 work emails to her personal email, which included confidential documents. These clauses of her IEA state:

20 Confidential Information

You must not use Confidential Information other than for the purposes of performing your duties.

You must not disclose Confidential Information unless the disclosure is to an officer or employee of the Company...

[...]

21 Intellectual Property

You acknowledge that the Company owns all Intellectual Property Rights...

You assign to the Company all existing and future Intellectual Property Rights...

You must do all things reasonably requested by the Company to enable the Company to perfect the assignment of the Intellectual Property Rights...

[...]

[105] Confidential Information in the IEA includes “trade secrets; confidential know-how; information concerning the business, finances, or customers of the Company...costs; prices; profits and sales; new business ideas, business strategies; ...forecasts;...all information relating to Intellectual Property...”

[106] Intellectual Property in the IEA includes “inventions...trademarks and designs; copyrightable works.”

[107] Ms Bell gave evidence that she forwarded emails that could have been relevant for the purposes of compiling her feedback to Hubergroup as she was on annual leave during that time. She also stated that after doing so, she deleted all of the emails. Ms Bell stated that it was not in her interest to use the information to damage the business given her longstanding association with Hubergroup nor had a purpose for retaining emails once she provided her feedback. Ms Bell says the transfer of emails to her

personal emails was because she did not want to prepare her feedback on her work email and computer.

[108] On a plain reading of the IEA, I consider that Ms Bell did not breach either clauses 20 or 21 of her IEA. This is because there was no evidence of any use of the information other than for Ms Bell to perform her duties, which I consider includes using the information for the purposes of providing feedback to Hubergroup's proposal to disestablish her role. Although I accept Ms Bell had forwarded to her personal email address a substantial quantity of emails, there was no evidence of disclosure other than to herself albeit to her personal email address.

[109] While I acknowledge Mr Toal's evidence that Hubergroup considered the matter a serious issue because there had been a prior security breach with the removal and unauthorised use of sensitive information via USB by a former employee, Hubergroup did not provide any evidence that it had security policies prohibiting the forwarding of work emails to one's personal email. As far as a breach of her IEA is concerned, there is none on a plain reading of the IEA. Any lingering concern by Hubergroup that the information may be inadvertently disclosed or compromised has been addressed by Ms Bell permanently deleting those emails from her personal email account. Further there was no evidence of any disclosure other than to Ms Bell herself. As such, Hubergroup's counter claim has not been made out.

Remedies

Compensation for humiliation, loss of dignity and injury to feelings

[110] As Ms Bell's unjustifiable dismissal claim is made out, she is entitled to compensation for humiliation and injury to feelings pursuant to s 123(1)(c)(i) of the Act.

[111] Ms Bell gave evidence of the physical and emotional impacts on her, following the loss of her job, including the loss of her sense of self and confidence. Ms Bell also gave evidence of the impacts on the connections and relationships she had established over her 30 year-long career in the industry and feeling isolated due to how her employment ended.

[112] I accept Ms Bell's evidence that the decision caused her significant emotional distress and harm, particularly so following her exceptionally long and loyal service to

Hubergroup. Ms Bell's passion, loyalty, and commitment to the business was evident and she gave evidence that she felt betrayed, especially following the withdrawal of her resignation at Hubergroup's request. In her evidence, Ms Bell stated that she believed Hubergroup played on her "love and loyalty" to the business. I was left in no doubt that the unjustified disestablishment of her role, including the manner in which it was done, impacted her greatly. I also read Mr Bell's witness statement which reflected on the emotional toil Hubergroup's decision had on Ms Bell.

[113] In considering an appropriate award of compensation, I take into account the impacts on Ms Bell due to both the lack of genuine reason for the redundancy, and the unfair and flawed process.

[114] Having balanced the evidence against current trends in both the Court¹⁴ and the Authority¹⁵, I consider an appropriate award of compensation under s 123(1)(c)(i) of the Act, subject to any reduction for contribution, is \$25,000.

Contributory conduct

[115] I am required under s 124 of the Act to consider the issue of any contribution that may influence the remedies awarded.

[116] There are no issues of contribution here.

[117] Although Hubergroup submitted that Ms Bell's act of forwarding confidential work emails to her personal email should be taken into account when assessing contributory conduct because it impacted on its trust and confidence in Ms Bell, Hubergroup says this only influenced its decision to pay notice in lieu, which it was entitled to do so under the IEA.

[118] As such, I do not consider that Ms Bell's actions contributed to the facts giving rise to the dismissal by redundancy.

¹⁴ *Pyne v Invacare NZ Ltd* [2023] NZEmpC 179; *GF v Customs* [2023] NZEmpC 101; *Pact Group v Robinson* [2023] NZEmpC 173.

¹⁵ *Sutter v Living Waters Medical Solutions Ltd* [2025] NZERA 485; *Stillman v Brother Coffee Ltd* [2025] NZERA 239.

Loss of remuneration

[119] With respect to wages, s 128(2) of the Act requires the payment of the lesser of a sum equal to lost remuneration or three months' ordinary time remuneration. The Authority may, in its discretion under s 128(3) of the Act, order payment of a greater sum by way of compensation for remuneration lost by that employee as a result of the personal grievance.

[120] Ms Bell found employment within two months of the dismissal. As such, I award her with two months of loss remuneration (\$9,166.84 gross monthly salary multiplied by two) at \$18,333.68.

“Special damages” – s123(1)(c)(ii)

[121] Submissions were advanced for Ms Bell seeking “special damages” under s123(1)(c)(ii) for legal fees incurred “in the consequence of having to defend her position and attempt [to] preserve the employment relationship where there was no merit to the restructure.” Reliance was placed on *Stormant v Peddle Thorp Aitken (Stormant)*¹⁶ on the basis that the Court paved the way for special damages to be awarded in relation to the pre-litigation legal costs incurred by the employee during the employer's process. The Court observed that there may be circumstances where an employee can claim costs associated with an employment investigation such as where the employer commenced a baseless process. It was submitted that the circumstances here are analogous to those in *Stormant* and Ms Bell seeks an award of “special damages, or alternatively under the heading of loss of monetary benefit” to reimburse her for the costs of an unjustified restructuring process “motivated by improper purpose.”

[122] Hubergroup did not respond to submissions for “special damages”.

[123] I consider that the award of special damages in *Stormant v Peddle Thorp Aitken*¹⁷ were based on unusual circumstances where a “bright line”¹⁸ could be drawn between the costs associated with the flawed redundancy process in those circumstances and the legal costs incurred as part of proceedings. In these circumstances, no evidence has been put to the Authority to consider this necessary

¹⁶ *Stormant v Peddle Thorp Aitken* [2017] NZEmpC 71.

¹⁷ *Stormant v Peddle Thorp Aitken* [2017] NZEmpC71.

¹⁸ *Stormant v Peddle Thorp Aitken* [2017] NZEmpC71, at para [96].

distinction between the costs claimed to have been incurred, nor am I persuaded that the circumstances surrounding the issues at hand were unusual so as to warrant an award of special damages.

[124] Claims for special damages are therefore declined. I find that any legal costs associated with proceedings must properly be treated as ‘costs’ and I reserve determination on any costs issues, as set out below.

Penalties

[125] I do not consider penalties appropriate in these circumstances. Section 4A provides that a party who fails to comply with a duty of good faith in s4(1) is liable to a penalty if the failure was “deliberate, serious and sustained” or was “intended to undermine...an employment relationship.”

[126] Although Hubergroup breached its obligation by failing to consult under s4(1A), I do not find its failures to do so were “deliberate, serious, *and* sustained” (emphasis added) or “intended to undermine” the relationship. Instead, I consider Hubergroup’s failures were a result of a flawed process that had been done, using its words “at pace” following the loss of the major contract. I find its actions of poor consultation and poor preparation of the information and its assessment of the business case, were inadvertent. I did not find evidence to the contrary.

[127] As such, no orders are made as to penalties.

Orders

[128] The Authority orders Hubergroup New Zealand Limited to pay Judith Bell, within 28 days of this determination:

- a. Lost wages: \$18,333.68 under s 123(1)(b); and
- b. Compensation for hurt and humiliation: \$25,000 under s 123(1)(c)(i).

Costs

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

[130] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Ms Bell may lodge, and then should serve, a memorandum on costs

within 28 days of the date of this determination. From the date of service of that memorandum Hubergroup 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.

[131] 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.¹⁹

Davinnia Tan
Member of the Employment Relations Authority

¹⁹ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1